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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/01635/2016

Dated: 16/11/2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Admn. Member

.....
PRALAY SARKAR
V/s
UNION OF INDIA & OTHERS

Counsel for the Applicant :Mr.S.K.Dutta,
Ms.S.Banerjee,
Advocate

Counsel for the Respondents: None

O R D E R

MS.JAYA DAS GUPTA, AM:

The Applicant, Shri Pralay Sarkar, has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) to direct the respondents to cancel, suspend, revalue and/or withdraw the order of transfer dated 31st October, 2016 issued by the Respondent No.5 forthwith:

(b) To direct the respondents to cancel, suspend, revalue and/or withdraw any order of release, if issued:

(c) To direct the respondent authorities to allow your petitioner to join his Kolkata Office till disposal of the instant application:

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(d) To direct the respondents to produce the entire records of the case before the Learned Tribunal for adjudication of the points at the time of hearing:

(e) And pass such further order/orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper:

(f) To direct the respondent authorities to continue in his existing post of ADE which is available in the office of the ADGE (E/Z), Kolkata."

2. Interim order which he has also prayed for in this OA is as under:

"direction be given upon the respondents not to disturb his service in the present place of posting i.e. at Kolkata till disposal of the matter."

3. The learned counsel for the applicant has undertaken to serve copy of the OA on the Respondents. However, the affidavit of service is not on record. No reply has been filed by the Respondents in this case.

4. The case of the applicant, in a nut shell, is that while he was continuing as an Assistant Director (Engg.), O/O the ADG (), EZ, Kolkata, vide order dated 29.09.29016/03.10.2016 he was transferred to AIR, Daltonganj against the post of STS. The aforesaid order of transfer, in so far as the applicant is concerned, is reproduced herein below for ready reference:

"Prasar Bharati
(India's Public Service Broadcaster).
Directorate General: All India Radio.
S.III Section.

No.2//1/2016-S.III/1056 Akashwani Bhawan, New Delhi

Dated: 29th September, 2016

03. Oct., 2016

OFFICE ORDER No.21/2016-S.III

The transfer/posting of following officers of IB (E) S cadre are ordered with immediate effect and until further orders:

Sl.No.	Name and Designation (S/Shri)	Present Place of Posting	Transferred to
4	Ralay Sarkar, Asstt. Dir. (Engg.)	O/O ADG(E) EZ, Kolkata	AIR, Daltonganj against the post of STS

2. Head of offices are directed to immediately relieve the officers concerned. The status report may be sent to this Directorate by return Fax or e-mail:

3. Shri Atul Gupta, Dir (E), AIR, Nagpur and Shri Hemant D. Sidam, Dir (E), AIR, Khandwa, who are under order of transfer, stand relieved from their present stations with direction to report for duty to P&D Unit, DG, AIR and AIR, Jagdalpur respectively immediately:

4. This issues with the approval of DG, AIR.
Sd/-(Ajaya Kumar K.P.)
Dy. Director of Admn(E)

5. It is the submission of the Applicant that he was promoted to the post of Assistant Engineer on 29.04.1991 after discharging duty in different capacities at different destinations. He was posted in the Office of the ADG (E) (EZ), Kolkata when he was served with the impugned order of transfer dated 29.09.2016/03.10.2016. He has been transferred from Kolkata to AIR, Daltonganj against the post of STS in the State of Jharkhand. It is his prayer that since he is due to retire on 31.05.2019, the present order of transfer is bad in



law being contrary to the transfer guidelines as he has less than three years to retire. He has also stated that his son is studying BA (Hons.) in Kolkata, besides being an opening batsman of S-24 Pgs District Team. His wife has suffered serious injuries in a road accident and, therefore, the present order of transfer would adversely affect their lives including the academic and sports career of his son.

6. He had earlier approached this Tribunal in OA No.350/1604/2014 which was disposed of on 24.10.2016 and direction of this Tribunal was as under:

"3. It is his contention that despite stipulations at para 21 of the transfer policy of Government of India, Ministry of Information and Broadcasting circulated on 14.07.1981, the applicant has been transferred at the fag end of his career. The relevant portion of the transfer policy dated 14.07.1981 is extracted below for ready reference:

"(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, offers will be made to shift them to or near their home towns to the extent possible."

4. Ld. Counsel for the applicant submits that the applicant has been transferred vide order dated 03.10.2016 from Eastern Zone Kolkata to All India Radio, Daltongunj and he has made a representation against his transfer order dated 05.10.2016 which allegedly has still not been considered by the respondent authorities. He further submits that the applicant is on leave from 07.10.2016 to 31.10.2016.

