

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated Friday the seventeenth day of March, One thousand nine hundred and eighty nine.

PRESENT

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

ORIGINAL APPLICATION NO.98/89

T.T. Joseph .. Applicant
Versus

1. Station Director,
All India Radio,
Trivandrum.
2. Director,
News Service Division,
All India Radio, New Delhi-1.
3. Under Secretary,
Ministry of Information and Broadcasting,
New Delhi-1.
4. Union of India, represented by its Secretary,
Ministry of Information and Broadcasting,
New Delhi.

... Respondents

Counsel for the applicant .. M/s O.V.Radhakrishnan,
K. Radhamani Amma &
Raju K Mathews.

Counsel for the respondents .. Mr. C.Kochunni Nair
ACGSC

O R D E R

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

The applicant who has been working as
Assistant News Editor at the Trivandrum Station of
the All India Radio has moved this application dated
16th February, 1989 under Section 19 of the Admini-
strative Tribunals Act praying that the impugned
order dated 14.2.89 transferring him as Field
Exhibition Officer, DAVP at Itanagar should be set
aside and that the respondents 1 to 3 be directed to

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allow him to continue in the post of Assistant News Editor, Trivandrum till he completes the tenure.

2. The brief facts of the case are as follows.

The applicant was recruited to the Central Information Service Group 'B' in 1982 and after training appointed as Field Publicity Officer at Vellore,

Tamil Nadu in 1983. He was transferred to Doordarshan Kendra, Trivandrum in November, 1985 at his request.

By the order dated 25.11.1988 (Exbt.A.1) he was transferred from Doordarshan Kendra, Trivandrum (DDK) to the post of Assistant News Editor, AIR at the Director Trivandrum. According to the applicant DDK, Trivandrum

request/the D.G. Doordarshan to allow him to retain

the applicant but finally the applicant was relieved on 25.1.1989 with direction to report to/ Station Director, A.I.R. Trivandrum on expiry of his leave granted upto 1.2.1989. Accordingly the applicant joined as Assistant News Editor, AIR at Trivandrum on 2.2.89.

Within 12 days of his joining there he was served with a telex message on 14.2.89 (Exbt.A.3) addressed to the Station Director and directing him to relieve the applicant from the post at Trivandrum for joining the new post as Field Exhibition Officer, DAVP at Itanagar. The telex message also indicated that

formal orders of transfer were issued on that day.

The formal order was later received by the applicant as at Exbt.A.4 posting him as Field Exhibition Officer, DAVP at Itanagar and transferring one Shri Sudhakaran, Field Publicity Officer at Palghat to take over as Assistant News Editor at Trivandrum.

also
This order indicated that one Shri Unnithan, Assistant News Editor, DDK, Trivandrum will look after the duties of Assistant News Editor, AIR, Trivandrum till Shri Sudhakaran joins the new post. This order was issued by the Deputy Secretary to the Govt. of India in the Ministry of Information & Broadcasting.

The applicant ~~also~~ requested, on receipt of the formal order of transfer, to amend the main application and to add a relief to the effect that the formal order dated 14.2.1989 should also be set aside. The amendment application was allowed. His another application to implead Shri Sudhakaran as one of the respondents was not allowed as it was felt that it was not necessary to implead Shri Sudhakaran as the latter has not developed a vested right to be transferred to Trivandrum. The applicant's plea is that the impugned order of transfer is illegal, arbitrary and is actuated by malafide and ulterior motive. He has urged that his transfer from Doordarshan to AIR was motivated

in order to favour one Shri Unnithan who wanted to be posted at Trivandrum. He has also alleged that on 13.1.1989 a news item appeared in the Indian Express, Cochin in which it was alleged that the transfer of the applicant from Doordarshan Kendra Trivandrum to All India Radio, Trivandrum was effected by political interference. The applicant has alleged that on the presumption that he had been instrumental in getting the news item published he has been ordered to be transferred to Itanagar in Arunachal Pradesh as a matter of punishment. He has argued that the transfer could not be of administrative exigency because he was transferred within a period of 12 days from the date of his taking over as Assistant News Editor, All India Radio on 2.2.1989. According to him he could have been very well accommodated against the two vacancies of Field Publicity Officers and one post of Assistant Information Officer at Trivandrum falling vacant due to the promotion of the present incumbent. He has urged that transfer during the middle of the academic year would cause undue hardship also to his two school going children who would face language difficulty at Arunachal Pradesh. He has referred to the specialised training on T.V. Production which he received at the Film and Television Institute of India at Pune and at ^{the} Asian Institute of

Broadcasting Development in Malaysia. He has referred to being a diploma holder in Film Technology. He has also averred that he was selected against the Malayalam language vacancy by the U.P.S.C. and since the post of Field Exhibition Officer at Itanagar ^{is} ~~not~~ a Malayalam language vacancy he cannot be transferred there. He has also referred to the fact that in Arunachal Pradesh he will be a stranger to the language and culture there and will not be able to discharge his duties efficiently. He has alleged that there are persons working at Trivandrum for more than 12 years and by singling him out for transfer to Itanagar within 12 days of his joining the post at AIR the Respondents have acted in a vindictive and malafide manner.

