

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

O.A.476/2013.

Dated this Tuesday the 10th day of December, 2013.

Coram: Hon'ble Shri A.J. Rohee, Member (J).

A.B. Mathur, son of
late Shri Govind Lal Mathur,
resident of 84/144, Madhyam
Marg, Mansarovar, Jaipur
(Under transfer to All India
Radio, Jhalawar as a
Programme Executive). .. Applicant.

(By Advocate Shri Pradeep Kalwania).

Versus

1. Union of India, through
the Secretary,
Ministry of Information
and Broadcasting,
New Delhi.
2. Director General,
All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi-110 001.
3. Addl. Director General
(WR-I & II),
All India Radio,
New Broadcasting House,
Backbay Reclamation,
Mumbai-400 020.
4. Director, All India Radio,
Jaipur.
5. Shri Srawan Lal Meena,

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Programme Executive,
All India Radio,
Jaipur.

..Respondents.

(By Advocate Shri Mukesh Agarwal
for Respondents No.1 to 4).

O R D E R

This is second round of litigation before this Tribunal challenging the impugned order dated 07.06.2013 Annexure A-1, by which representation of the applicant not to transfer him from Jaipur as Programme Executive at All India Radio, to any other place is rejected.

2. The facts of the case in nutshell may be stated as under:-

That the applicant whose native place is Ajmer was initially appointed as Farm Radio Reporter on 31.01.1983 at Jaipur. He was promoted to the post of Programme Executive and joined at Kota on 30.05.1994. He was again transferred to Jaipur in the same capacity on 07.05.1997 and again transferred to Mount Abu in May, 2007. He was again transferred to Jaipur on 10.11.2008 and since then is working there till the impugned order Annexure A-1 was issued

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thereby confirming his transfer order dated 17.05.2013 to Jhalawar.

3. According to the applicant, he was not liable for transfer on the verge of his retirement on superannuation to take place on 31.03.2015. Apprehending that some order regarding his transfer will be issued by the Respondent No.2, on 12.03.2012 he submitted a representation to retain him and not to disturb him since he desires to settle at his native place after retirement. However, by the order dated 17.05.2013 the applicant was transferred from Jaipur to Jhalawar. The applicant immediately approached this Tribunal by filing O.A.No.390/2013 which was allowed with a direction to the Respondents No.1 to 4 to consider the pending representation of the applicant and till its disposal not to give effect to the transfer order if the applicant has not already been relieved.

4. Pursuant to the above order the applicant again submitted another representation

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dated 23.05.2013 to consider his previous representation. The Respondent No.2 did not find favour with the applicant and rejected his representation by passing the impugned order Annexure A-1 and thereby maintaining the transfer order dated 17.05.2013.

5. The impugned order has been challenged on the following grounds:-

(a) That the same is illegal and arbitrary exercise of powers by the Respondents No.1 to 4 and that the same is against the provisions of the transfer policy dated 14.07.1981 declared by the Government of India, Ministry of Information and Broadcasting and also the provisions of All India Radio Manual.

(b) That the Transfer Policy prohibits transfer of an employee from his home town or from a place near his home town before 3 years of his superannuation and if it becomes necessary to do so the employee has to be posted near his home town during the said period. Since the applicant is to retire on superannuation on 31.03.2015 i.e.

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after one year and 10 months only the impugned order is illegal.

(c) After retirement the applicant desires to shift with his family to his native Ajmer where he has his ancestral house property requiring renovation to make it habitable.

(d) That the impugned order has been passed with the sole object to accommodate the Respondent No.5 and there was no administrative exigency to shift the applicant from Jaipur.

(e) That there are other employees working at Jaipur in the same capacity who have put in more tenure than that of the applicant and instead of transferring such employees the applicant is unnecessarily transferred.

(f) That the impugned order is nothing but a display of adamancy or arrogance and depiction of the disrespect shown by the Respondents to the order passed by this Tribunal.

(g) That the service record of the applicant since beginning is excellent and there was no complaint against him and hence no reason to

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transfer him before two years of his superannuation.

(h) That the Respondents No.1 to 4 have acted contrary to the transfer order inasmuch as they have relieved Respondent No.5 from Jhalawar and allowed him to join at a new destination Jaipur especially when the applicant was not relieved from Jaipur. This clearly shows that the Respondents wants to accommodate the Respondent No.5 anyhow to the detriment of the applicant.

