

(91)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 598/92

Date of Decision: 20.10.92

ExxNo.

Mr. A. Atchutha Rao and another

Petitioner.

Mr. P. Venkateswarlu

Advocate for
the Petitioner(s)

Versus

Director, Cyclone Warning Centre, Vizag and

another

Respondent.

Mr. NV Ramana

Advocate for
the Respondent
(s)

CCR.M:

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

THE HON'BLE MR. C.J. Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1, 2, 4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

HRBS
M(A)

HCJR
M(J)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 claiming a relief to quash the order of the 1st respondent issued in No.CWC-STF/ dated 23.6.1992 transferring the applicants to the Cyclone Detection Radar Unit, Dolphin's Nose, Visakhapatnam as unjust and illegal.

2. The facts that are necessary to determine the case are briefly as follows:-

The applicants were working as Scientific Assistants in Cyclone Warning Centre, Visakhapatnam. By the Office Order No.CWC-STF/, dated 23.6.1992 issued by the 1st respondent, they were transferred to CDR Unit, Dolphin's Nose, Visakhapatnam with effect from the Forenoon of 1.7.1992. The applicants state that there are a number of employees in the cadre of Scientific Assistants, continuously working in the so called 'popular stations' i.e., Hyderabad, Madras, Bangalore, Trivandrum and it would be just and rational to transfer those employees either to 'unpopular stations' which are Visakhapatnam, Kalingapatnam, Ramagundam, Tirupathi, Gannavaram in the A.P.State, or to out stations. It is stated that the the employees in the popular stations managing the

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Higher ups without getting a transfer even though they have put-in about two decades of service. The first applicant has been working in the out-station at Visakhapatnam since 1987 for more than five years and he expects a transfer () reasonably to 'popular stations'. Similarly, the 2nd applicant has been working in the out-stations since 1978 to 1990 at Ongole and from 1990 to till-today at Visakhapatnam and also expects transfer to 'popular stations'. The Cyclone Detection Radar Station situated at Dolphin's Nose Hill, Visakhapatnam where the applicants were transferred is 25 Kms away from Visakhapatnam city and there are no basic amenities available and it is a prohibited area for defence purpose. The applicants have to reside in the quarters making themselves available for 24 hours.

3. The applicants made O representations to the 1st respondent on 19.6.1992 and also to the 2nd respondent on 30.6.1992, which were not yet replied. Hence, this application.

4. The respondents stated in their counter that the transfer is an incident of service and no employee can claim a particular place of posting as a matter of right. The contention O of the applicants distinguishing between 'popular' and 'unpopular' is baseless the hence denied. There is no station which declared as 'Popular' or 'unpopular'

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station as far as Southern Region is concerned. Even as per the applicants, the first applicant had served at popular station for about 15 years and was given transfer as per his request from the so-called 'popular' station of Bangalore to Visakhapatnam. The 2nd applicant also served only at the so-called 'popular' stations and in his native taluk and District for more than a decade. Moreover, the applicants never requested to post them out of Visakhapatnam.

5. The respondents state that the 1st respondent is the competent authority to deploy staff of all cadres to the units located at Visakhapatnam. In order to effect deployment on an objective basis, a seniority list is maintained by him which has been approved in the 2nd meeting of the Regional Counsel held in 1988 in which the staff side representative from Visakhapatnam and the Regional Secretary Non-Gazetted Staff Union, Madras Region, Madras were also present. The list contains the names of Scientific Assistants for the purpose of posting from CWC to CDR, Visakhapatnam. The applicants have been posted to CDR, Visakhapatnam by an order dated 23.6.1992 as per the list cited above, which was filed as Annexure RII. The 1st applicant tops the list and the 2nd applicant is 2nd in the list of Scientific Assistants who have not worked previously at CDR. There is no violation of any rule or principle of seniority and there is no discrimination. In view of the above circumstances, the impugned order is justified and the OA is liable to be dismissed, as it is devoid of merits.

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6. The 1st applicant filed an additional affidavit contending that the Director of Cyclone Warning Centre, Visakhapatnam is not competent to issue transfer orders and he has no jurisdiction over the Cyclone Detection Radar Centre at Dolphin's Nose, Visakhapatnam. The Meteorologist Grade-I is the controlling officer of Cyclone Detection Radar Centre and the Deputy Director General of Madras is the head of the Region. He further states that there are two candidates who are seniors to the applicants viz., Smt. J.Nirmala who has been working at Cyclone Warning Centre since 1976 and Smt. M.Lalitha who has been working there since 1977 whereas the 1st applicant has been working since 1987 and the 2nd applicant has been working since 1990. Hence, the stand taken by the respondents is not correct.

7. The respondents were given four weeks notice before admission of the case vide orders dated 17.7.1992. When the case was posted on 18.8.1992 for admission hearing and orders, the applicant's counsel was not present. Hence, it was listed under the same heading on 14.9.1992 on which date also the counsel for the applicant was not present. Hence, the case was ordered to be listed for 'rejection' on 21.9.1992. At the request of the counsel for the applicant, it was again posted under the same heading on 25.9.1992, 28.9.1992 and finally on 30.9.1992, when the counsel for both the sides were present.

