

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 9.11.89

Present

Hon'ble Shri N.V. Krishnan, Administrative Member
And

Hon'ble Shri N. Dharmadan, Judicial Member

Original Application No. 390/89

P.S. Sathesh Kumar : Applicant
Vs

1. Union of India, rep. by the Secretary, Central Water Commission, Sewa Bhavan, New Delhi.
2. The Director (C), Central Water Commission, O/o the Chief Engineer, Water Resources Organisation (SR), H.NO. 10-2-8/1 Shantinagar, Hyderabad-28.
3. The Executive Engineer, South Western Rivers Division, Central Water Commission, Cochin - 15.
4. G. Ramanan, LDC, Tapti Division, CWC, Surat (Gujarat).

Mrs. Daya K. Panicker : Counsel for applicant

Mr. P.V. Madhavan Nambiar, SCGSC : Counsel for respondents (1 to 3)

Mr. AK John : Counsel for Respondent-4.

ORDER

(Hon'ble Shri N.V. Krishnan, Administrative Member)

The applicant is a Lower Division Clerk working
in the Office of the Executive Engineer, South Western

Rivers Division, (Respondent-3), under the Central Water Commission, C.W.C., for short. He has been transferred by the impugned order dated 10.4.89 (Annexure-A) in the same capacity to Tapti Division, Surat vice G. Ramanan, Respondent-4, who has been transferred to the resultant vacancy in Cochin. The applicant filed a representation to the Director (CWC, in the Office of the Chief Engineer, Water Resources Organization (SR), Hyderabad, ie, Respondent 2, against this transfer which has been rejected by the letter dated 21.6.89 (Annexure-C). The applicant has, therefore, impugned the orders at Annexure-A and Annexure-C and has sought a direction to quash the Annexure-A order in so far as it concerns his transfer.

2. The respondents 1 to 3 (ie, the Department) have filed a counter affidavit in which they have denied that the applicant has any right to relief. The transfer order has been passed on administrative grounds and it is required to be complied with. Respondent-4, G. Ramanan, has also filed a reply stating that his transfer to Cochin, is over due because he had asked for a transfer to his home state Kerala which was allowed as early as on 15.12.83 (Ex.R-4 (1)) but this was cancelled for no

reason, whatsoever. He contends that his present transfer to Cochin is unassailable.

3. We have perused the records and heard the counsel for the parties.

4. It was contended by the counsel of applicant that the applicant's transfer is due to vindictiveness and malice. She pointed out that the applicant had challenged his earlier order of transfer to Nagpur before this Bench in OAK 117/87 which was allowed. Hence, the present transfer order is really a punitive measure to victimise the applicant. It is denied that there are any administrative grounds to justify the transfer. The transfer has been made solely with a view to creating a vacancy in the Office of Respondent-3 to which Respondent-4 could be transferred and posted from Surat. Thus the transfer has been made to oblige R-4. She further contends that this transfer is against the guideline contained in the "Transfer Policy for CWC Employees" exhibited as Annexure-E. She also relied on the following decisions in support of her contentions:-

(i) Damodaran Vs. State of Kerala KLT 1982-
Short Notes, Case No.38;

(ii) 1 (1987) ATLT 251-Chiranjit Lal Vs.
Union of India and others;

(iii) PR Parikh and others Vs. Union of India -
II (1987) ATLT (CAT) 257.

5. On the contrary, the learned counsel for the Respondents 1 to 3 contend that the transfer is a simple administrative action. The applicant, along with two others, who had stayed longer in Cochin than the applicant, were transferred to other places in order to accommodate the long pending requests for postings to Cochin by others whose home state is Kerala. These transfers are in accordance with the aforesaid transfer policy and the charge of malafide is denied as this is a simple administrative decision. These respondents rely on the decision of the Supreme Court in UOI & Others Vs. HN Kirthania (1989) II-ATC 269 in support of their contention that the transfer of employees in administrative interest cannot be interfered with by Courts or Tribunals.

6. We have seen the decision of this Bench in OAK 117/87 wherein the order transferring the applicant to Nagpur was impugned. That transfer order was set aside on the ground that there were persons in the Cochin office, who have stayed here longer than the applicant.

The Respondents contended that they were not transferred because they were female employees. The Bench found that in the matter of transfers, the guideline did not differentiate between male and female employees and that therefore, the applicant could be transferred only on his turn.