(i) That the applicant is not practically relieved from Jaipur and hence he cannot be presumed to have joined at Jhalawar in pursuance of the transfer order and hence the Respondent No.5 should not have been relieved from Jhalawar.

(j) That the Respondents have committed contempt of Court by violating the stay granted by this Tribunal in its order dated 23.05.2013 and hurriedly passed relieving order of applicant on 14.06.2013.

(k) That in any case the impugned order is

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contrary to the provisions of the Transfer Policy, the rules and there was no administrative exigency to shift the applicant just two years preceding his superannuation.

6. On the above grounds it is prayed to set aside the impugned order Annexure A-1 by declaring it as illegal so also the transfer order Annexure A-2 and the relieving order Annexure A-3, further direction to the Respondents to call back the applicant to join his duty at Jaipur.

7. On notice the Respondents No.1 to 4 appeared and resisted the claim by way of common reply dated 17.07.2013 denying all the adverse allegations and averments made in the application. According to the Respondents the impugned order was passed after considering the administrative exigency, public interest and also the provisions of the transfer policy and the same does not cause any prejudice to the applicant. It is specifically denied that the impugned order was passed only with a view to

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accommodate the Respondent No.5 who according to the Respondents he was infact due for transfer since he completed the requisite tenure of two years at C Category difficult station declared by the Department.

8. According to the Respondents the post of Programme Executive comes under the All India Service and is, therefore, transferable anywhere in India where All India Radio Stations are located. Further, Programme Executive is responsible for planning, production and broadcasting of programmes over the Stations of his posting and, thus, is a key post necessarily require to run a Station by an experienced hand. That none of the terms of Transfer Policy declared by the Central Government is infringed or violated by passing the impugned order as alleged by the applicant especially when Clause xxi thereof is not attracted since the applicant is not presently posted at his home town Ajmer, where there is no Radio Station. He has already put in more than required four years of tenure at

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Jaipur before issuance of the impugned order and thus was due for transfer. In his 30 years of service, he was posted for a total period of 26 years at Jaipur. This being so, he should not have any grievance with the impugned order. That the transfers of all categories of members working in All India Radio are governed by a Transfer Policy and the AIR Manual Part I and the same is strictly followed while issuing transfer order and while passing impugned order. The other similarly situated Programme Executives could not be disturbed on account of the medical ground and since the applicant was having the longest tenure at Jaipur the administration thought it proper to transfer him on administrative exigency.

9. That the direction issued by this Tribunal in the previous O.A. was fully followed and only after passing the impugned order the applicant was relieved on 14.06.2013 to facilitate him to join at the new destination of his transfer. There was no question of handing

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over the charge as such by the applicant after he is relieved and he was simply called upon to return the office articles retained by him. The Respondent No.5 was relieved from Jhalawar to facilitate the applicant to join there. The representation of the applicant was rightly considered and rejected. The applicant is not justified in approaching this Tribunal nor the impugned order is liable to be set aside on any of grounds alleged by him which are not maintainable in the facts and circumstances of the case. The Respondents have made all endeavor to accommodate the applicant and transfer him at the nearest possible station from Jaipur and also from his native place Ajmer to minimize his grievance. The Respondent NO.5 was relieved from Jhalawar and was allowed to join at Jaipur in the vacant post of the applicant after he was relieved. As such there is no breach of any order passed by this Tribunal.

10. On the above grounds it is prayed to dismiss the application.

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11. The applicant on 26.09.2013 filed the rejoinder denying all the adverse allegations and averments made in the reply and reiterating the same grounds mentioned in his application for setting aside the impugned order. It is also stated that since there is no Radio Station at his home town Ajmer and Jaipur being the nearest Station to his home town his case is fully covered by Clause xxi of the Transfer Policy and hence the impugned order is liable to be set aside.

12. This Tribunal at the time of issuance of the notice to the Respondents granted interim relief on 19.06.2013 thereby staying the effect and operation of the impugned order dated 07.06.2013 Annexure A-1, the transfer order dated 17.05.2013 Annexure A-2 and the relieving order dated 14.06.2013 Annexure A-3 and the said order was continued from time to time till today.

