

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. KXXXXXX 584 of 1991.

DATE OF DECISION 28.6.1991

K.P.Hareendranathan _____ Applicant (s)

Mr.MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Chairman, Central Board of Workers Education and others _____ Respondent (s)

Mr.Mathews J Nedumpara,ACGSC _____ Advocate for the Respondent (s)

CORAM : for R.1&2

The Hon'ble Mr. S.P. Mukerji, Vice Chairman.

The Hon'ble Mr. S.P. Mukerji, Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 12.4.1991 ^{filed} under Section 19 of the Administrative Tribunals Act the applicant who has been working as Regional Director, Workers Education Centre, Kozhikode under the Ministry of Labour, Government of India has challenged the impugned order dated 3.4.91 (Annexure-II to M.P.534/91 dated 29.4.91) transferring him from Kozhikode to Vijayawada (Andhra Pradesh). He has urged that with only 11 months of service left before retirement and when he is due for promotion as Zonal Director, his transfer is a result of the vindictive action of the Chairman, Central Board of Workers Education. According to him the Chairman made a surprise visit on 29.10.90 when he reached office half-an-hour late. The Chairman got annoyed with the applicant's late coming and scolded him and he was threatened with transfer or suspension. Later his explanation was called for. The applicant

62

gave his explanation and the matter was considered to be closed. His plea is that the transfer is punitive in nature and no interest of service or administrative exigency is involved. He is to retire in March, 1992 and his children are studying in school and college around Kozhikode and the transfer will be a hard blow to him. He has also alleged that after his transfer the respondents are intending to fill up the vacancy by promoting one of their favourites. The applicant is the seniormost Regional Director and his next promotion as Zonal Director was likely to arise at Madras by the end of April, 1991^{and} by the transfer he will be missing the promotion also. He has also brought out that he has been a victim of frequent transfers in 1985 from Kozhikode to Cochin, in 1986 from Cochin to Hassan in Karnataka, in 1987 from Karnataka to Cochin and again in February, 1988 from Cochin to Kozhikode.

2. In the Counter Affidavit the respondents have not denied the factual parts of the application. They have stated that except for a small period at Hassan in Karnataka State, the applicant has been mostly posted within Kerala. Since he has not completed five years of service as Regional Director, he cannot be considered for the post of Zonal Director. They have denied that he is the seniormost amongst the Regional Directors. They have not, however, denied that the applicant has less than 11 months to retire but have stated that there is no rule which prohibits transfer of Government servants when they have short period to retire. The guidelines of transfer are not statutory in nature and cannot be enforced through a judicial forum. The administration is always at liberty to deviate from the guidelines and such deviation is not justiciable. The guidelines do not confer a right on the employee. They have conceded that the Chairman did visit the Centre on 29.10.90 when the applicant was late by half-an-hour, that there were complaints ^{his habitual} about late coming and unpunctuality that the said complaint was ^{found} to be one not without merit by the Chairman from his own experience.

They have further stated that the applicant had been advised to be punctual and avoid habitual late coming. The habitual late coming was sufficient enough for the respondents to take disciplinary action against him but the respondents showed utmost indulgence to the applicant. They have denied any ulterior motive or malifides as alleged by the applicant. The applicant has completed three years of service at Kozhikode and his transfer to Vijayawada is not arbitrary or discriminatory. The respondents have stated that they are not bound to disclose the exigencies of administration which weighed with them in passing the impugned order. They have stated further that the guidelines issued by the Government of India may not strictly ^{be} binding on the Board and its employees unless they are adopted by them. The impugned order was passed as a general order of transfer covering six other persons.

3. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is conceded by the respondents that the policy of the Government is to give a posting of choice to one who has less than two years of service left before retirement. This is a salutary policy accepted all over the Central Government organisations and cannot be faulted. After putting in 20 to 30 years of one's life the employee can legitimately deserve a posting of his choice at the fag end of his career so that he can make advance preparations for settling down after retirement. Unless, therefore, there are compelling reasons of administrative exigency, transfer of the applicant who belongs to Kerala and whose children ^{are} studying near Kozhikode cannot be thrown out to Vijayawada, outside the State, when he has about less than a year of service left. This will not only dislocate his life and that of his family but would also create unnecessary administrative problems to the place where he is posted and from where he has to retire after less than a year. The respondents' plea that even though they are instrumentality of the State, being a Society, they are not bound by the policy of the Government seems to be farfetched especially when the policy is based on very sound personnel policy. This aspect of the ^{has been} matter ^{has} very lucidly dealt with by the Principal Bench of this Tribunal in Shri KK Jindal Vs. General Manager, Northern Railway and others,

ATR 1986 CAT 304. Mr. Justice K.Madhava Reddy, the Hon'ble Chairman as he then was, speaking for the Division Bench observed as follows:

"6. It cannot be gainsaid that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. At the same time, an order of transfer as observed by V. Khalid J (as he then was) in P.Pushpakaran v. Chairman, Coir Board (kerala) 1979(1) SLR 309, "can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts". That is the human aspect of the matter. However, exigencies of administration and public interest must take precedence over individual inconvenience or hardship. A welfare state, governed by Rule of Law has therefore attempted to ensure fairness and equality of treatment and eliminate arbitrary action even in the matter of transfers by enunciating a policy. Though the State was not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to rules if any framed and policy, if any, enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a Constitutional requirement which every order must satisfy."

(emphasis supplied)

In Asu Singh Vs. State of Rajasthan, 1983(3) SLR 783, the Rajasthan High Court observed as follows:

"Once the administrative instructions or the executive orders are passed to lay down guidelines for doing a particular act, it would not be open to the State to say that it may or may not follow those guidelines or instructions. True it is that, in certain matters the guidelines cannot or need not be strictly followed for certain reasons. But if there is no such reason, then any act in disregard to those instructions can be challenged and would be open to scrutiny by courts."

I am fully conscious of the various rulings of the Hon'ble Supreme Court in which interference by judicial fora in matters of transfer in public interest has been frowned upon ^{but} ~~where~~ where ex-facie elements of malafides, collateral purpose or punitive action is ~~discernible~~ ^{where} discernible, there is no bar to the Court or Tribunal from satisfying itself that the impugned order of transfer does not suffer from such extraneous considerations. In Management of Syndicate Bank Vs. the Workers, AIR 1966 SC 1283 it was held that ~~even~~ ^{where} an order of transfer is malafide or for ulterior purpose

for punishing an employee for Trade Union activities, the Industrial Tribunal should interfere because the malafide exercise of power is not considered to be the legal exercise of the power given by ~~the~~ law.

4. In the instant case before us it has been conceded by the respondents that during the Chairman's visit in October, 1990 the applicant had been marked out as a late comer and there were complaints about his habitual late coming. The respondents have made no bones about how they would have treated the applicant by observing in the counter affidavit as follows:

"The unpunctuality and habitual latecoming on the part of the applicant which was found to be of substance at the surprise inspection was sufficient enough for these respondents to take disciplinary action against him. No such action was taken and utmost indulgence has been shown to the applicant."

From the above it is clear that the motive of transferring the applicant near the fag end of his career was to teach him a lesson for his habitual late coming. A Full Bench of the Tribunal in Shri Kamlesh Trivedi Vs. Indian Council of Agriculture Research and others, ATR 1988(2) CAT 116, observed that the transfer must be ordered by a competent authority in bonafide exercise of power. It could not be "a fixed" transfer or for settling scores. But if the transfer is made on a finding of misconduct arrived at without observing the principles of natural justice and that is the operative reason for transfer, it is liable to be quashed.

