

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH. (9)

JAIPUR

Date of decision: 20-11-1995

OA No. 464/95

P.C.Khanwani

.. Applicant

VERSUS

Union of India and others

.. Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

For the Applicant

.. Mr.K.L.Thawani

For the Respondents

.. Mr. M.Rafiq

ORDER

PER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri P.C.Khanwani has prayed that order dated 5-9-1995 transferring the applicant, a Programme Executive in All India Radio, Jaipur to Nagaur in the same capacity, may be quashed. He further prayed that order Annexure-A2 dated 27-9-1995 relieving him of his posting at Jaipur and asking him to join his duty at Nagaur may be quashed, as both orders are illegal, arbitrary etc. and violative of Articles 14 and 16 of the Constitution. He had also prayed that the respondents may be directed not to relieve the applicant and to withhold the transfer order.

2. By the interim order dated 6-11-1995, the Tribunal had directed that the order dated 5-9-1995 (Ann.A1) shall be stayed till the next date.

3. The applicant's case is that he has been functioning as Programme Executive in All India Radio, Jaipur since July, 91. He is a Unit Secretary, Programme Staff Association of Akashwani and Doordarshan, Jaipur Unit since July, 1994 and has been

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selected to the said post for a period of two years. On the call of the All India body of Programme Staff Association, the applicant went on token hunger strike on 31-5-1995. The authorities were annoyed with the applicant and have transferred him to Nagaur as a punitive measure. The transfer order is capricious and passed with ulterior motive and on extraneous grounds. As per rules, transfer of employees with the longest stay at a particular station is to be made but in the applicant's case "pick and choose" policy has been adopted. He has given name of 4 persons who have a longer stay at Jaipur but have not been transferred out. He has also stated his personal difficulties such as his mother being 75 years old and 90% blind and also of other members of the family ~~who~~ are ailing. He has stated that it is not possible for him to shift his family to Nagaur which is a small place and where he will have to stay in a rented house without proper facilities. There are still 4 vacancies of Programme Executive at Jaipur and nobody has been posted vice him on his transfer from Jaipur. The applicant made a representation on 12-9-1995 against his transfer but instead of considering his request, respondent No.2, i.e. Director General, All India Radio, New Delhi directed respondent No.3 the Station Director, All India Radio, Jaipur to relieve the applicant from Jaipur.

4. According to the applicant, transfer should be made in April each year and as per transfer policy as contained in All India Radio Manual (Rule ix) (Ann.A6) a person with the longest continuous stay at a station should ordinarily be transferred first. This policy had not adhered to in the case of applicant and his transfer had been ordered out of vengeance. He has been left with service of 3 years for superannuation and deserves to be retained at Jaipur

particularly when the transfer order is neither in the administrative interest nor in the exigencies of the service. (1)

5. The respondents in their reply have stated that the applicant has been at Jaipur since 15-7-1991. As per the transfer policy laid down by the department contained in Ann.A6, the extracts of All India Radio Manual, normal tenure at stations like Jaipur is 4 years. The applicant has completed his prescribed tenure at Jaipur. Transfer from one station to another is a condition of service and an employee has no right in the matter. The transfer of the applicant was necessitated by exigencies and not on account of his participation in the hunger strike. Since the applicant has gained experience of working in C category station, it was considered necessary in the administrative and public interest to make use of his services at a C/^{category} station at Nagaur. They have also given reasons why the 4 persons mentioned in the application have been retained at Jaipur whereas the applicant has been transferred out. Cancelling the transfer order in all cases on grounds of parent's illness is not always practicable.

6. During the arguments, the learned counsel for the applicant accepted that the criterion as laid down by the Hon'ble Supreme Court in the case of Union of India and others Vs S.L.Abbas (1993) 4 SCC 357, is that an order of transfer can be interfered with only when the order is made in violation of the statutory provisions or it is malafide. He, however cited before us 3 orders of the Tribunal to support the view that interference in the circumstances of the present case is called for on the part of the Tribunal. One is D.R.Sengal Vs Chief Post Master General and others (1991), 15 ATC 36, wherein the Tribunal held inter-alia that transfer of an employee other than the one who stayed longest at the same station is bad, transfer of employees contrary to policy guidelines is also bad and in such circumstances the Tribunal can interfere in the orders of transfer. The other case cited by him is V.Bhaskaran Vs Deputy Collector (P&E), office of the Collector of Central Excise, Armaculam, Cochin and others (1987) 4 ATC 473 wherein the Tribunal held that

