

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 128/2006

this the 2nd day of May, 2006

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

Ratan Kumar Biswas aged about 48 years son of Sri N.C. Biswas resident of 108/2 Manak Nagar, Lucknow at present working as Section Research Engineer, Engine Development Directorate, RDSO, Lucknow.

...Applicant

By Advocate: Sri A.K.Srivastava

Versus

1. Union of India through its Ministry of Railways, Rail Bhawan, New Delhi.
2. The Director General, Research, Designs and Standards Organisation (RDSO), Lucknow.
3. Executive Director, Engine Development, RDSO, Lucknow
4. Assistant Design Engineer, ED I, RDSO, Lucknow.
5. Executive Director (Track Machine) Directorate, RDSO, Lucknow

..Opposite Parties

By Advocate: Shri N.K.Agrawal

ORDER

BY HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

The short question involved in this O.A. is whether there is any illegal lacuna in the impugned transfer order dated 7.3.2006 (Annexure 1). By the said order, the applicant has been transferred from work at Engine Development Directorate for testing Diesel Engine Power Pack placed on test bed (no tour) to Track Machine Directorate. The contention of the applicant as given in para 4.4 is as under :-

"That the applicant have been transferred 10 times 2000. However, there are several staff (Sri A.K.Saxena, Sri Promod Kumar, Sri R.K.Roy ,A Sanyal, Prem Chand, Moniram Sharma , Smt. Sadana Agarwal) were working more than 15 years in non touring unit. Impugned transfer order passed by O.P. No. 2 only harassing of the applicant as a punishment because working of track machine directorate is 16 hours per day and continuous recording about 25 days per month without rest. However, in HOR it said 8 hour per day and weekly rest is compulsory. The TM Directorate not providing weekly rest. The office order No.7 is not applicable at present status of RDSO. "

2. The applicant relied upon the order dated 5.8.2005 which inter alia states as under:-

"Board desire that representation's of SC/ST and OBC Railway employees relating to their transfer/ postings and other relative service matters be dealt with care and efforts be made to resolve their grievance, so that feeling of harassment amongst these SC/ST/OBC employees is minimized. For this purpose, General Manager should ensure that complaints /grievances of these employees are examined judiciously keeping in view the extant instructions and cases of genuine harassment maybe looked into at their levels."

3. The applicant's representation dated 9.3.2006 remains unanswered.

4. The respondents contested the O.A. stating that the applicant is not being transferred outside Lucknow and relied to the following judgments:-

- a) 1991 Supple.2 SCC 2001 page 659
- b) 2001 8 SCC page 5724

5. The case has been considered. This is an intra-station transfer, not involving movement outside the present station of posting. This is from one unit to another, which does not involve any change in residence or school of the children nor does it affect any service condition of the applicant. As such, it is only when any of the legal rights of the applicant is/are affected that the transfer could be interfered with.

6. Law on the subject matter of transfer of employees has been well settled. Right from the decision of the Apex Court in the case of EP. Royappa v. State of T.N., (1974) 4 SCC 3, wherein it has been held as under, till today, exigency of service is kept at a higher pedestal than the individual convenience of the incumbent:-

"So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Articles 14 and 16."

7. The Courts do consider various adverse impacts of frequent transfers, and in this regard, it is appropriate to refer to the decision of the Apex Court in the case of *B. Varadha Rao v. State of Karnataka*, (1986) 4 SCC 131 wherein the Apex Court has held as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the government will keep these considerations in view while making an order of transfer."