It is because of that order that in the present impugned order Annexure-A, Rachal B Varghese and Rachal George, two other employees like the applicant in the Office of R-3, have also been transferred along with the applicant to Surat and Coimbatore respectively. The Respondents, therefore, contend that the applicant cannot have any grouse against Annexure-A order as it is neither discriminatory nor vindictive. We agree with this contention.

7. The relevant portion of the Transfer Policy relied upon by the applicant is extracted below:-

"3. Group C & D personnel should not normally be transferred from one station to another except to meet the following inevitable contingencies:

- a) When transfers become essential for purposes of adjusting surplus staff or making up deficiencies of staff.
- b) On the request of employees on compassionate grounds or on mutual transfer request basis.
- c) At the time of promotion, when the promotee cannot be adjusted locally for various administrative and other valid reasons.

d) For exigencies of service or administrative requirements.

As the applicant belongs to Group 'C', it is contended that he should not have been transferred as none of the conditions mentioned above are satisfied. It is also emphasised that the Respondents 1 to 3 cannot cause serious inconvenience to the applicant by transferring him merely to accommodate the request of Respondent-4 for a transfer to his home state, Kerala.

8. On the contrary, the Respondents 1 to 3 contend that the transfer is in accordance with the same transfer policy, para 6 of which is as follows:-

"6. Employees transferred to station away from their home stations may be brought back, subject to exigencies of service and availability of vacancies after 3 years of posting at the stations outside the home State. In no case, the period of such a stay should exceed 5 years, unless voluntarily desired by the employee and also considered in the public interest. However, in case there are no vacancies to accommodate all such persons, a person having the longest stay outside his home State shall be given first preference."

It is stated that R-4 had been working outside his home state, Kerala, for more than 8 years. Therefore, in order to accommodate him in Cochin, the applicant was transferred. Another colleague of the applicant who was similarly transferred (Smt. Rachal B Varghese)

had also represented against her transfer, but this was also rejected by the Respondents.

9. Having heard both sides, we are of the view that the Respondents are on firm ground in this regard. It may happen that all the posts of Lower Division Clerks in Cochin are filled up by Keralites. There may also be Keralites appointed as Lower Division Clerks in other States. The applicant cannot contend that merely because the latter have been recruited as Lower Division Clerks in States other than Kerala, they cannot claim Kerala to be their home State. We are of the view that this latter group of employees also can seek a posting in Kerala and their request will have to be dealt with in accordance with para 6 of the guideline extracted above. That guideline requires that the period of stay outside the home State may not exceed five years. If such a person has to be posted to his home State, it is evident that the persons already working in the home State will necessarily have to be transferred out. Such a transfer will normally be of the person who has stayed the longest in the home State. This is precisely

what has happened in the present case. Respondent-4 had to be accommodated in terms of para 6 of the guidelines and this could not be done without transferring the applicant. Therefore, this is a transfer fully in accordance with the Transfer Policy.

10. In this connection, the applicant's counsel has drawn our attention to the Short Note on Case No.38 in 1982 KLT. In that case Government took a sympathetic interest in one employee and ordered a transfer which adversely affected another employee. In that circumstance, the Court held that there was no justification for that transfer at the cost of another's interest. That case can be distinguished because apparently in that case there was no guideline requiring the adoption of a sympathetic attitude in such cases. As against that, we notice that in the present case, the transfer is ordered to give effect to this very aspect of the guideline of the Transfer Policy.

11. The case of Chiranjit Lal (1) 1987 ATLT-251 is quite different from that of the applicant. That is a case of a Lower Division Clerk who refused promotion

on several occasions as Upper Division Clerk as this

would have involved a transfer from Delhi. He firmly

desired to remain in Delhi in view of his domestic

circumstances. He was, nevertheless, transferred on

the ground that his stay in Delhi was the longest.

The Tribunal found that this was not so, because his

stay in Delhi, after forsaking promotion as UDC, should

be counted as a fresh lease of stay in Delhi and not in

continuation of his earlier stay. In the present case,

the applicant has no complaint that persons who have

stayed longer at Cochin than him are not transferred.

That apart, there is a very significant difference which

exposes the applicant thoroughly. For, though the appli-

cant has urged domestic circumstances, particularly the

looking after of his aged parents, who are also ill, as

the reason for his not wanting to be transferred out of

nevertheless

Cochin, he is prepared to give up all this for getting

some more money by way of emoluments. For, the Respon-

dents 1 to 3 have pointed out by Annexure-R1 and R-2,

that the applicant has given his consent to be sent on

deputation to as far a place as Bhutan merely because

that deputation, if it materialised, would have resulted

in his getting higher pay and allowances.

