



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

No. O.A. 350/01444/2017
M.A. 350/00031/2018

Date of order: 14th May 2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Subrata Mukherjee,
Son of Late S.K. Mukherjee,
Aged about 56 years,
Working as Senior Engineering Assistant,
Residing at Flat No. 4,
13, Salimpur Bye Lane,
Kolkata – 700 031...

.. Applicant

- V E R S U S -

1. The Union of India,
Through Secretary, Ministry of Information & Broadcasting,
New Delhi – 1.
2. Prasar Bharati, India's Public Service Broad Caster,
Through Chairman, Doordarshan Bhawan, Copernicus Marg,
New Delhi – 1.
3. The Additional Director General (G)(EZ), All India Radio & Doordarshan,
Akashbani Bhavan, 4th Floor, Eden Garden,
Kolkata – 1.

.... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Mr. S.K. Dutta, Counsel

For the Respondents : Mr. R. Halder, Counsel

O R D E R

Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at being transferred from LPTV Centre at Midnapore to Bhubaneswar vide respondent authority's order dated 14.7.2017, the applicant has filed the instant Original Application seeking the following relief:-

[Signature]

"(a) The order of transfer dated 14.7.2017 issued by the Additional Director General (ENGG-E/Z) AIR and Durdarshan Kolkata and order dated 20.9.2017 issued by Dy. Director (Engg.) Doordarshan Maintenance Centre, Bardhaman cannot be sustained in eye of law since the office memorandum dated 30.9.2009 issued by the DOPT was not followed and therefore the same may be quashed.

(b) An order do issue directing the respondents to reconsider the case of the applicant for his posting at Kolkata since one post Senior Engineering Assistant was transferred to Kolkata due to closure of LPT Supal."

An interim relief has also been sought for directing the respondents to allow the applicant to perform his duties as Sr. Engineering Assistant at Kolkata.

2. Heard both Id. Counsels, examined pleadings and documents on record.

As directed by the Tribunal on 23.3.2018, supplementary affidavit has been filed by the respondents and a reply to the supplementary affidavit has been filed by the applicant. Written arguments have been filed by both Id. Counsel.

3. The contentions of the applicant, purporting, and as canvassed by his Id. Counsel, are as follows:-

That, the applicant was working as a Sr. Engineering Assistant posted at LPTV Centre at Midnapore and that consequent upon closure of the LPTV Centre at Midnapore, the applicant was transferred to Bhubaneswar in terms of respondent authority's orders No. CC-1(33)/2017-5 dated 14.7.2017.

That, the applicant has submitted his option on 7.6.2017 for posting at Kolkata on health grounds and the said representation had been forwarded to the concerned respondent authority.

That, when LPT Midnapore, LPT Jhargram and LPT Supal were closed, the posts were transferred to different stations of All India Radio and one such post which was transferred to Kolkata, is lying vacant till date. Despite the same and despite the fact that the applicant had prayed for posting at Kolkata on medical grounds as well as on the ground of posting of husband and wife in the same station, his option was not considered and he was transferred to Bhubaneswar. According to the applicant, the order of transfer was issued in violation of the transfer policy and that the principles laid down in Office

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Memorandum dated 30.9.2009 issued by DOPT in respect of posting of husband and wife at the same station had been violated. Hence, the instant application.

That, the applicant had also filed an M.A. bearing No. 31/2018 arising from O.A. No. 1444 of 2017 in which the applicant had prayed for compliance of the order of the Tribunal dated 26.10.2017. The said order dated 26.10.2017 was passed in the context of the interim prayer of the applicant in which the applicant had prayed for issue of direction upon the respondents to allow the applicant to perform his duties as Sr. Engineering Assistant at Kolkata. The Tribunal had passed the following order in response to the prayer for interim relief:-

"4. As no reply has been filed, while granting 2 weeks time to Mr. Halder to file his objection to the interim order, we make it clear that if there is any vacancy available and the respondents are not in difficulty, they may allow the applicant to perform his duty as Senior Engineering Assistant at Kolkata without any prejudice to any of the parties."

In response to the M.A., the respondents had filed reply by way of supplementary affidavit, particularly, clarifying the issue on vacancies at Kolkata and objecting to his prayer for interim relief. The applicant has filed a reply to the said supplementary affidavit in which detailed explanations have been offered reiterating the fact that as many other incumbents have been accommodated in Kolkata, the applicant should have been adjusted against the vacancies of Sr. Engineering Assistant in Kolkata Office.