Since in the present case it appears to me that the applicant was transferred ^{a specific and} for habitual late coming and he had not been given an opportunity to explain this charge against him, the order of transfer being punitive has to be set aside. Discussing a catena of rulings of the Supreme Court and various High courts, the Guwahati High Court in Mohan Barua and others Vs. Union of India and others, 1986(1) SLJ 480 inter alia held that "if a transfer order is passed with malafide ulterior motive or an extraneous consideration with a view to penalising the employee, or the order is arbitrary or discriminatory, such an order will be liable to be quashed." In Gummadi Ankineedu Vs. the D.G. I.C.A.R, 1988(1) SLJ 186

the Andhra Pradesh High Court on the basis of the circumstances in which the petitioner therein had been transferred to a place not congenial to his specialisation, held that the transfer was by way of punishment and not in public interest and could not be ordered without notice. In Union of India Vs. H.N. Kirtania, 1989(3) SLJ SC 44 the Supreme Court held that transfer of public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides. Since in the case before us there are palpable elements of punishment in the order of transfer of the applicant who has to retire within less than a year, I feel that judicial intervention in this case cannot be ruled out. In C.Ramanathan Vs. Zonal Manager, Food Corporation of India, 1980(1) SLR 309 the Madras High Court held that if an order of transfer was not made for administrative reasons but to achieve a collateral purpose, then it is "open to the Court to crack the shell of innocuousness which wraps the order of transfer and by piercing such veil, find out the real purpose behind the order of transfer. No doubt, a normal order of transfer can, under no circumstances, be misunderstood, as a punitive measure. But if the circumstances surrounding such an order lead to a reasonable inference by a well-instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant consideration, then the arm of the Court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design and motive of circumventing disciplinary action.....". It was observed in that case that guidelines fixed for transfer have not been followed and why there has been deviation thereto, there is no explanation at all. In the present case also the respondents have virtually refused to divulge the reasons underlying the impugned order of applicant's transfer in following terms:

PR

"10. Guidelines do give enough leeway or elbow room to the administration to deviate from it and pass orders in the interests of the administration. Therefore, there is no force in the contention that the guidelines are given a go-by. However, in the instant case, the said contention is factually incorrect. The applicant has already completed 3 years of service at Kozhikode. The norms only state that to the extent possible an employee who has got only less than two years service should be posted to a place of his choice. In the instant case, it became necessary in the exigencies of the administration to transfer the applicant from Kozhikode to Vijayawada. This respondent is not bound to disclose what are the exigencies of administration which weighed the second respondent in passing the impugned order of transfer."

I feel that by their explicit secretiveness the respondents have exposed their weakness in justifying the validity of the order of transfer. This ^{clearly} weakness is brought out in the letter dated 30.4.91 which the Regional Director wrote to the Zonal Director in which he unequivocally deprecated the applicant's transfer as being not in the best interests of the Board. The following extracts from that letter appended as Annexure-III with the rejoinder filed by the learned counsel for the applicant, are self revealing:

"I bring to your kind notice the unjust and unfair transfers of Shri K.P.Harindranathan and Shri Ch.Venkateswarlu, Regional Directors of Kozhikode and Vijayawada respectively. It is felt that such transfers are not in the best interests of the Board.

It is all the more painful when such Senior Regional Directors are being transferred towards the fag end of their services when no serious charges are pending or levelled against them. I am sure that left to yourself you might not have done this unjust act.

In the interests of justice and fairplay the unjust transfers effected may please be cancelled and statusquo maintained. The above mentioned 2 officials may be permitted to leave the Board in peace and happiness. This is the only small consideration that can be shown to them who have to carry out many social obligations towards the fag end of their services."

5. Nothing in the respondents' case can survive the aforesaid ^{Regional} castigations of the ^{Zonal} Director. In the aforesaid facts and circumstances, I allow the application, ^{and} set aside the impugned order dated 3.4.1991 in so far as the applicant is concerned. There will be no order as to costs.

S.P. Mukerji / 28.6.91

(S.P.Mukerji)
Vice Chairman

Dated 28.6.1991.

Ks.