12. Similarly, the reliance of the applicant on Parikh's case II(1989) ATLT 257 does not advance his case. In that case a deviation from the accepted guidelines was justified as being in the administrative interest. While the normal rule in regard to rehabilitation of surplus staff is that the junior most surplus person should be transferred, the applicant, Parikh, though senior, was transferred. This was upheld by the Tribunal on the ground that he being an experienced person, his services were required at the other end by the respondents and this was a proper administrative ground.

13. Thus, none of the rulings cited by the counsel of applicant helps her. ~~The applicant~~ ^{He/She} has, however, not cited a single decision of the Supreme Court having a bearing on this issue. These can now be considered.

14. The decision of the Supreme Court in B Varada Rao Vs. State of Karnataka (1986) 4-SC Cases-131 lays down the proposition that transfer does not effect any change in the conditions of service. In the course of that judgment, some observations have been made regarding the departmental guidelines on transfer. These observations

are as follows:-

"It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post." As the learned Judges rightly observed:

The norms enunciated by government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the government servants."

15. The aforesaid observations were considered by a Full Bench of the Central Administrative Tribunal in Kamalesh Trivedi Vs. ICAR 1988-7-ATC 253. In that judgment, the following observations have been made:-

"19. It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case, instructions embodying the transfer policy are more in the nature of guide-lines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny. The fact that the transfer is ordered in derogation of the transfer policy would impose an obligation on the Tribunal to find out if it was necessitated in the exigencies of administration. If it is found that it is against the general policy of transfer, it may lend some *prima facie* basis to the allegation that it is an arbitrary order. But

merely because the order is not in conformity with the transfer policy, it cannot be quashed for the competent authority is generally vested with the discretion to order transfer in the exigencies of service and in public interest. Hence the obligation to show that it is made mala fide or in colourable exercise of power still lies upon the applicant."

In other words, there can be deviation from the normal guidelines, and even, if the deviation cannot be properly justified, it cannot by itself be treated as mala fide.

16. When transfers are assailed, the judgment of the

Supreme Court in Gujarat Electricity Board Vs. Atma Ram AIR (1989) SC 1433 has necessarily to be referred to.

That was a case of a transfer of a Deputy Engineer of the Electricity Board from Surat to Ukai Sub Division, about 60 Kms away. The employee resisted the transfer and despite the rejection of his representation and a warning to him, he failed to report for duty. Therefore, in accordance with a special provision of the service rules applicable to him, his service was discharged. The matter was brought up to the Supreme Court by the Gujarat Electricity Board, it being aggrieved by the decisions of the High Court of Gujarat in favour of the employee. In that case the following observations were made:-

"4. Transfer of a Govt. servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee or Public Undertaking has legal right for being posted at any

particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

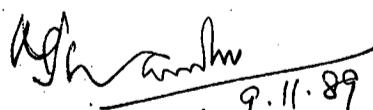
17. A similar view has been taken by the Supreme Court in the more recent case of Union of India and others Vs HN Kirthania - 1989(2) ATC-269. The employee was a Public Relation Officer in the Regional Passport Office, Calcutta and he was transferred to Jaipur by an order dated 14.9.85 which was challenged by him. The matter was taken up to the Supreme Court by the Union of India challenging some orders passed against them by the High Court of Calcutta. The following observations were made by the Supreme Court in this connection:-

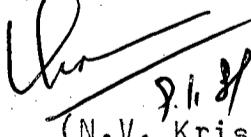
"5. After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a

Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. 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 mala fides. There was no good ground for interfering with the respondent's transfer."

18. Needless to say, these important observations of the Supreme Court have to be borne in mind while considering applications like the present case. As we have already stated, we do not find any infirmity in the impugned order of transfer read with the guidelines for transfer. We are also not impressed by the stand taken by the applicant that he cannot be transferred merely to accommodate another person serving in Surat who desires to be posted to his home State of Kerala.

19. In the circumstances, this application is dismissed. There will be no order as to costs.


(N. Dharmadan) 9.11.89
Judicial Member
9.11.89


(N.V. Krishnan) 9.11.89
Administrative Member
9.11.89