4. Per contra, the respondents have filed a reply to the original application further supplemented by the written notes of arguments in which the following rationale had been advanced.

That, the department in public interest needs to distribute their technical staff in a suitable manner so as to operate the units as per operational and administrative requirements.

That, in public interest of the service of the department, the Unit at NABM-Bhubaneswar requires Sr. Technical Staff which had necessitated transfer of the applicant from LPTV-Midnapore to NABM-Bhubaneswar.

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That, as the applicant has been appointed in the post which is transferable all over India, the employee does not have any right to demand his posting at Kolkata.

That, employees who have less than two years of service period have a stronger right for being transferred to a particular place of posting than the applicant, who has more than two years service period upto his superannuation.

That, the sanctioned strength of Sr. Engineering Assistant at Kolkata is 35 and presently 35 incumbents are posted against the same.

That, the applicant has served the department for the last 32 years out of which he has spent 28 years within Kolkata or nearby in the State of West Bengal.

That, the order of transfer was issued by the respondents after fulfilment of all the norms of the department and with due reference to the availability of posts and the status of the applicant.

That, at Bhubaneswar there is 20% less staff than required for uninterrupted operation of the Unit compared to Kolkata which only has 15% less staff than that required.

That, as the applicant has not challenged the transfer order on the following grounds, namely:-

- (i) The transfer order has been passed by an inappropriate authority.
- (ii) That it smacks of malafide.
- (iii) That such transfer order is against any statutory rules

there is hardly any scope of judicial review or intervention in this regard.

The respondent's Counsel have also referred to a Larger Bench order of the Central Administrative Tribunal, Kolkata Bench passed on 8.9.2017 in O.A. No. 675 of 2017 wherein after having referred to the ratio laid down in **State of UP v. Gobardhan Lal, (2004) 11 SCC 402, Shilpi Bose (Mrs.) v. State of Bihar, 1991 Supp (2) SCC 659, UOI & ors. V. Janardan Debnath, (2004) 4 SCC 245, Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey & ors.**

(2007) 2 SCC (L&S) 596, the Larger Bench had concluded that in the limited parameter of Judicial Review no interference on transfer order has to be made unless it is not passed by an appropriate authority, it smacks of malafide or it is against any statute and accordingly, the respondent authorities have objected to the Original Application as well as any scope of interim relief associated with the said application.

ISSUE

5. The relevant issue that has to be decided in this case is whether the transfer order so impugned calls for judicial review and intervention.

FINDINGS

6. (i) The Ld. Counsel for the applicant has strongly relied on the DOPT Circular F.No. 28034/9/2009-Estt.(A) dated 30.9.2009 on the subject matter of posting of husband and wife at the same station. The guidelines refer to the following situations in the context of posting of husband and wife in the same station:-

- (i) Where the spouses belong to the same All India Service or two of the All India Services,
- (ii) Where one spouse belongs to one of the All India Services and the other spouse belongs to one of the Central Services
- (iii) Where the spouses belong to the same Central Service
- (iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service.
- (v) Where one spouse belongs to an All India Service and the other spouse belongs to a Public Sector Undertaking.
- (vi) Where one spouse belongs to a Central Service and the other spouse belongs to a PSU
- (vii) Where one spouse is employed under the Central Govt. and the other spouse is employed under the State Govt.
- (viii) Where only wife is a Govt. servant, the above concession will be available to the Government servant.

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In this case it is clear that the categories at (i), (ii), (iii), (iv), (v) & (vi) does not apply in the case of the applicant. Coming to the category (vii) and (viii) where one spouse is employed in Central govt. and the other spouse is employed under the State Govt., we refer to the certification issued by the President of the Kanchrapara Indian Girls' High School at Annexure, "A-6" to the O.A. whereby the spouse of the applicant has been certified as a headmistress in the said Institute. There is also an appointment order of the wife of the applicant as Headmistress in the Kanchrapara Indian Girls' High School signed by the President, Kanchrapara Indian Girl's High School counter-signed by the District Inspector of Schools(SE), Barrackpore, North 24 Parganas.