13. On 03.12.2013, when the matter was called on for final hearing, heard the oral submissions of Shri Pradeep Kalwania, learned

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Advocate for the applicant and Shri Mukesh Agarwal, learned Advocate for Respondents No.1 to 4. None appeared for the Respondent No.5.

14. I have carefully gone through the pleadings of the parties, the material placed on record by them in support of their rival contentions and had also given thoughtful consideration to the submissions advanced before me.

15. The only point that arise for my consideration is whether the impugned order dated 07.06.2013 Annexure A-1 is liable to be set aside on the ground alleged by the applicant? I record my finding in the negative for the following reasons.

Reasons

16. It is obvious from record that the impugned order has been challenged mainly on two grounds that it has been passed in violation of the Transfer Policy and there was no administrative exigency to transfer the applicant and secondly it has been passed to accommodate



the Respondent No.5. It is undisputed that the applicant rendered service at Jaipur for a long period although intermittently he served for a few years at Mount Abu and Kota. Admittedly, Jaipur is not his home town or native place and he is from Ajmer which is about 110 kms. away from Jaipur. It is also obvious from record that the applicant had some clue that transfer order is likely to be passed and hence anticipating and apprehending it, he suo-motu submitted a representation on 12.03.2013 Annexure A-5 not to shift him raising the same ground that preceding 3 years from the date of his superannuation he cannot be shifted and that he wanted to settle with his family members at his native place Ajmer after retirement in his ancestral house. During the course of arguments it has been rightly pointed out by the learned Advocate for the Respondents that the applicant's case is not covered by the provisions of Clause xxi of the Transfer Policy dated 14.07.1981 Annexure A-4, since he is not posted at his home town. The

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said provision reads as under:-

"xxi) Members of staff, who are within three years of reaching the age of superannuation, will, if posted at their home town not be shifted there from, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible."

17. If we carefully consider the above referred provision it is obvious that due care is thereby taken by the administration not to shift the employees who are on the verge of the retirement and are posted at their home town and in case the administrative exigency requires to shift them and to post them elsewhere, efforts should be made to post them near their home town as far as possible. Although there is no Radio Station available at Ajmer, the home town of the applicant, it cannot be said that his case is covered by the said clause since he is presently serving at a place near his home town. Such interpretation cannot be given to the said clause. This being so, it cannot be said that there is violation of any of the terms of the

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Transfer Policy by the Respondents while considering the representation of the applicant, and as such it cannot be said that the applicant is successful in establishing the first ground.

18. From record it is obvious that the sequence of events is first issuance of transfer order dated 17.05.2013 Annexure A-2 which order was challenged in previous O.A.No.390/2013 decided on 23.05.2013 Annexure A-6, with a direction to decide the representation of the applicant and not to give effect to the transfer order till the same is decided. Accordingly, the representation is decided on 07.06.2013 vide impugned order Annexure A-1 and while doing so direction given by the Tribunal not to give effect to the transfer order till the decision on representation i.e. not to relieve the applicant from his present post was followed. It is only after passing the impugned order i.e. after deciding the representation of the applicant, the relieving order dated 14.06.2013 Annexure A-3 was issued. Then the applicant immediately

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approached this Tribunal by filing the present Original Application and as stated earlier the effect and operation of Annexure A-1, A-2 and A-3 was stayed by interim order dated 19.06.2013. This is how inspite of issuance of the relieving order it appears that the applicant is still working at Jaipur, although in the meantime Respondent No.5 appears to have joined at Jaipur. In any case on account of interim order passed by this Tribunal, it will be for the Respondents to take care of and ensure that at one post two persons do not join.

19. So far as second ground raised by the applicant is concerned it is not disputed that the Respondent No.5 was posted at Category 'C' difficult station and as per the Transfer Policy after rendering service for a period of two years at such Station such employee can make a request for his transfer to any other convenient post of his choice. Under this clause the request of the Respondent No.5 was considered by the Respondents and he was transferred to Jaipur vice the

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applicant. It is obvious from record that there are few more Programme Executives working at Jaipur, who could have been considered for transfer to Jhalawar. However, it is the settled law on transfer policy that it is the discretion of the employer to transfer a particular employee from one place to another unless it is shown that there was some malafide intention in doing so. In the present case the applicant has not alleged malafides against any of the Respondents in issuing the impugned order. Bare perusal of the impugned order shows that it gives elaborate and cogent reasons while rejecting the representation of the applicant.

