

This the 25th day of July, 2008

HON'BLE SHRI A.K GAUR, MEMBER (J)

Vijay Shankar Chatterjee, aged about 58 years son of late Shri Shanti Moy Chatterjee, R/o 289/302, Jyoti Kunj, Moti Nagar, Lucknow presently working as Programme Executive, Prasar Bharti, Broadcasting Corporation of India, Akashvani, Lucknow.

Applicant

By Advocate: Sri S.N. Pandey

Versus

1. Union of India through its Director General, Prasar Bharti AIR Akashvani Bhawan, Sansad Marg, New Delhi.
2. Director, Prasar Bharti, AIR, Akashvani, 18 Vidhan Sabha Marg, Lucknow.

Respondents

By Advocate: Sri S.P. Singh for Sri Z.A. Khan

ORDER (ORAL)

BY HON'BLE SHRI A.K GAUR, MEMBER (J)

I have heard Sri S.N. Pandey, learned counsel for the applicant and Sri S.P. Singh B/h for Sri Z.A. Khan for respondents.

2. Learned counsel for the applicant has challenged the order of transfer solely on the ground that transfer policy has not been followed by the competent authority and the transfer order has been passed in contravention of the transfer policy No. XXI which clearly indicates as follows:-

“Member of staff, who are within three years of reaching the age of superannuation will if posted at their home town, not be shifted therefrom, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible.”

3. On the other hand Sri S.P. Singh B/h for Sri Z.A. Khan, learned counsel for respondents vehemently argued that transfer order has been passed at the request of the applicant. Mr. Pandey learned counsel for the applicant submitted that the representation was given long back. Learned counsel for the applicant has also challenged the validity of transfer order on the ground of malafide.

4. Having heard parties counsel at length, I am firmly of the view that the transfer is an incidence of service and employee can be transferred in administrative


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exigency from one place to another. The order of transfer could be challenged only on three grounds:-

- i) When the transfer order is malafide.
- ii) When the transfer order has been passed by a incompetent authority who has no jurisdiction ;
- iii) When the transfer order has been passed in violation of statutory rules.

5. Learned counsel for the applicant Sri S.N. Pandey contended that the order of transfer has been passed on the ground of malafide. It is settled principle of law that if the malafide has been alleged against the person, he should be impleaded by name as one of the necessary parties by the applicant. No such person has been impleaded as respondent by name.

6. However, having considered the grievance of the applicant, I feel satisfied that the grievance of the applicant might be redressed, if a direction is given to the respondents to consider and dispose of the pending representation of the applicant by a speaking order within a period of one month taking into account the specific norms of transfer policy guidelines No. xxi by the competent authority. Learned counsel for applicant submitted that he may be permitted to file a fresh representation, he is permitted to do so. Accordingly the applicant is directed to submit a fresh representation to the competent authority within a period of 15 days and competent authority shall dispose of the same by reasoned and speaking order within a period of one month from the date of receipt of such representation in accordance with transfer policy No. xxi. Till the disposal of the applicant's representation, the transfer order may not be given effect to. With the aforesaid observation, the O.A. is disposed of.


Member (J)

HLS/-