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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING 6
BOMBAY - 400 001

O.A. No. 441/91

Shri Nagesh Prabhakar Rahalkar
C/o. Shri J K Sathe
Vanjari Nagar
Nagpur

.. Applicant

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Revenue
NEW DELHI

2. The Collector
Central Excise
Nagpur; P B No.81
Telankhedi Road
Civil Lines; Nagpur

3. Assistant Collector (Vigilance)
Central Excise, PB No.81
Telankhedi Road; Civil Lines
Nagpur

.. Respondents

CORAM: Hon. Shri P S Chaudhuri, Member (A)
Hon. Shri T C Reddy, Member (J)

APPEARANCE:

Shri Y R Singh
Advocate
for the applicant

Shri P M Pradhan
Counsel
for the respondents

JUDGMENT:
(PER: P S Chaudhuri, Member(A))

DATED: 22-8-1991

1. This application under section 19 of the Administrative Tribunal's Act, 1985 was filed on 5.8.91. In it the applicant who is working as Tax Assistant in the office of the Collector of Central Excise, Nagpur is challenging the order dated 26.7.91 by which he is transferred from Nagpur to Chandrapur.

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2. The respondents have opposed the admission of application by filing their written statement. As the facts are not in dispute and as both the learned counsel were prepared to argue their case, we admitted the application and now proceed to decide it.

3. The impugned order of transfer is assailed on a number of grounds. The first is that the applicant is a good and faithful Government Servant who has hitherto always carried out orders of transfer. But this has only to be stated to be summarily rejected because there is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred and posted to any place within India.

4. The transfer was then assailed as being in violation of the guidelines issued on 1.11.1978 as subsequently amended. But 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 - see B. Varadha Rao V. State of Karnataka and others, AIR 1986 SC 1955.

5. The applicant's third ground was that he had been subjected to repeated transfers. It was also alleged that there were others who had been at Nagpur for longer periods than the applicant and that there were vacancies at Nagpur against which the applicant could have been accommodated. But the mere fact that the respondents had did not wish to post the applicant against any such posts, but, instead, to retain others in these posts does not

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constitute arbitrary action. All these actions can be classified as "exigencies of service". In Lachman Dass V. Shiveshwarkar & Others, AIR 1967 Punjab 76, with which we are in respectful agreement, H.R. Khanna, J (as his Lordship then was) held that:

"A variety of factors may weigh with the authorities while considering the question of transfer, viz., the suitability of the official for the post, his aptitude, past conduct, reputation, the period for which he has been on that post and a number of other grounds which may be clubbed together under the head "exigencies of service" ... The Court can only interfere if the transfer is violative of any legal provision or is otherwise mala fide. Except in such a limited contingency, the order of transfer is neither open to judicial review nor justifiable."

Again in Prem Praveen V. Union of India & Ors., 1974 SLJ with S.N.15 at page xviii (Delhi), which we are also in respectful agreement, Sachar, J. (as his Lordship then was) held that:

" the administration is the best judge and in the know of all relevant circumstances and to determine as to the desirability or the propriety of any particular posting and at what place of a Government servant. But it is equally well settled that Courts can interfere if the transfer is violative of any legal provision or is otherwise mala fide."

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~~In view of this position we see no merit in this submission~~

Besides, in M.A. Rasheed and others V. The State of Kerala, AIR 1974 SC 2249, the Supreme Court has held:

"The onus of establishing unreasonableness rests upon the person challenging the validity of the acts".

In view of this position, this submission of the applicant, too, must be rejected.

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6. The applicant's final submission was that he deserved sympathetic consideration in view of his serious domestic problems encompassing an invalid father,

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enceinte wife, enceinte sister and ailing mother-in-law whose family also needs assistance. While we do sympathise with the applicant regarding his personal problems and difficulties, we cannot hold that these circumstances warrant or permit interference with a legally valid order of transfer.

7. Over a decade ago in Shanti Kumari V.

Regional Director, Health Services, Patna Division
and others, AIR 1981 SC 1577, the Supreme Court held:

"Transfer of a government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters."

This was reiterated in Gujarat Electricity Board and another V. Atmaram Sunqomal Poshani, AIR 1989 SC 1433 in which the Supreme Court has lucidly summarised the legal position regarding transfer of employees in the following words:

"4. Transfer of a government 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 of 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 with 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".

Finally, in Union of India and others V. H.N. Kirtania.
(1989) 11 ATC 269, the Supreme Court held:

"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."

From these decisions it is clear that the legal position is that interference is permissible only in the limited contingency that the order of transfer is violative of any rules or legal provisions or is otherwise mala fide.

8. There is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred and posted to any place within India. So, against the legal position discussed in detail, the only question which falls for determination in this case is whether the impugned order of transfer is violative of any legal provisions or statutory rules or mandatory instructions or is mala fide in any way whatsoever. The impugned order of transfer does not suffer from any of these fatal flaws. In this view of the matter we see no merit in this application and are of the opinion that it deserves to be dismissed.

9. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.

T. (Signature)
(T. C. REDDY)
MEMBER (J)

P. S. Chaudhuri (Signature)
(P. S. CHAUDHURI)
MEMBER (A)