20. During the course of arguments, it was vehemently contended by the learned Advocate for the applicant that the Respondents have violated the order passed by this Tribunal in the previous O.A. and also condition of the transfer order Annexure A-2 which specifically states that Respondent No.5 will be relieved from Jhalawar only after the applicant joins there. So far as

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first submission is concerned as stated and discussed earlier it cannot be said that the Respondents have violated or committed breach of the order passed by this Tribunal in the previous O.A. or the interim order passed in the present O.A. It is true that before the applicant joins at Jhalawar Respondent No.5 was relieved and was allowed to join at Jaipur, however, plausible explanation was given by the Respondents in reply to the effect that he was allowed to join in the vacant post. Thus, it is obvious that only because Respondent No.5 was relieved and was allowed to join before the applicant reports at Jhalawar it cannot be said that this is serious infirmity and although it may be said that the Respondents have shown some favour to the Respondent No.5 for his early joining at Jaipur. Further, plausible explanation is given by the Respondents No.1 to 4 for not disturbing some other Programme Executives and as such no adverse inference can be drawn against the Respondents. The fact that the applicant had clean service

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record or that there were no complaints against him nor he faced any inquiry are not relevant, especially when he had completed 4 years of tenure at Jaipur, as stated earlier and as such he was due for transfer.

21. During the course of the arguments the learned Advocate for the Applicant relied upon decision of this Tribunal in a case of **Mumtaz Ahmed Khan Vs. Union of India and others in O.A. 347/2005 decided on 02.02.2006**. However, the facts of that case are totally different although in that case the transfer order was challenged on the ground that the same is in violation of the Transfer Policy where the tenure of four years has been fixed and the applicant in that case was transferred much before completing this period. It cannot be said that the decision in the said case is in any way helpful to him in the present case.

22. Before concluding it may be mentioned that through a catena of judicial pronouncements the Hon'ble Apex Court has laid down the law

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relating to transfer of Government employees. It is settled view that transfer is an inevitable sequence of the service and that it is the prerogative of the employer and the same can be effected on account of administrative exigency and in public interest. It is not open for the Tribunal or the Court to look into the matter if the public interest are safe guarded or not on account of the transfer effected by the Government. Further, transfer order can be challenged and set aside only if it is established that the same is the result of malafides or in violation of any statutory rule or regulations or has been issued by a person who is not competent to do so. Normally in majority of the cases challenging the transfer order the various grounds of domestic difficulties like illness of family members, education of kids are raised. It is needless to say that every Government employee is answerable to his employer i.e. Government as well as to the public at large for whom he render his services and since he has

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paid the salary out of the State exchequer. This being so, his primary responsibility is to render service honestly and faithfully and the family obligation comes thereafter. In any case as stated earlier there is hardly any scope for interference with the transfer orders passed by the employers and the Tribunal does not sit in appeal to reappreciate the view taken by the employer in the matter of transfer of employees.

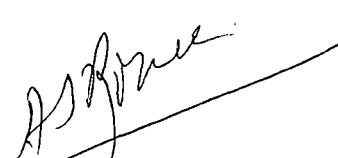
Normally, transfer orders are issued after considering the Transfer Policy and due care is taken to accommodate the employees, as far as possible. The Hon'ble Apex Court has even gone further by laying down the principle that on receiving the transfer order, the Government servant should first join at the new destination and then should make a representation to the employer stating ground for its cancellation and if not considered then should knock the doors of this Tribunal for necessary redressal. However, in majority of cases it is noticed that immediately on receiving the transfer order a

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representation is submitted to the employer and although such employee is relieved from its previous station to enable him to report him at his new destination he does not join there and proceeds on leave, thereby hampering the smooth administration.

23. In the present case as stated earlier it is not established that any statutory rule or transfer regulation governing the transfers or any term of Transfer Policy is violated nor that allegations of malafides are made against any of the Respondents nor that the Respondent No.2 was not competent to issue transfer order of applicant. This being the position on record the applicant is not entitled to any relief from this Tribunal and it cannot be said that the impugned order is illegal or arbitrary and is liable to be set aside.

24. In the result, the application is dismissed, however, with no order as to costs. Consequently, the interim order dated 19.06.2013 also stands vacated.


(A.J. Rohee)
Member (J) .

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