In the pleadings it has been stated that the said Kanchrapara Indian Girl's High School is a Govt. sponsored High School. In this context, the "Management of Sponsored Institutions (Secondary) Rules, 1972" of Government of West Bengal are referred to. The following notifications are extracted as below:-

No. 264-Edn(S) Dated: 08.03.1972 [Management of Sponsored Institutions (Secondary) Rules, 1972]
No. 779-SE(S) Dated: 08.10.1998 [Amendment of Management of Sponsored Institutions (Secondary) Rules, 1972]
No. 663-SE(S) Dated: 02.05.2001 [Amendment of Management of Sponsored Institutions (Secondary) Rules, 1972]

NOTIFICATION

In exercise of the power conferred by Sub-Section (i) and in particular by clause (d) of Sub-Section (2), of Section 45 of West Bengal Board of Secondary Education Act, 1963 (West Bengal Act, V of 1963), the Governor is pleased hereby to make after previous publication as required by sub-section (1) of the said section, the following rules, namely:

1. Short Title

These rules may be called the Management of Sponsored Institutions (Secondary) Rules, 1972.

2. Application

These rules will apply to the Sponsored Institution (Secondary) in West Bengal.

3. Definition

The words and expressions used in these rules shall have the same meanings as are assigned to them in the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969.

Xxxxxxxxxxxxxxxxxxxxxx"

Hence, a government sponsored school is not a school owned by the State Government and under no circumstances, a teacher/headmistress employed in such a Govt. sponsored school can be said to be employed by the State Government or is a Government servant. It is obvious from the certifications that the President of the Kanchrapara Indian Girl's High School is the President of the Managing committee of the school, which is responsible for the school's administration and the State Government, apart from certain funding through Government grants (if applicable), does not have any ownership over such managing committee oriented educational institutions. Hence, clearly the DOP&T circular so strongly relied upon by the LD Counsel for the applicant, does not apply in this case.

(ii) The applicant has been representing that he should be posted in Kolkata on health grounds as he is suffering from Blood Pressure, Gastritis and is undergoing treatment under the Christian Medical College, Vellore for Ischemic heart disease. As by his own admission, the applicant is undergoing treatment under the Christian Medical College, Vellore, his continuance in Kolkata cannot be associated with such treatment as he would have to visit the medical college and hospital at Vellore from any Unit of his posting and it is an admitted fact that the Christian Medical College, Vellore is not located at Kolkata.

(iii) The interim order dated 26.10.2017 passed by the Tribunal is once again, quoted for the purpose of analysis. The interim order reads as follows:-

"..... We make it clear that if there is any vacancy available and the respondents are not in difficulty, they may allow the applicant to perform his duty as Senior Engineering Assistant at Kolkata without any prejudice to any of the parties."

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Hence, there are three operational parts of this order:-

- (a) If there is any vacancy available.
- (b) The respondents are not in difficulty.
- (c) The respondents may allow the applicant to perform his duty as Senior Engineering Assistant at Kolkata, without any prejudice to any of the parties.

The respondents, as directed by the Tribunal, have filed a supplementary affidavit in which R-2 collectively in a list stating that there are no vacancies in the post of SEA as because although there are 15 staff in the position against 17 sanctioned posts of SEA, 2 number of EAs have been posted against the posts of SEA as per need since 27.11.2014 and 19.4.2016 accordingly and that the EAs will be transferred upon completion of their normal tenure. On query during hearing, the Ld. Counsel for the respondents clarified that such normal tenure related to a period of 4 years. Also, one post of SEA in Kolkata will become vacant on 27.11.2018. Prior to that there appears to be no vacancies in the post of SEA in Kolkata. The statement has been affirmed by way of an affidavit by the competent respondent authority. In response the applicant has referred to the following:-

- (a) That, one Smt. Mamata Patra and Smt. T.V. Madhavi Adhikari had been transferred from NABM, Bhubaneswar to AIR, Berhampore and AIR, Sambalpur respectively, who are also experienced Senior Engineering Assistants and if the operational needs of Sr. Engineering Assistant at NABM, Bhubaneswar is so acute, such experienced officials should not have been transferred from that Unit.
- (b) That, one Shri Sujit Kumar Sikdar was ordered to be posted at Kolkata vide order dated 28.12.2017 which was subsequently not implemented implying that a clear vacancy existed on the date of his transfer, namely, 28.12.2017.

(c) One Shri Aurabinda Sarkar was ordered to be transferred to Kolkata vide order dated 13.2.2018 and since he has expressed his inability to join, one clear vacancy exists in Kolkata.

(d) One vacancy of Engineering Assistant existed in Kolkata on account of superannuation of one Abubakar Ali against which Shri G.K. Guha or Shri Amiya Kumar Pan could be adjusted as Engineering Assistant.

