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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 313/2000
~~TA~~ No.

199

02.11-2000

DATE OF DECISION 11-2000

Bal Krishan Sharma

Petitioner

Mr. P.P.Mathur

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. V.S.Gurjar

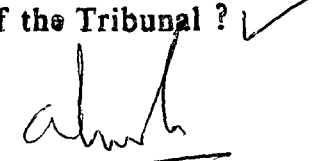
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

The Hon'ble Mr.

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


(N.P.NAWANI)
Adm. Member

Date of order: 02.11.2000
10.2000

OA No.313/2000

Bal Krishan Sharma, Announcer Gr.IV in the Office of Director, All India Radio (CBS), Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Information and Broadcasting, New Delhi.
2. The Secretary, Prasar Bharti (Broadcasting Corporation of India) Akashwani Bhawan, Sansad Marg, New Delhi.
3. The Director General, All India Radio, Akashwani Bhawan, Sansad Marg, New Delhi.
4. The Station Director, All India Radio (CBS), Akashwani Bhawan, 5 Park House, M.I.Road, Jaipur.

.. Respondents

Mr. P.P.Mathur, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant, Shri Bal Krishnan Sharma, Announcer in the CBS, AIR, Jaipur has prayed for following reliefs through this OA:

"(I) That by an appropriate/order/direction the impugned transfer order No.PF3/1583/92-SV III/470 dated 28.4.2000 passed by Respondent No.3 and which has been despatched on 1.5.2000 and relieving order No. ८५/विप्रस/इसई/जेपीए/2000/489 dt. 9.5.2000 passed by Station Director, Respondent No.4 in compliance of Annexure-A-1 (Relieving Order) (Annexure-A-2) may kindly be



declared illegal and the same may also please be quashed and set-aside.

(II) Any other relief to which the Humble Applicant may found entitle may please be granted in the interest of justice."

2. I have heard the learned counsel for the parties at length, have perused all the material on record, including the rejoinder taken on record during the hearing and given my respectful consideration to all the case law cited by the learned counsel for the rival parties.

3. The learned counsel for the applicant has essentially challenged the transfer order on four grounds. First, on account the personal/family problems being faced by the applicant which require his continued presence at Jaipur. It is stated that the brother of the applicant is suffering from neurological and eye-sight related problems. His mother has heart ailment. His father suffers from depression. All these are taking specialist treatment at Jaipur, which is not available at Nagaur. The applicant being the only one to lookafter them, he cannot leave his ailing brother, mother and father to anybody else's care. He has enclosed a number of medical prescriptions to substantiate his contentions. Second, the applicant alleges violation of transfer policy. He had come to Jaipur after joining and spending three years at Jhalawar, which was earlier category 'B' station but was subsequently declared as category 'C' (hard) station. It is alleged that many Announcers like Naseem Zaib, Malti Jain, Pratima Banerjee, Aruna Jaswant Singh and Ramavtar Meena have not been posted to any hard stations in the entire service tenure extending from 12 to 30 years whereas he should not have been transferred twice to hard stations. It is contended that in view of this, not only the transfer policy has

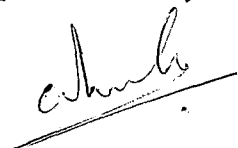


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been violated but the applicant has been discriminated against, violating the Article 14 of the Constitution of India. Third, the applicant has been a victim of malice in law. In other words, the transferring authority by not adhering to their own professed norms, which certain circulars further enjoin it to strictly follow, has issued the impugned transfer order under colourable exercise of power and the said transfer order, therefore, deserved to be expugned and set-aside.

4. The learned counsel for the respondents has equally forcefully controverted the arguments advanced and pleas taken on behalf of the applicant. In reply to the first ground, it has been argued by the learned counsel for the respondents that on one hand the applicant states that his continued presence is required at Jaipur in order to look after his ailing brother, mother and father, while on the other the applicant has simultaneously been applying for his appointment in Radio Japan as recently as 29.7.1998; as Field Publicity Officer on transfer basis with choices of Ajmer, Sikar and Sawai Madhopur and on transfer to Kargil and thus it is quite clear that the applicant is prepared to leave his family behind if he can manage a posting of his choice. It is, therefore, contended by the learned counsel for the respondents that the plea of the applicant to the effect that he should not be transferred out of Jaipur in order to enable him to look after his ailing brother, mother and father has no legs to stand. In reply, the learned counsel for the applicant has contended that the applicant cannot be faulted if he wants to advance his career prospects and that the applicant has volunteered to serve in Kargil on account of his patriotic feelings.

5. As regards the second ground, the learned counsel for the respondents has clarified that Jhalawar was not a category 'C'

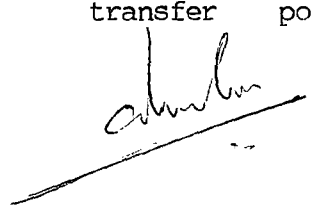


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station (hard station) when the applicant joined there on fresh recruitment and during the period he was stationed there till he was given the posting at Jaipur on his own request. The applicant cannot, therefore, claim that with his transfer to Nagaur, he has been posted to a hard station a second time. The learned counsel for the respondents has also contended that it is well settled principle of law that an employee cannot claim comparative hardship in order to question a transfer order and if some Announcers, as mentioned by the applicant, have been working at Jaipur for periods more than the applicant, it is so in the best judgment of the administration and the applicant cannot derive any right from such a situation.

