

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

O.A.No.278/2005

Decided on : June 14, 2005.

CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN

Maliram S/o Sh.Hanuman Prasad, Age about 52 years, R/o Village Kladera, Near Post Office, District-Jaipur presently working as Upper Division Clerk, Chlordanes Kendra, Jaipur.

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Applicant

By : Mr.Amit Mathur, Advocate.

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, Sanchar Bhawan, New Delhi.
2. The Director, S-2, Akashwani Bhawan, Sansad Marg, New Delhi.
3. Station Director, Akashwani, Jaipur.
4. Station Director, Doordarshan Kendra, Jhalana Doongri, Jaipur.

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Respondents

By : None.

O R D E R(oral)KULDIP SINGH,VC

The challenge of the applicant in this O. A. is to the order dated 6.6.2005 (Annexure A-1) by which he has been transferred from Doordarshan kendra, Jaipur to Akashwani, Nagaur.

The facts as alleged by the applicant are that he is working as



UDC at Doordarshan Kendra, Jaipur. The applicant has worked at AIR Jhalawar prior to year 2000 for a period of more than three years. AIR Jhalawar is a difficult station. The applicant was transferred to Civil Construction Wing, all India Radio, Jaipur on 20.6.2000. On 27.11.2002, the applicant was transferred to All India Radio, Barmer against which he submitted a representation and after acceptance of such representation, the transfer order dated 27.11.2002 of the applicant to AIR Barmer was canceled on 23.4.2003.

The applicant submits that he was again transferred to AIR Kota vide office order dated 27.8.2003 and was relieved w.e.f. 2.9.2003. The applicant submitted a representation against the same which was accepted and vide order dated 28.1.2004, transfer order dated 27.8.2003 was cancelled. He was again transferred by order dated 22.4.2004 to Bundi against which he filed an O.A. Before this Tribunal and after interference of the Tribunal the transfer order of the applicant was cancelled. He claims that all the transfer orders issued by the respondents were contrary to the policy of transfer. Now again he has been transferred by Annexure A-1 against which he has submitted a representation, Annexure A-2, dated 9.6.2005. It is submitted that policy of transfer clearly stipulates that the person having the maximum stay shall be transfer first. He has mentioned detail of employees who are posted at Jaipur for a longer period than

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the applicant. The representation of the applicant has not been considered and due to malafide reasons, the applicant is being transferred time and again. The applicant has three children and all are studying. The wife of the applicant is not fit and is getting regular treatment at Jaipur. The applicant cannot maintain two establishments.

I have heard learned counsel for the applicant at length and gone through the pleadings of the O.A.

I find that applicant has not been able to pin point any illegality in his transfer to Nagaur. Undisputedly, it is a chain transfer involving 21 persons and any interference with one person will effect the chain. Undisputedly, the applicant is working on a transferable post and is liable to be transferred to the place he has been posted. The applicant has tried to level allegations of malafide in his transfers but nobody has been impleaded as a party before us in this case nor any evidence has been lead in the O.A to prove that the applicant has been transferred due to malafide intentions.

Hon'ble Supreme Court of India in the case of Abani Kanta Roy Vs. State of Orissa (1996) 32 ATC, Page 10, has held that transfer which is an incident of service is not to be interfered with the Courts or Tribunals unless same is shown to be arbitrary or vitiated by malafide or infraction of professed norms of principles of governing transfer. In the cases of State of M.P. Vs. S.S.Kaurav, 1995 SCC (L&S), Page 666;

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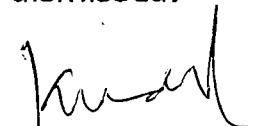
State of Rajasthan Vs. Prakash Solanki, 2003 (7), SCC, 409; V.Jagannadha Rao Vs. State of A.P., 2001 (10) SCC, 414 & State Bank of India Vs. Anjan Sanyal, 2001 (5) SCC, 514, it has been held that unless the transfer is vitiated by malafide; arbitrariness or is enforced as a punishment, the same cannot be interfered with. I do not find that the transfer of the applicant is on account of malafide or arbitrariness on the part of the respondents nor there is any violation of statutory rules. In so far as policy of respondents regarding transfer is concerned that senior most should move first, let it be stated that even on this point, the Hon'ble Supreme Court has taken a view in Union of India & others Vs. S. L. Abbas, AIR 1993 SC Page 2444, that Guidelines issued by the government do not confer upon employee any legally enforceable right. In that case the order of transfer was made without following guidelines. The Court held that the order cannot be interfered with by Court unless it is vitiated by sulfides or is made in violation of statutory provision. The C.A.T. Not being appellate authority, cannot substitute its own judgment for that of competent authority. It cannot substitute its own judgment for that of the authority competent to transfer.

However, in so far as personal problems are concerned that are to be considered by the competent authority. Undisputedly, the applicant has already submitted a representation to the respondents,

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Annexure A-2 which has not yet been decided by the respondents and is pending with them.

In the result I do not find this O.A to be a triable case, thus, it is dismissed in limine. However, the respondents are directed to consider the representation submitted by the applicant against his transfer order and pass an order on the same within a period of 30 days from the date of receipt of copy of this order. Till such order is passed, the operation of the impugned order qua the applicant shall remain stayed. However, on merits the case stands dismissed.



(KULDIP SINGH)
VICE CHAIRMAN

June 14,, 2005.

HC*