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although the transfer of a civil servant can be ordered for administrative reasons and the employer is the best judge in this regard, yet fairness and equality of treatment that is required of the state actions in view of provisions of Articles 14 and 16 of the Constitution demands that equality of treatment be applied to orders of transfer as well. Where the order has been made for extraneous considerations and is in a colourful exercise of powers, the Tribunal is competent and is obliged to examine whether the assertion of the respondents is genuine. He also cited before us an order of the Ernakulam Bench of the Tribunal passed on 28-10-93 in OA No. 484/93, Y.Kurikesu, ASTT. This appears to be un-reported judgement and a copy thereof was made available to us by the learned counsel for the applicant during the arguments. He concluded by saying that the respondents have not properly explained why the persons with the longest stay at Jaipur have been retained and why the policy guidelines as contained in Ann.A6 have not been complied with. He placed emphasis on item XI) of the policy guidelines Ann.A6 (page 20 of the OA) wherein it is stated that persons who have already had a spell of posting at a C station would not be posted to such a station a second time if there are candidates in the same grade who are still to be posted at such station. It has been added therein that they may, however, be posted again on promotion. Since the applicant had already had a spell of posting at a C station namely Bhuj in 1971-74, there is no justification for posting him at Nagaur now, which is a C station, because his posting has not been made to the said station "on promotion" but long after his promotion in 1987.

7. The learned counsel for the respondents stated during the arguments that there is no averment in the OA that the applicant had earlier been posted at Bhuj, a 'C' category station. He added that reasons had been given by the respondents why persons with longer stay at Jaipur had been retained at Jaipur whereas the applicant had been transferred to Nagaur. He emphasised that the applicant had already completed the tenure of 4 years

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at Jaipur and, therefore was liable to be transferred outside. As regards the policy guidelines at Ann.A6, he stated that item x) and xi) should be read together. As per item x), as far as possible, every employee should be posted to category C station atleast once during his service. The contents of item xi) had also been referred to above and these provide that a person can be posted again to a C station on his promotion. In the applicant's case, even if he was posted to Bhuj earlier, it was on a post lower than held by him at present. The applicant was promoted in 1997 to the post of Programme Executive and he has been transferred to a 'C' station in 1995. The use of the expression "on promotion" in item xi) of the policy guidelines Ann.A6 does not mean that a person can be posted to the such a station only immediately on promotion and that he cannot be transferred to the such station some time after the promotion, after having been posted to another station in the meantime. He stated that in terms of the judgement of the Hon'ble Supreme Court in the case of S.L.Abbas, this order can be assailed only on the ground of violation of statutory rules, because malafides have not been specifically alleged by the applicant against any officer by impleading him by name. According to him, even if it is assumed that the policy guidelines at Ann.A6 have the force of statutory rules, there is no violation thereof in transferring the applicant at Nagaur, because his second posting to a C station, if at all it can be termed as a second posting to a C station, is after his promotion.

8. We have heard the learned counsel for the parties and have gone through the records as also the judgements cited before us. The charge of arbitrariness in transferring the applicant has been denied by the respondents by giving reasons for non-transfer of persons with a longer stay at Jaipur. We have no reason or ground to hold that the reasons given by the respondents are false or untrue. No doubt, the applicant had cited personal grounds for seeking the stay of his transfer from Jaipur but the respondents have cited administrative

reasons for sending him to Nagaur. As regards policy guidelines we are of the view, after hearing the learned counsel for both the parties, that a too narrow interpretation was placed on the expression "on promotion" when the question of grant of interim stay was considered on 6-11-1995 and such interim stay was granted. Even if the applicant was earlier posted to Bhuj during 1971-74, a C station, about which there is no averment in the OA, it was admittedly on a lower post. It is after the promotion of the applicant that he has been posted to Nagaur and we do not consider such posting as being in violation of the policy guidelines at Ann. A6. The judgements cited before us have been carefully considered by us. We have, however, to consider the applicant's case in the light of the question whether there is any violation of the guidelines issued by the Govt. We do not find that there has been any such violation in the instant case. It would have been for the respondents to consider the personal difficulties of the applicant but if they have overriding administrative reasons for transferring the applicant, we cannot interfere in the matter. Other grounds urged by the applicant have also been carefully considered by us but we find no merit therein. In the circumstances, we see no reason to interfere into the order of transfer of the applicant. The OA is, therefore, dismissed with no orders as to costs, at the stage of admission. The interim direction issued on 6-11-1995 is vacated.

(O.P.Sharma)
Member (A)

Gopal Krishna
(Gopal Krishna)
Vice-Chairman