

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 592/92  
~~XXXXXX~~

199

DATE OF DECISION 10.7.1992

C.S.Viswanathan Applicant (s)

M/s. M.Ramachandran &  
P.Ramakrishnan Advocate for the Applicant (s)

Versus

Employees State Insurance Corporation,  
Panch Deep Bhavan, Respondent (s)  
Kotla Road, New Delhi represented by its  
Director General and two others.  
Mr. C.S.Rajan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

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

In this application dated 22nd April, 1992 the applicant who has been working as Deputy Regional Director (DRD), ESI Corporation, Trichur has challenged the order of his transfer dated 13.4.92 at Annexure-1 from the post of DRD, Kerala to that of DRD, Bombay. He has conceded that he has been working at Trichur, his native place, first as Assistant Director and then as Deputy Director for the last seven years, but has argued that since he has only one and a half years to retire on 31.12.1993, his transfer at this late stage is uncalled for. He has also alleged that he has been transferred in order to accommodate his juniors especially respondent No.3 who is coming from the post of DRD, Bombay. He has argued that there are two posts of Deputy Directors and the applicant could very well be accommodated in one of them. He has also alleged that

one Shri V.Pillai has been working at Trichur Office since 1972. He has also contended that he has been sanctioned permission for constructing a residential house at Trichur which has to be built before his retirement and his transfer at this stage will endanger his plans. He has got aged parents at Trichur residing with him. Finally he has alleged that for personal reasons, the second respondent, i.e, the Regional Director at Trichur has engineered his transfer.

2. In the counter affidavit, the second respondent has stated that during 33 years of the applicant's service, he remained posted in and around Trichur, his native place for more than 31 years. His transfer was necessitated in public interest as several specific complaints of misuse of power and demand of bribe have been received and it was felt that his transfer is necessary for facilitating a proper enquiry and to improve the image of the Organisation. It has been contended that there is no accepted norm in the ESIC prohibiting transfer of officers who are to retire within two years. It has been denied that the applicant had sought permission for construction of a house. He had sought permission for purchasing 10 cents of land. Respondent 3 has been working in Bombay for nearly three years and his wife being employed in the Corporation at Trichur he was transferred to Trichur in place of the applicant.

3. In the rejoinder the applicant has alleged that without waiting for the <sup>arrival</sup> ~~approval~~ of Shri Appachan as required in the impugned order issued by the Director, the second respondent vindictively and on his own issued orders relieving him forthwith at Annexure-III without

.3.

any authority . The applicant has denied any knowledge regarding misuse of power or any memo issued to him in that connection. No vigilance enquiry has been made according to his knowledge and the allegation of his demanding bribe is false. He has not been in charge of revenue branch since 1991. He has further averred that <sup>he</sup> ~~has~~ was elected as the President of ESIC Field Officers Association for 1990-92 and the Association was not having a good relationship with the second respondent, that the former Secretary of the Association was also unlawfully transferred and this transfer was set aside by the Tribunal, that the present Secretary of the Association had also been arbitrarily chargesheeted. The applicant has also alleged that the second respondent has been harassing him by transferring him from the revenue branch , by not granting casual leave and not approving his tour programme.

4. In the reply to the rejoinder the second respondent has reasserted that the applicant had worked outside Kerala only for 14 months during his 33 years of service. He has clarified that the applicant was directed to be relieved immediately without waiting for Shri K.P.Appachan not at his instance but because of a telex message from the first respondent <sup>as</sup> ~~at~~ Annexure R2(b). A copy of an affidavit filed by Shri Namboodiri, Dy.Regional Director(Administration) had also been filed at Annexure-R2(a) to rebut the false statement made by the applicant that the order of transfer was served on the applicant at his residence instead of being served by Shri Namboodiri personally on the applicant in the office. It has also been stated that the integrity of the applicant was not certified

in his Confidential Reports for March 1991 and March 1992, that memos, advice and warnings had been issued to the applicant who had been punished twice, in one of which the charges of corruption had been enquired into by the C.B.I. and resulted in the punishment. The second respondent has stated that he has the power to recommend transfer of the applicant as well as other officers. It has been asserted that the applicant applied for permission for construction of a house only after filing the Original Application and thus he made a wrong statement in the Original Application. Even now no sanction <sup>has been</sup> ~~was~~ granted for construction of a house and that he had withdrawn an advance from the Provident Fund in August 1986 not for construction of a house but for the purchase of a plot and that he retained the excess amount withdrawn from the Provident Fund illegally with <sup>him</sup> ~~£~~ for 5 1/2 years. The applicant's contention that he was elected President of the ESI Field Officers Association for the period 1990-92 has been stated to be a false statement as he was elected President on 22.9.90 and later submitted his resignation which was accepted by the Executive Committee on 29.12.90. Thus he was never a President during 1991 or 1992. It has also been stated that the averment of the applicant that Shri Krishnan, General Secretary of the Association was unlawfully transferred, by stating that Shri Krishnan was General Secretary of the Association till December 1983 but he was transferred only in October 1990. It has been explained that the applicant exceeded his powers by issuing recovery notices illegally under the ESI Act and without the approval of his superior officer and without the knowledge of the second respondent. It has been stated