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5. Hence, this OA is disposed of with a direction that the respondent authorities will consider the representation of the applicant as per transfer guidelines and other prevailing rules in this regard, after giving a personal hearing to the applicant definitely within 31.10.2016 and intimate the decision to the applicant on the same date."

7. We find that as per the direction of this Tribunal in OA No.350/1604/2014 which was disposed of on 24.10.2016, the representation of the applicant was considered by the Respondents keeping in mind the administrative exigencies and passed the order at Annexure-A/5 dated 31.10.2016 which is quoted herein below, and against such order, the applicant has filed the present OA seeking the above reliefs. The order dated 31.10.2016 reads as under:

"PRASAR BHARATI
(INDIA'S PUBLIC SERVICE BROADCASTER)
DIRECTORATE GENERAL: ALL INDIA RADIO
AKASHVANI BHAWAN, NEW DELHI - 110001.
(EPM SECTION)

No: 2/3/2016-EPM dated, 31.10.2016

Subject:- O.A. No. 350/01604/2016 dated
24.10.2016 filed by Shri Pralay
Sarkar Vs. Union of India & Others
in Hon'ble CAT, Kolkata.

As per the direction of Hon'ble CAT, Kolkata in O.A. No. 350/01604/2016 dated 24.10.2016, the Additional Director General(Engineering)(East Zone) AIR & Doordarshan, Kolkata, who is also a respondent (respondent no.6) in said OA, was authorized on behalf of Director General, All India Radio, vide Letter no.7/4/2016-EPM dt 28.10.2016, to give personal hearing to Shri Pralay Sarkar within 31.10.2016 and to inform this office to consider the same along with

his representation against the DG:AIR transfer order no.21/2016-SIII dated 3.10.2016. Additional Director General(Engineering)(East Zone) AIR & Doordarshan Kolkata was also authorized to intimate the decision of competent authority to Shri Pralay Sarkar after the same is forwarded to him by this office on the same day.

Mail received from ADG(E)(EZ) after giving personal hearing to Shri Pralay Sarkar at his office on 31.10.2016. ADG(E)(EZ) has communicated that Shri Sarkar has verbally submitted that he is ready for transfer to AIR Kolkata or SPT AIR Chinsurah in addition to his representation. Regarding transfer within 3 years of retirement, when Shri Sarkar specifically asked, he was replied that his earlier transfer order to AIR Ranchi issued two years before was got cancelled on his request by DG:AIR. Regarding mentioning Home Town as Kolkata in representation submitted to DG:AIR and Coochbehar in the affidavit submitted to Hon'ble Court, Shri Sarkar informed that he got his home town changed to Kolkata from Coochbehar. But, no such records available in the ADG(E)(NZ) office.

The case of Shri Pralay Naskar, with reference to his application dated 5.10.2016 and verbal submission made by him during personal hearing on 31.10.2016, has been considered by the Competent Authority with following observations:

1. Shri Pralay Sarkar, ADE was working at O/o ADG(E)EZ Kolkata since 21.04.2010. After completing the full tenure (4 years) he was transferred to AIR Ranchi vide DG:AIR order No. 19/2014-SIII dated 29.08.2014. His transfer order was cancelled on his request as his child was studying in XIIth std. After a period of two years he was transferred to AIR Daltonganj in the administrative interest of the organization vide DG:AIR order No. 21/2016-SIII dated 3.10.2016.

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2. Shri Pralay Sarkar has been relieved by O/o ADG(E)(EZ) vide letter No. 1(1856)E dated 5.10.2016 ADG(E) EZ office twice tried to serve the relieving order to Shri Pralay Sarkar through Peon book. But he refused to receive the Order which is unbecoming of a government servant. The relieving order sent to his residence vide Speed Post was also returned back as Door was locked.
3. On 6.10.2016, Shri Pralay Sarkar left the Casual Leave application in the office on the table of DDG(E), who was on leave on that day, without getting sanctioned from higher authority. Moreover, he left the office early on 6.10.2016 without prior approval.
4. Shri Pralay Sarkar is misleading DG:AIr by mentioning Kolkata as Home Town. As per affidavit submitted to the Hon'ble Court and available records in the O/o ADG(E)(EZ) office, Coochbehar is the Home Town of Shri Pralay Sarkar.
5. AIR Daltonganj is a two year tenure station and no gazette engineering officer is posted there. Station is struggling to perform essential/basic administration, operation and maintenance schedule. Maintenance of costly/essential equipments is suffering due to absence of suitable engineering officer. In view of his experience & competence, Shri Pralay Sarkar has been posted there as functional requirement.
6. On completion of tenure he can give three different choice places for posting. His request will be considered sympathetically.