8. The limited scope of challenge of transfer has been highlighted by the Apex Court in a good number of decisions and in the cases referred to by the counsel for the respondents, the following are the decisions/observations of the Apex Court:=

(a) *Shilpi Bose (Mrs) v. State of Bihar*, 1991 Supp (2) SCC 659

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not

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interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

(b) *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*, (2001) 8 SCC 574

"It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of *mala fide* exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

9. The above view has been echoed with emphasis in the following cases as well:-

1. *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, (2004) 12 SCC 299
2. (2004) 4 SCC 245 : 2004 SCC (L&S) 631, *Union of India v. Janardhan Debanath*
3. 1995 Supp (4) SCC 169 : 1996 SCC (L&S) 175 : (1996) 32 ATC 107, *Abani Kanta Ray v. State of Orissa*
4. (1993) 4 SCC 357 : 1994 SCC (L&S) 230 : (1993) 25 ATC 844 : AIR 1993 SC 2444, *Union of India v. S.L. Abbas*

10. In the instant cases first of all, there has been no outstation transfer. The functional responsibilities of the post to which the applicant has been posted may involve "out door duties". The same does not in any way affect the domestic life of the family as it does not warrant any change of schools or establishment etc., Secondly, on the basis of the earlier order of the Tribunal dated 4th



June, 2004 in OA No./ 180/2004, respondents have accommodated the applicant for full one year and as such, the case of the applicant has been considered with due compassion by the authorities. After all, service exigencies cannot be compromised or pushed to the rear row for advancing individual interest of the incumbent. For outstation duties involved, it is not that the individual would be made to incur expenses out of his own pocket and in all expectation, there must be provisions of grant of DA and TA/Railway Pass etc.,

11. Intra station transfers are invariably based on the administrative reasons and convenience and interference in such transfers, especially, when the respondents have been lenient in accommodating for one year cannot in any way be justified.

12. The applicant has stated in his application that he has young children and one of them is mentally challenged and as such, frequent out-door duties for a stretch of more than three weeks in a month, would unduly affect the domestic life. This problem is no doubt, well appreciated. However, whether the sympathy emanating from the domestic situation as aforesaid would eclipse the service exigencies has to be considered. In Two points are significant in this regard:-

1. The power of the Tribunal is limited that it could only pass an order which is in conformity with the law as declared by the Legislature or the Apex Court.
2. The Tribunal cannot be swayed with the sympathy emanated from the facts and circumstance of the case. In a very recent judgment of the Constitution Bench of the Apex Court in the case of **Secretary, State of Karnataka vs Umadevi and others (CA No. 3595-3612/1999)** decided on 10-04-2006, the Apex Court has held as under:-

28. Incidentally, the Bench also referred to the nature of the orders to be passed in exercise of this Court's jurisdiction under Article 142 of the Constitution. This Court stated that jurisdiction under Article 142 of the Constitution could not be exercised on misplaced sympathy. This court quoted with approval the observations of Farewell, L.J. in Latham vs Richard Johnson & Nephew Ltd (1913(1) KB 398) – *'We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles.'*

This court also quoted with approval the observations of this Court in Teri Oat Estates (P) Ltd., vs U.T. Chandigarh (2004) 2 SCC 130) to the effect: *'We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Articles 142 of the Constitution of India, this court ordinarily would not pass an order which would be in contravention of a statutory provision.'*

When the above is the settled law, and when even for the Apex Court, there are certain reservations, needless to mention that the Tribunal cannot go on the basis of any sympathy.

13. In view of the above, as long as no legal rights to challenge successfully have been congealed in favour of the applicant, the Tribunal is not in a position to interfere with the impugned transfer order. It is purely left to the respondents to consider all the hardships stated to be faced by the applicant and if the respondents are of the view that the case of the applicant deserves sympathetic consideration and if the functional responsibilities do not warrant the respondents to implement the impugned order, it is only for them to modify suitably and the decision of the respondents in this regard is more on the basis of their discretionary power than on the ground of any legal right crystallized by the applicant. It is left to the respondents to reconsider the matter as and when situation so warrants to post the applicant to any of the posts not involving out duty job, and keeping in view the Railway Board circular

dated 22-08-2005 referred to above. And, no opinion is expressed over the representation dated 8-03-2006 filed by the applicant and it is for the respondents to consider the same.

14. With the above observation, the OA is disposed of.

15. No cost.



(K.B.S. RAJAN)
MEMBER (J)