22

that he was allowed to remain in the Inspection Branch even before the decision was taken in June 1991 to divest him all powers in the Revenue Branch. Since the applicant did not follow the procedure for applying <sup>for</sup> ~~of~~ leave in advance and for ~~his~~ deviations from the approved tour programme, he had been cautioned and these have nothing to do with his transfer.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents brought to our notice a number of judgments of the Hon'ble Supreme Court notably one in Mrs. Shilpi Bose and Ors., vs. State of Bihar & Others, 1991 II L.L.J 591 in which it was held that a Govt. servant holding a transferable job has no vested right to remain at one place and that transfer orders issued by the competent authority do not violate any of his legal rights and that even if an order is passed in violation of executive instructions, the courts ordinarily should not interfere with the order. In Shri G.K. Vohra vs. Union of India & Others, SLJ 1990(3) (CAT) 261 the Principal Bench of the Tribunal relying upon the various judgments of the Supreme Court <sup>in the</sup> and especially <sup>in the</sup> Union of India vs. H.N. Kirthnia, 1989(3) SCC 455, held that an order of transfer cannot be interfered with unless there is mala fides or violation of any statutory rule.

He has also referred to a number of rulings (1987(3) SLR 624, 626 and 189) to urge that <sup>transfer</sup> guidelines can be waived in case of administrative exigencies. It is now established law <sup>sanctified</sup> ~~sanctified~~ by a number of rulings of the Supreme Court and various Benches of the Tribunal that transfer

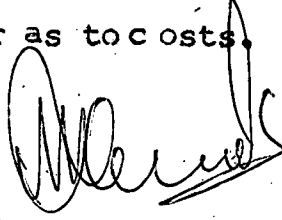
is an ordinary incident<sup>e</sup> of service and if there are administrative exigencies and public interest involved, the transferred officer cannot rely upon any right under Articles 14 and 16 of the Constitution or the administrative guidelines which are applicable in a normal situation. The court can interfere only if it is made out that the order of transfer is actuated by mala fides or a collateral purpose or as a substitute of punishment. Retention of some while transferring others in the public interest has been held to be not violative of Articles 14 and 16 of the Constitution. <sup>Amar Nath Vaish vs U.O. 9 (1987) RTC 606</sup> A Full Bench of this Tribunal in <sup>A</sup> Ramesh Trivedi vs. ICAR, ATR 1988(2) CAT 116, held that transfer on complaints even without enquiry is justified on administrative grounds. It has also been held that no Fundamental Right is involved in transfer (AIR 1982 SC 917). This Tribunal in M.Doss vs. Senior Divisional Mechanical Engineer and others, ATR 1988(2) CAT 610, held that transfer in order to maintain efficiency and smooth functioning of office, is valid. In Mohan Barua and others vs. Union of India and others, 1986(1)SLJ 480, it was held that transfer for improvement of general working condition or environment is in public interest even though in emergent cases a mid-session transfer has to be resorted to. In V.R Datania vs. Union of India and Others, (1989) 9 ATC 211, it was held that in a case of transfer of a low-paid employee, hardship is no ground for judicial intervention and there can be no immunity to transfer liability on ground of hardship alone.

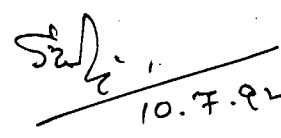
6. Keeping the tenor of judicial pronouncements as indicated above, we find that no case for judicial intervention has been made out in the application before us.

The applicant has been working in Kerala especially at Trichur and in its neighbourhood for more than 31 years out of 32 years of his service. He is being posted to Bombay in order to bring in an officer whose wife is working at Trichur and who has been in Bombay for more than three years. The only point in the applicant's favour is his impending retirement in December 1993 but from the pleadings one gets the impression that the applicant who is a native of Trichur has got himself embroiled in a number of cases unnecessarily including cases of corruption for which on the basis of a C.B.I enquiry he had been punished. <sup>The</sup> ~~His~~ certificate of <sup>his</sup> integrity has been withheld in two successive years recently. Even in his pleadings he has made a number of statements which have been proven to be false. He made a specific statement in the application that he had been granted permission for construction of a residential house but it was revealed that the permission which was granted to him in 1986 was for <sup>the</sup> purchase of a plot and no permission for construction of a house had either been sought by him or given to him before the application was filed before the Tribunal. For the first time he sought permission for construction of the house on 30.4.92, i.e, 7 days after he had filed the application before the Tribunal making the false statement that he had been sanctioned permission for constructing a residential house. The other statements made by him in the rejoinder that he was elected President <sup>the</sup> of ESIC Field Officers Association, Kerala for 1990-92 was also found to be false. The applicant has not come before the Tribunal with clean hands and truthfully.

He does not deserve any indulgence of this Tribunal much less any judicial intervention in his transfer to Bombay in the circumstances of the case.

7. In view of the conspectus of facts and circumstances, we see no merit in the application and dismiss the same without any order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN

n.i.j