

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

O.A. No. 1038/98.

Decided on: 11-3-1999.

MISS NEERA RANI & ANOTHER ..

APPLICANT

(BY ADVOCATE MR. RAVI SHETTY FOR MR.V.M.BENDRE, COUNSEL)

vs.

UNION OF INDIA & ORS.

... RESPONDENTS

(BY ADVOCATE MR. V.S. MASURKAR)

CORAM:

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

1. To be referred to the Reporter or not? *yes*

2. Whether to be circulated to other Benches of the Tribunal?

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(K.M.AGARWAL)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A. No.1038/98.

THIS THE 11TH DAY OF MARCH, 1999.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

1. Miss Neera Rani,
148/5446/7
C.G.S. Colony,
Mumbai-400 037.

2. Shri Raja Selvanathan
65/2744/7,
C.G.S. Colony,
Mumbai-400 037.

....APPLICANTS.

(MR. RAVI SHETTY FOR MR. V.M. BENDRE, COUNSEL)

vs.

1. Union of India
through the Chief Producer,
Films Division,
24-Peddar Road,
Mumbai-400 026.

2. Sr. Administrative Officer
-do-

3. Manohar Singh Bist
-do-

....RESPONDENTS.

(BY COUNSEL MR. V.S. MASURKAR)

ORDER

JUSTICE K.M. AGARWAL:

By this common application under Section 19 of the Administrative Tribunals Act, 1985, the applicants are challenging two separate and independent orders dated 13.8.1998 and 30.10.1998, (Annexures A-1 and A-2). One of them is of transfer and the other is for going on tour from Mumbai to New Delhi.

2. To begin with the case of the applicant no.2, Shri Raja Selvanathan, it appears that he was directed in the month of September 1998 to undertake tour to Films Division, New Delhi. Instead of proceeding on tour, he went on medical leave. On being referred to J.J. Group of Hospitals, he was reported to be fit and, therefore, by *3m* order dated 14.10.1998, he was again asked to proceed on

tour to Delhi. He did not obey the order. Ultimatley the impugned order dated 30.10.1998, Annexure A-2, was passed, asking him again to proceed on tour, failing which appropriate disciplinary proceedings might be taken against him. This order for undertaking tour to New Delhi in public interest cannot be imagined to be arbitrary or mala fide and, therefore, the prayer to quash such an order is misconceived. I was also told during the course of hearing by the learned counsel for the respondents that the applicant no.2 had returned from tour to New Delhi and, therefore, this O.A. to the extent of the prayer made by the applicant No.2 has become infructuous. Under these circumstances, the surviving claim of the applicant No.1 only requires consideration.

3. So far as the applicant no.1, Miss Neera Rani is concerned, it is not disputed that ever since the date of her initial appointment, she is working as an Assistant Maintenance Engineer in Films Division at Mumbai. The post is a transferable post. By the impugned order, she was transferred from Films Division, Mumbai to Films Division, New Delhi. It is being challenged as arbitrary and mala fide. The application is resisted by the respondents.

4. After hearing the learned counsel for the parties and perusing the record, I am of the view that the allegations of bias and mala fides are mostly imaginary and baseless. The second and third respondents are alleged to be close friends and capable of influencing higher authorities. It is next alleged that the third respondent was guilty of subjecting one Smt. Nayana Sunil Kumar to sexual harassment and then of similar harassment to the applicant No.1. Further allegations relate to transfer on deputation of one R.R. Dhavale from New Delhi and breach of rota quota rules at the instance of the second and third

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respondents. So many other irrelevant allegations are made and then the impugned transfer is alleged to be a device to accommodate the brother of one top Executive Shri P.Ellappan at Mumbai. So many similar other irrelevant allegations are made to advance the case of the applicant No.1, but all in vain. The learned counsel for the applicants cited P.K. SABHARWAL vs. STATE OF PUNJAB, (1995) 2 SCC 745; NAJAMAL HUSSAIN MEHADI vs. STATE OF MAHARASHTRA, (1997) 1 SCC 532; VISHAKA vs. STATE OF RAJASTHAN, (1997) 6 SCC 241; STATE OF HARYANA vs. AJAY WALIA (Ms), (1997) 6 SCC 255; and ARVIND DATTATRAYA DHANDE vs. STATE OF MAHARASHTRA, (1997) 6 SCC 169 in support of his contentions, but they are all distinguishable and do not support the case of the applicant No.1.

5. In paragraph 6 of the Written Statement, reason for the transfer has been stated as follows:

"The Respondents respectfully submit that the transfer of the Applicant is strictly in the exigencies of the service since the post at New Delhi was crucial and lying vacant for quite long period and the office at New Delhi was insisting that some person should be sent to Delhi on regular basis so that the work should not suffer. In these circumstances the competent authority was pleased to transfer the Applicant No.1 vide order dtd. 13th August 1998 in the public interest."

Earlier an attempt was made to find out an Assistant Maintenance Engineer, who was willing to go on transfer from Mumbai to New Delhi. This is also admitted by the applicants in sub paragraph 2 of paragraph IV (a) of their application. When no one was willing to go on transfer, the competent authority had no alternative but to issue the impugned transfer order in its discretion in name of the applicant No.1. How such an order of transfer can be said to be biased, illegal or mala fide ? In STATE OF MADHYA PRADESH vs. S.S. KOURAV, JT 1995 (2) S.C. 498, the

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Supreme Court said:

"It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."

In another case of N.K.SINGH vs. U.O.I., (1994) 28 ATC 246, the Supreme Court held:

"...No roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual. There is thus no basis to accept the appellant's contention that his transfer was occasioned by mala fides of the then Prime Minister on account of his annoyance with the appellant for the reasons stated or that it was in any manner contrary to the requirements of the Tenure Rules."

Further in B.VARDHA RAO vs. STATE OF KARNATAKA, (1986) 4 SCC 131 = (1986) 1 ATC 558 (SC), the Supreme Court said:

"... 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

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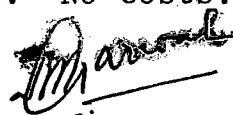
claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

In E.P. ROYAPPA vs. STATE OF TAMIL NADU, AIR 1974 SC 555, it was said:

"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

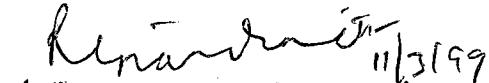
It is not, therefore, a matter to be scrutinised by the Tribunal.

6. For the foregoing reasons, I find no merit in this O.A. Accordingly it is hereby dismissed. No costs.



(K.M. AGARWAL)
CHAIRMAN

Order pronounced today in the Open Court by the undersigned under Rule 107 of the C.A.T. Rules of Practice, 1993, as per the authorisation letter by the Hon'ble Chairman, dated March 08, 1999.



11/3/99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

DATED : MARCH 11, 1999.