In this context, it is noted that none of the incumbents as mentioned in the reply have been impleaded as parties in the O.A. and consequently no conclusion could be arrived at regarding their status with reference to the potential/actual vacancy in the Kolkata Unit. Suffice it to say that the respondents by way of an affidavit have categorically stated that there are no vacancies at present in Kolkata Unit and the next vacancy will arise at 27.11.2018 on account of completion of normal tenure by one of the EA who have been accommodated against the post of SEA in Kolkata Unit.

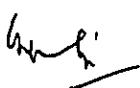
It is important to note that the interim order did not rely only on the instances of vacancy available but associated the said vacancies with the convenience of the respondents by the phrase

"respondents are not in difficulty"

The respondents have categorically stated in their reply, written argument and supplementary affidavit that their requirement at NABM, Bhubaneswar is much more demanding compared to the Kolkata Unit and as a result the applicant has been moved to Bhubaneswar by the transfer order so impugned. The Tribunal is not in a position to question the administrative requirements of the respondents which is eventually their prerogative unless malafide has been established conclusively or there are proven violation of statutory rules.

The interim relief also referred to:

"without any prejudice to any of the parties."



Hence, the applicant's assertions on the possibility of vacancy at Kolkata as well as the transfer made from NABM, Bhubaneswar on account of superannuation, non-joining, transfer etc. cannot be a deciding factor here, as because any order passed to the detriment of the individuals named in the reply to the supplementary affidavit, even if not impleaded, would be prejudicial to such individuals as they have not been given an opportunity of being defended.

(iv) It is the settled principle of law that an order of transfer is subject to judicial review as any other administrative action but the grounds of review may not be as expansive as in the case of other administrative orders. It has been held in **Union of India v. S.L. Abbas (1993) 4 SCC 357** that an order of transfer is an incidence of Govt. service which is a matter for appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere.

It has further been held in **Rajendra Roy vs. Union of India (1993) 1 SCC 148**, that to draw reasonable inference of malafide action from the pleadings there must be firm foundation of facts pleaded and established.

In **Union of India v. N.P. Thomas (1993) 1 SCC 704**, the Hon'ble Apex Court has held that a Government employee holding a transferable post has no vested right to remain in a particular place of posting.

Similar in **N.K. Singh v. Union of India (1995) 1 LLJ 854** the Hon'ble Apex Court has held that unless the decision on transfer is vitiated by malafide or infraction of any professed norm or principle governing the transfer, that alone can be scrutinized judicially. It has further been held that there are no judicially manageable standards for scrutinizing all transfers which must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated.

In **Abani Kanta Roy v. State of Orissa 1995 Supp (4) SCC 169** it has been held that it is a settled law that a transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or

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vitiated by malafides or infraction of any professed norm or principle governing the transfer.

In *C. Ramanathan v. Acting Zonal Manager, FCI (1980) 1 SLR 309* the Hon'ble Apex Court has held that it is open to the Court to crack the shell of social innocuousness which might wrap the order of transfer and by piercing the veil to find the operative reasons behind the order of transfer.

In this context, the operative reason behind the order of transfer was public interest and lesser staff strength in the Bhubaneswar Unit by which the respondent authorities decided that posting of the Sr. Engineering Assistant at NABM, Bhubaneswar was an administrative necessity while LPTV, Midnapore Office was required to be closed down.

Nowhere in the pleadings or during the hearing, the applicant or his Ld. Counsel has challenged the transfer order on grounds of malafide or that the order was not passed by an appropriate authority or that the transfer order was against the statute. The only grounds advanced are that the spouse of the applicant was a headmistress of a Govt. sponsored school near Kolkata and that the applicant is suffering from health problems. The application, therefore, does not invoke any scope of judicial review or intervention.

(v). This Tribunal, in its larger Bench had decided on the scope of judicial intervention vide its order dated 8.9.2017 in O.A. No. 865 of 2017 wherein the Larger Bench had concluded based on the decisions of the Hon'ble Apex Court that the order of transfer is not liable to be interfered with as because no transfer policy had been violated in the said context. Herein also, apart from a reference to DOPT circular that is not applicable in the case of the applicant, no challenge has been made to the transfer policy of the respondents.

7. Accordingly, we refrain from interfering with the transfer order and do not think that this is a matter that warrants judicial review.

8. The O.A. is dismissed on merit. The application does not succeed and there will be no costs.

[Signature]

9. The M.A. praying for execution of the interim order is disposed of accordingly. The interim order stands vacated.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

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