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8. We have heard the learned counsel for the applicant Mr. P. Venkateswarlu and the learned Additional Standing Counsel for the Respondents, Mr. N.V. Ramana.

9. The applicant also filed M.A.No.764/92 in this O.A. seeking permission to add additional applicants in the O.A. Since both the applicants have common interest in the case and the cause of action is also the same, we permit them to file the O.A. The M.A. is accordingly allowed.

10. The main ground urged by the applicants in questioning the transfer order is that they were being transferred to the so called "unpopular" stations ~~xxxxVisakhapatnamxxxxKakinada~~ ~~patnamxxxxRanigundamxxxxBuxpathixxxxGannavaramxxxx~~ whereas the employees in 'popular' stations managing the higher ups without getting a transfer even though they have put-in about two decades of service in the same 'popular' station.

11. The CDR Unit, Dolphin's Nose, Visakhapatnam where the applicants were transferred, is 25 Kms away from Visakhapatnam. It is the case of the respondents that the applicants never requested ~~for a~~ posting out of Visakhapatnam to a "Popular Station". The applicants were transferred as per the seniority list maintained by them. They also contend that the contention of the applicants distinguishing between 'popular' and 'unpopular' is baseless and thereby denied the same.

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12. The learned counsel for the applicants produced a copy of letter with regard to the principles to be followed in the transfer of non-gazetted staff in the India Meteorological Department. These guidelines cannot be taken as mandatory, as administrative exigencies of service sometimes over-ride the guidelines. Even according to these guidelines, the basic principle for transfers is "that transfers are made in the interest of public service and for meeting the exigencies of service should always be kept in view while ordering transfers. A balance is, however, sought to be attained between the interests of service and the personal interests and convenience of the individual in so far as it can be met by the transferring authority, and if the two interests cannot be reconciled, the interest of public service are to be kept paramount."

13. The applicant in reply to the counter affidavit in his additional affidavit contends that the Director of Cyclone Warning Centre, Visakhapatnam is not competent to issue transfer orders and he has no jurisdiction over the Cyclone Detection Radar Centre at Dolphin's Nose, Visakhapatnam. In terms of Ministry of T&C.A. OM No. ME11013/4/77-M (B), dated 21.9.1979, all transfers within the region are to be decided by the R.C.M. The respondents in their counter stated that the 1st respondent is the competent authority to deploy staff of all cadres to the units located at

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Visakhapatnam. It is also stated that the transfer of the applicants was made as per the list maintained by the 1st respondent which has been approved in the meeting of the Regional Counsel in which the staff side representative from Visakhapatnam and the Regional Secretary Non-Gazetted Staff Union, Madras Region were also present.

14. Besides, the Hon'ble Supreme Court of India in "Gujarat State Electricity Board Vs. Atma Ram, AIR 1989 SC 1433", held that-

"the applicant should have joined the service and then made a representation."

15. That apart, the Hon'ble Supreme Court of India also in the case of "Union of India Vs. Kirtania (1989 SC (L&S) 481)", held that the "applicant cannot choose a place of posting and that the transfer is an incident of service."

16. In AIR 1991 SC 532 (M/s Shilpi Bose and others Vs. State Bank of Bihar and others), the Hon'ble Supreme Court held in para-4 that-

"the court should not interfere with the transfer order which are 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 malafides. The Government servant holding transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred to one place from another. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if transfer order is passed in violation of executive instructions/orders, the court, ordinarily should not be interfered with the orders, instead affected party should approach the higher authorities in the department. If the courts continue to interfere with the day-to-day transfer orders, there will be complete chaos in the administration which would not be conducive in the public interest."

17. Following the various principles laid down in the Judgments by the Hon'ble Supreme Court cited supra, we have no hesitation to hold that the transfer of the applicants is in order and is not malafide. The applicants have not made out any case for interference in the matter.

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18. However, this does not preclude the respondents considering ~~favouredly~~ any representation made by the applicants.

19. With these directions, the application is disposed of with no order as to costs.

Subashini

(R. BALASUBRAMANIAN)
Member (Admn.)

Ermy
(C. J. ROY)
Member (Judl.)

Dated: 20th October, 1992.

S. M. S.
Deputy Registrar (Judl.)

Copy to:-

1. The Director, Cyclone Warning Centre, Visakhapatnam, A.P.
2. The Deputy Director General of Meteorology, Regional Meteorological Centre, Madras-6.
3. One copy to Sri. P. Venkateswarlu, advocate, ~~222~~ 4-7-220, Esamia Bazar, Hyd.
4. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
5. One spare copy.

vsn

Rsm/-

Post Script
16/11/92

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O-A-59892
TYPED BY

CHECKED BY

ASR
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COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 20/10/1992

ORDER/JUDGMENT:

R.A. / C.A. / M.A. No

O.A. No.

in
59892

T.A. No.

(wp. No _____)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

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