

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 6.12.1989.

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.145/89

VK Sreerema - Applicant

Versus

1. Chief General Manager(Telecom.),
Trivandrum.
2. Divisional Engineer
(Telecom. Dist. Engineer)
Telegraphs,
Cannanore.
3. Assistant Engineer,
Indian Cross Bar Project,
Maintenance, Tellicherry.- Respondents

M/s MK Damodaran & CT Ravikumar - Counsel for applicant

Mr.PVMadhavan Nambiar, SCGSC - Counsel for respondents.

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of
the Administrative Tribunals Act, the applicant Smt.
VK Sreerema, Junior Telecom Officer prays that, the
order of the first respondent dated 20.2.1989 transferring her
from Indian Cross Bar Project Exchange, Tellicherry to
Calicut in Calicut SSA. The brief facts of the case are
as follows:

2. The applicant has been working at Tellicherry for
abroad
the last three years. Her husband is employed/and she is

residing at Tellicherry with her young school going children and aged mother. While so, she came to know that she has been transferred to Calicut. Aggrieved by that order of transfer she has filed this application. It has been alleged in the application that the impugned order of transfer is motivated by malice and an intention to harass the applicant. Against a technician by name K.C. George ~~the~~ disciplinary proceedings have been initiated on the allegation that, he had created fault in the Telephone line. The applicant was called upon to tender evidence. The applicant has alleged in the application that since she refused to give self incriminating statement as instructed by the authorities, the authorities are harbouring ill feeling towards her and that really is the reason for transferring her while persons who have been working in the same station in the same capacity for more than 8 years have not been transferred. The applicant prays that as the order of transfer is ^{made} ~~not~~ on account of any administrative grounds or public interest, but motivated by malafide intention, an order may be passed quashing the impugned order.

3. We have heard the arguments of learned counsel. The learned counsel for the applicant submitted that while the general rule regarding transfer is to transfer a person who has been in a station for more than 8 years,

the applicant who had been working at Tellicherry for only three years should not have been normally transferred, especially while persons having larger stay are allowed to continue. He invited our attention to the averments in the application that, the authorities are having an ill feeling towards the applicant, since she refused to give an incriminating statement, and also to the averment in paragraph two of the reply statement filed by the respondents that investigation revealed that the applicant also was involved in the mischief of creating faults by and her lack of supervision, that though she deserved suspension a lenient view was taken by the CGM and she was transferred to the nearest cross bar station which according to the learned counsel is contrary to the averments in the reply statement that the transfer was unconnected with the disciplinary proceedings against the Technician only and in the interest of administration and with a view learned counsel to utilise her expertise in a better way. The submitted that, viewed in this back ground it can be easily concluded that the transfer was made as a punitive measure and the administrative convenience now put forth is an absolute falsehood. In this connection the learned counsel invited our attention to the following observation of his Lordship V.Khalid, J as he then was in P Pushpakaran -Vs- Chairman, Coir Board, 1979(1)-SLR-309:

"This Court will normally lean in favour of the employer when a transfer order is challenged, for, for a proper administration of a Government or a Department of Government or even a Private Company, transfers will be necessary in the exigencies of service or for administrative reasons. An employee will not be lightly taken when orders of transfer are challenged. The whole difficulty arises when under the cover of order a transfer, an employer seeks to achieve something which he cannot otherwise achieve. In such cases, the employees in distress seek the assistance of Courts in their unequal contest with their employers. A transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when affected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by Courts."

The learned counsel submitted that without taking any disciplinary proceedings against the applicant, the authorities have achieved their end to punish her by transferring her from Tellicherry where she is living with her young children and aged mother, and that, therefore, this is a fit case where the Tribunal has to interfere. The facts of Pushpakaran's case are entirely different from the facts of this case. In Pushpakaran's case there were circumstances which indicated that he was victimised for union activities. In this case there is no such indication at all. The respondents have averred in the reply statement that the transfer was only in administrative convenience. The learned counsel for the applicant submitted that the case of administrative convenience, and of transferring the applicant to Calicut taking a lenient view,

rather than suspending for grave misconduct/mutually
inconsistent and that itself creates a doubt about the
order of
bonafides of the transfer. It is true that in addition
to the averment that the applicant's services were needed
at Calicut, it has also been averred that her involvement
in the technicians ~~working~~ creating faults in the line
by lack of supervision, deserved seriousness and that
instead of suspending her she was transferred to Calicut.
But, transferring an official to another place, in order
to ensure more efficacious discharge of duties, in
certain circumstances also, can be done in the public
interest and for administrative convenience. If the
authorities thought, that it would be in the interest
of the administration to transfer the applicant to
Calicut to make use of her expertise in the SSA at
Calicut instead of retaining her at Tellicherry, where
was
her sincerity towards duty doubted, it cannot be said
that this idea behind the order of transfer is malafidie.

In Union of India and others -Vs- H.N.Kirtania, 1989(2)-
ATC-269, The Supreme Court of India has observed thus:

"Transfer of a 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."

Here in this case we are not convinced that the order

of transfer is illegal or malafide or made in violation of statutory rules obliging us to interfere in the matter.

The learned counsel for the applicant submitted that, since the applicant has to look after her young children and aged mother, her transfer to a distant place would

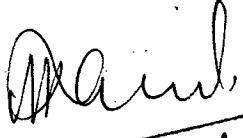
cause great hardship to her especially while her husband

is away. It is not known as to how Tellicherry would be a more convenient place to the applicant than Calicut.

Just as she looks after her aged mother and young children at Tellicherry, she can very well do so at Calicut also.

Anyway it is open to the applicant to submit a representation to the authorities for a posting back to Tellicherry, if she is so advised and the authorities may consider the matter then. But at this stage we find no reason to interfere with the impugned order of transfer.

4. In the result finding that, there is no reason to interfere with the impugned order of transfer, we dismiss the application without costs.


(A.V.HARIDASAN) 6/12/89
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

6.12.1989