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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 296/89 198
T.A. No.

DATE OF DECISION 14.2.1990

Dr.V.D.Pathak Petitioner

J.M.Chitale

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr.R.C.Kotiankar for Respondents No.1 to 4,
Respondent No.5, in person. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.SREEDHARAN NAIR, VICE-CHAIRMAN,

The Hon'ble Mr. P.S.CHAUDHURI, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.296/89.

Dr. V.D.Pathak.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Mr.J.M.Chitale.
Respondents 1 to 4 by
Mr.R.C.Kotiankar (for
Mr.M.I.Sethna) and Respondent
No.5 appeared in person.

Oral Judgment:-

Dated: 14.2.1990

¶Per Shri G.Sreedharan Nair, Vice-Chairman¶

The applicant while working as Extension Officer, All India Radio, Nagpur was transferred to Bombay by the order of the second respondent, the Director General, All India Radio issued on 7.3.1989. ~~It was~~ Accordingly the applicant was relieved of his duties by the 4th respondent, the Station Director, Nagpur on 13.3.1989 A.N. When the applicant reported at Bombay on 16.3.1989 it is alleged that he was not admitted to duty on the ground that the order of transfer has been cancelled. Thereafter, two telegraphic communications have been sent to the applicant on 6.4.1989 and 7.4.1989 informing him that the transfer order has been cancelled. The applicant has prayed for setting aside the cancellation order. It is urged that the cancellation is mala fide and arbitrary. There is also a plea that the cancellation has been done to favour the 5th respondent.

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2. A reply has been filed by the Station Director, All India Radio, Bombay, the third respondent, where it is stated that it is on behalf of all the respondents. It is contended that the order of transfer was erroneously issued as it was not noticed that the ^{first respondent, the} counter part of the applicant at Bombay was to retire on superannuation in August, 1991. It is stated that under the transfer guidelines adopted in the All India Radio a person who is within a period of about two years from the date of retirement should be either posted at his home town or near about or if he has already been in such a place he should not be disturbed. A reply has also been filed by the fifth respondent where he has incorporated a prayer that he be continued to serve at Bombay till retirement or till he gets his expected promotion whichever is earlier. He has also made a reference to the transfer policy.

3. Normally, this Tribunal will be ^{local} to interfere when a Civil Servant assails an order of transfer, ^{if it is} made in administrative exigencies. But when an order of transfer has been made, and that too based on the request made by Civil Servant, if it is cancelled arbitrarily the Tribunal has necessarily to step in.

4. In the instant case it is on record that on 17.2.1989 the applicant made a representation to the second respondent, the Director General for a transfer to All India Radio, Bombay or Pune highlighting his physical ailments. Evidently, it was pursuant to the said request that the order was issued by the Director General on 7.3.1989 transferring the applicant to Bombay. By the same order the fifth respondent who was holding the post at Bombay was transferred to Nagpur. Pursuant

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to the order the applicant was duly relieved on the afternoon of 13.3.1989. It is not in dispute that on 16.3.1989 he reported at Bombay when he was denied the benefit of the order of transfer on the ground that it has been cancelled by the Director General.

5. No doubt the Director General being the authority who issued the order of transfer had the power to cancel the same, provided it was having regard to the administrative exigencies. It is significant to note that the solitary ground on which the respondents 1 to 4 have sought to sustain the cancellation order is that pursuant to the guidelines governing transfer of the All India Radio employees, the fifth respondent was not liable to be disturbed from Bombay. At the time of hearing, Counsel for Respondents No.1 to 4 placed before us a copy of the transfer policy as laid down in the letter dt. 14.7.1981 issued by the Ministry of Information and Broadcasting. Clause.xxi thereof is the Clause that has been relied upon. It is in the following terms:

"Members 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."

On a perusal of the said clause it is manifest that the reliance placed on it to support the cancellation order is totally mis-conceived and unfounded. It has application only to those members of the staff who are posted at their home town. The fifth respondent who

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was present in person before us admitted that Bombay is not his home town, but it ^{is} Belgaum in the State of Karnataka. As such though he is within three years of reaching the age of superannuation, placing reliance on the aforesaid clause the order transferring the applicant to Bombay should not have been cancelled. In this context we cannot ~~but~~ point out that in the affidavit that has been filed by the third respondent by way of reply to the application ~~even~~ a proper reference to the aforesaid clause or its implication has not been made, though an averment is seen to have been made therein to resist the relief claimed by the applicant ^{based on the transfer policy.} We have also to observe that since the order of transfer as well as the order of cancellation were passed by the Director General, the non-filing of a reply or even an affidavit setting forth the reasons that prompted him to cancel the order of transfer is a circumstance which is fatal to the contention put forward by the Respondents 1 to 4.

6. From the records before us it is seen that on 14.3.1989 the Station Director, Nagpur has passed an order to the effect that "in pursuance of telephonic instructions from the Director General, the relieving order dt. 13.3.1989 stands cancelled". There is no plea in the reply filed by the fifth respondent that on receipt of the order of transfer he had submitted any representation to the Director General against the same complaining about the violation of any guidelines governing transfer. As such we are at a loss to comprehend ^{why} ~~while~~ such telephonic instructions had been issued ^{the} cancelling transfer.

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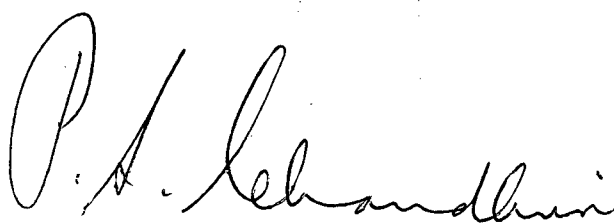
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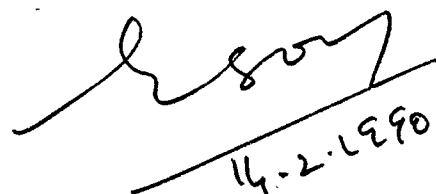
7. Though elaborate averments have been made in the application pointing out certain facts to lead to the inference of mala fides, we are not adverting to the same as we are clearly of the view that the cancellation of the order of transfer is arbitrary, capricious and unfair, and as such cannot be sustained.

8. In the result we quash the order ^{by} ~~under~~ which the transfer of the applicant to Bombay ~~was allowed~~ by the order dt. 7.3.1989, has been cancelled and direct the respondents to implement the aforesaid order dt. 7.3.1989 without delay.

9. The application is disposed of as above.



(P.S. CHAUDHURI)
MEMBER (A)


14.2.1990

(G. SREEDHARAN NAIR)
VICE-CHAIRMAN.