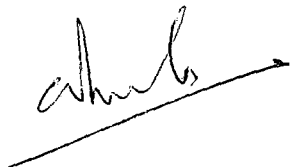
6. As far as the third ground is concerned, the learned counsel for the respondents has denied existence of any express malice or malice in law and contended that the applicant has miserably failed to substantiate the allegation of any malice. It has also been contended that the applicant has not impleaded any authority by name, against whom the applicant now alleges entertainment of malice against him and, therefore, such a frivolous allegation is not worth consideration of the Hon'ble Tribunal.

7. I have carefully considered the rival contentions. I do feel that it is unusual that the applicant, on one hand, seeks interference of this Tribunal and quashing the order of transfer to Nagaur as he was the only one to look after his ailing brother, mother and father receiving specialist treatment at Jaipur but on the other, he has himself offered his services for postings at places which include Japan, Alwar, Sikar, Sawai Madhopur and Kargil. As far as the plea of discrimination and violation of transfer policy is concerned, it is now well settled law that any transfer policy/guideline/instruction/circular is only a



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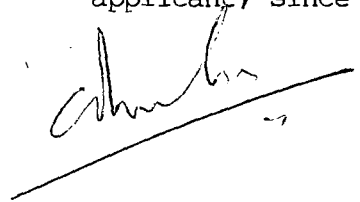
compilation of guidelines and such policy/guideline/instruction/circular including those cited on behalf of the applicant, is not mandatory and has no statutory force. Hon'ble the Supreme Court in Union of India v. S.L.Abbas, JT (1993) 3 SCC 678 have held that "an order of transfer is an incident of government service.... Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it." (emphasis supplied). The same view was taken by the Apex Court in the case of State of Madhya Pradesh v. S.S.Kourav, JT 1995 (2) SC 498 wherein the Supreme Court held that "the Courts/Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly." In view of such clear enunciation of law by Hon'ble the Supreme Court, I just cannot muster the gumption to interfere with the impugned transfer order on the ground of violation of the transfer policy and alleged discrimination meted out to the applicant in the implementation of the transfer policy. The applicant has not been able to establish that the respondents have whimsically and capriciously ordered his transfer and this also leaves no scope at all for me to quash the impugned transfer order. That there are some Announcers with longer stay at Jaipur is also not relevant in view of the law laid down by the Apex Court in the case of S.L.Abbas (supra) to the effect that "who should be transferred where is a matter for the appropriate authority to decide". It has also been held by the Apex in the case of B.Vardhan, AIR-1986-SC-1955 that "the norms enunciated by the government for the guidance of its officers in the matter of ~~relating~~ transfers are more in the nature of guidelines to the officer who order transfers on the exigencies of administration than vesting of any immunity from transfers in the government servants". Further, it has also been held by the Apex Court in the case of



S.S.Kourav (supra) that "it is not permissible for the Writ Court or Tribunal to go into the relative hardship of an employee which may be caused by his transfer/posting." It has also to be noted that the respondents allowed the on-request transfer from Jhalawar, for which station he was recruited to Jaipur in 1993 and having already spent seven years at Jaipur, he cannot allege unsympathetic attitude on the part of respondents. The applicant has alleged some discrepancies in the date etc. of retirement/tenure of those staying longer than him at Jaipur as mentioned by the respondents in their reply but that does not change the legal position, although the respondents will be well advised to be careful with their facts when they file any reply before this Tribunal.

8. The third ground taken by the applicant was that he was a victim of malice in law. First of all, the applicant has not impleaded the authority by name who, according to him, should be held guilty of malice in law. This, by itself, should be sufficient to ~~reject~~^{dismiss} such a contention. However, the applicant has also failed to substantiate that the said transfer order has been issued without any application of mind or that the power of transfer has been exercised for a purpose other than the purpose for which the power was conferred by the legislature as mentioned in the case of Pratap Singh v. State of Punjab, 1954 SC 72 [per Administrative Law by D.D.Basu, Kamal Law House, Calcutta (1993)] or that it was issued in colourable exercise of power. I, therefore, find no merit in this argument and accordingly reject it.

9. The learned counsel for the applicant has also argued that the impugned transfer order is bad in law since it has been issued by the Prasar Bharti Corporation which has no jurisdiction over the applicant, since he is still a Central Government employee and his

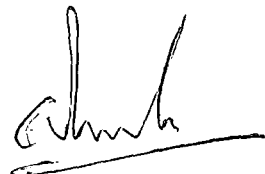


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services have not yet been placed even on deputation basis with the Prasar Bharti. I find that this plea was not at all taken by the applicant in this Original Application and he cannot now be allowed to take a new plea either in his rejoinder to the reply of the respondents or at the stage of arguments. In this connection I refer to the judgment of Hon'ble the Supreme Court in the case of Meghraj Urkudaiji v. State of Maharashtra reported in 1999 (2) ALJ 130 (SC).

10. I have also given my most respectful consideration to the orders/judgments cited by the learned counsel for the applicant such as in OA No. 416 of 1999, J.C.Bhatia-v. Union of India and ors., decided by the Principal Bench of this Tribunal on 6.9.1999, OA No.2370 of 1996 P.Dorai-Raj-v. Union of India and ors., again by the Principal Bench on 12.2.1997 and Smt. Preeti Sharma v. Union of India and ors. reported in SLJ-2000-(2)-422. However, in view of the clear law laid down by Hon'ble the Supreme Court, as briefly discussed earlier in this order, I feel that the applicant cannot get any support from these judgments/orders.

11. Against the background of discussions as recorded hereinbefore, I find no justification to interfere with the impugned order of transfer (Ann.A1) and the relieving order (Ann.A2) and the OA is accordingly dismissed with no order as to costs.



(N.P.NAWANI)

Adm. Member