3. The Respondents have strongly denied the allegation of illegality, malafides, arbitrariness and retaliation in the impugned order. They have also denied that the impugned order was passed to favour one Shri Unnithan or there was any political influence or nexus with the news item which had appeared about his transfer. They have argued that the post of Field Exhibition Officer at Itanagar had been lying vacant for quite some time and since the applicant was due for a hard posting and had not worked at any difficult

station in the past and had an all India obligation of transfer the impugned order was passed in the public interest. In his rejoinder the applicant has argued that the first respondent who has filed the Counter Affidavit cannot file an affidavit to deny the allegations of malafides and bias against the third respondent who passed the impugned order, without disclosing nature and source of his knowledge for such denial. He has also quoted the instance of one Shri Varghese, Field Publicity Officer who has remained posted at Kerala for the last 19 years and had never worked outside Kerala. He has attached commendatory letters which were sent to him in connection with the work done by him during the Seventh Non Aligned Summit in 1983 and during the Prime Minister's visit to Lakshadweep in 1987. He has argued that as against one vacant post at Itanagar there are four vacant posts in Kerala and weight of administrative exigency lies more in favour of his posting in Kerala than at Itanagar. He has challenged the averment of the respondents regarding the hard posting indicating that there are no norms or rules that such a posting has to be done.

4. I have heard the arguments of the learned counsel for both the parties and have gone through

the documents carefully. The applicant cannot claim any right of being posted to a particular unit like Doordarshan Kendra or to a particular area like Kerala on the basis of his specialised training or on the basis of his being recruited against a language vacancy. He belongs to the Central Information Service and is liable to be posted anywhere in the country. It is established law that the Government as an employer has the inherent right to decide how best to deploy its officers in the interest of efficiency and optimum utilisation of the manpower resources. A judicial review of an order of transfer is neither desirable nor permissible unless a *prima facie* case is established that the transfer is punitive in nature or is actuated by malafides, arbitrariness or for collateral purpose.

5. The main thrust in the applicant's challenge to the impugned order is the news item which had appeared in the Indian Express on 13th January, 1989 that the applicant was transferred from Doordarshan Kendra to All India Radio by political interference. It may be noted that the applicant had not taken over as Assistant News Editor at AIR till 2.2.1989. He was on leave from Doordarshan. If his transfer to Itanagar was punitive and related to the news item,

to Itanagar
there is no reason why the order of his transfer/
should have been passed more than one month after
the news item had appeared. He could have been
transferred to Itanagar even before he took over
at AIR, Trivandrum on 2.2.1989. He has also alleged
similar political motivation in his first transfer
from Doordarshan to AIR at Trivandrum when there
was not even a change of place in his posting and
he was retained at Trivandrum itself. In paragraph 5
(a) of his application he had originally indicated
that the impugned order of his transfer to Itanagar
was passed because he had represented against his
transfer from Doordarshan to AIR at Trivandrum and
the authorities had been enraged because of that.
Even though this allegation was scored out by the
applicant yet it shows that the applicant in his
was hopping
mind/hopping from one presumption to another to some-
how tar the impugned order of his transfer to Itanagar
with a political brush of his own imagination. Further,
he has alleged in the rejoinder malafides against an
unnamed Under Secretary in the Ministry when neither
the telex message at Exbt.A.3 nor the formal order
at Exbt.A.4 regarding his order of transfer had
anything to do with any Under Secretary of the Ministry

6. As regards weighing the comparative administrative exigency of filling up the vacant posts in

Kerala and that in Arunachal Pradesh, the final judgment has to my mind to be left with the respondents themselves. The applicant has not given any evidence either, to show that he was recruited to a Malayalam language vacancy and therefore he cannot be transferred to Arunachal Pradesh. If that were so he could not have been posted at Velloore either. Even accepting the argument of the learned counsel for the applicant that respondent No.1 cannot swear an affidavit to deny the allegation of malafide in respect of respondents 2,3 & 4 I feel that even without the denial, the applicant has not been able to establish a prima facie case of malafide against respondents 2, 3& 4. Respondent No.2 & 4 can have no grievance by the news item much less respondent No.3 who is/unnamed Under Secretary of the Ministry. It is established law that the burden of proof of malafides lies on the person who alleges it. (Pratap Singh Vs. State of Punjab, AIR 1964 SC 72; Kedarnath Bahl Vs. State of Punjab AIR 1979 SC 220; Swaranlatha Vs. Union of India, 1979 (1) LLJ (SC) 273). It has further been held by the Supreme Court in E.P. Royappa Vs. State of Tamil Nadu, 1974(1) SLR 500 that the burden of establishing malafide is very heavy on the person

who alleges it if it is grave and against Senior Officers. In the instant case therefore, the presumption on the part of senior officers of malafides/cannot be accepted by me merely because a news item had appeared alleging political interference. The Principal Bench of the Tribunal in Kamlesh Trivedi Vs. Indian Council of Agricultural Research, ATR 1988(2) CAT 116, held that the transfer per se is not punitive inspite of the attendant hardship caused. It has also been held that transfer order in exigency of service cannot be interfered with (S.P. Jain Vs. Union of India, ATR 1986(2) 304) and that exigencies of service must take precedence over individual convenience (K.K. Jindal Vs. General Manager, Northern Railway, ATR 1986(2)-304). The Supreme Court in K.B. Shukla Vs. Union of India, 1979 (2) SLR 58, held that the Government which is responsible for good administration and not the Court, only can judge the propriety or sufficiency of exigencies of service. The subjective satisfaction of the Government in such cases cannot be judged by objective standards save where the process of forming subjective judgment is vitiated by malafides, dishonesty and extraneous purpose. The Supreme Court in B. Varada Rao Vs. State of Karnataka and others, AIR 1986 SC 1955, held that transfer is an ordinary

incident of service.

7. In the conspectus of facts and circumstances I do not find any reason to intervene in the matter and I reject the application with the direction to the respondents that the applicant should be allowed to enjoy the benefits of Government accommodation and other facilities available to the members of his family at normal rates at Trivandrum till the end of the current academic session or 31st May, 1989 whichever is later. There will be no order as to costs.



(S.P. Mukerji)
Vice Chairman
17.3.1989

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