After due consideration, the Competent Authority has found whatsoever submission Shri Pralay Sarkar has made in his application and in verbal submission on his personal and family matters are faced by every Government Servant who has liability of all India transfer. They are not of such nature which can override the administrative need and service exigencies in the public interest. The Competent Authority has also found that he had been serving at his present place of posting for more than 6 $\frac{1}{2}$ years, and had always preferred Kolkata after short spells of service at difficult stations. During last 16 yrs of service, he has served places in and around Kolkata except for a brief period of 2 yrs. He was transferred to AIR Ranchi vide DG:AIr order No. 19/2014-SIII dated 29.08.2014. His transfer order was cancelled on humanitarian grounds as his son was studying in Class XII. He was retained at Kolkata for two more years, so that his son can complete his studies. Now, he has been transferred after following the set procedures and keeping in view the guidelines, in public interest. The administrative and technical work at AIR Daltonganj is being adversely affect for want of engineering officer of his seniority and experience.

In view of all the above facts, the Competent Authority, after careful reconsideration has come to the conclusion that it is not possible to accede to the request of Shri Pralay Sarkar, for cancellation/modification of transfer order, which is hereby communicated and has directed him to join his place of posting i.e. AIR Daltonganj immediately.

Sd/-
(D.P. Shukla)
Dy. Director of Admin.
For Director General(AIR)

To

Shri Pralay Sarkar,
Assistant Director Engineering
AIR Daltonganj

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(Through Additional Director General
Engineering (EZ)).

Copy to

Additional Director General
Engineering (EZ), (Kind at Shri A.R. Sheikh, ADG-E),
AIR & Doordarshan, 4th Floor, Akshvani Bhavan, Eden
Garden, Kolkata - 700001 with the request to
handover the decision of DG: AIR to Shri Pralay
Sarkar."

8. The above order of the Respondents clearly shows that the applicant has been accommodated on his transfer to Ranchi as per his request by the Respondents. It is also clear that the applicant had wilfully refused to receive the impugned order of transfer which is not expected from a Govt. servant. It further appears that it is his contention that he had declared Cooch Behar as his home town initially. But no records are available to the above extent. In fact, the applicant had submitted in the OA that his application for LTC shows that he had declared Kolkata as his home town. Declaration of his home town in the LTC application is no proof that if at all the authorities at any time received his application for transfer of his home town from Cooch Behar to Kolkata that had been accepted and acted upon, as no record has been filed to the above extent. Even if we hold, in absence of any such document, change of the home town is correct that cannot be a ground to retain the applicant in his place at Kolkata where he has been working for last six and half years and he has been in Kolkata only after short spans

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of being transferred elsewhere during last sixteen years of his service except a brief period of two years. His transfer to Ranchi was also cancelled by the Respondents earlier on his own request.

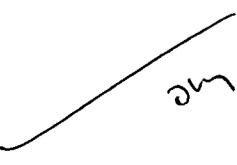
9. The first contention of the applicant is that as he has less than three years of service left, he ought not to have been transferred in violation of the transfer policy of the Government of India. We do not agree with such submission of the applicant because the applicant is a member of service and subjected to All India Transfer Rules. Government instructions or policy of transfer are mere guidelines without any statutory force and therefore, the Court and Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed in violation of the statutory rules as held by the Hon'ble Apex Court in the case of *Union of India v S.L.Abas*, AIR 1993 SC 2444. Thus, it is clear that the transfer policy does not create any legal right in favour of an employee.

10. The second contention of the applicant is that the order of transfer would adversely affect the education and sports activity of his son and treatment of his wife. Here our mind is reminiscent and redolent with a decision of the Hon'ble Apex Court rendered in the case of *State Of Madhya Pradesh & Ors vs Sri S.S. Kourav & Ors*, 1995 AIR 1056, 1995 SCC

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(3) 270. The transfer order may cause great hardship as an employee would be forced to have a second establishment at a far distant place, education of his children may be adversely affected, may not be able to manage his affairs and to look after his family. This aspect was also considered by the Apex Court in *State Of Madya Pradesh & Ors (supra)*, wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

11. Similarly, we find no force on the stand of the applicant that the transfer is tainted with malice and arbitrariness being not supported with any evidence. The transfer policy is mere guidelines violation of which cannot be assumed or presumed that the order of transfer is tainted with malice or arbitrariness. The issue of "malus animus" was considered in *Tara Chand Khatri vs Municipal Corporation Of Delhi*, AIR 1977 SC 567, 1977, wherein the Hon'ble Supreme Court has held that the Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a *prima facie* case are not given in the petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish *malus animus*.

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In this case except frivolous allegation no material has been placed to establish such allegation with supporting documents.

12. Last but not the least, we may state as held by the Hon'ble Apex Court in the case of Union of India v Janardhan Debnath, AIR 2004 SC 1632 that an employee has no right to claim to remain in a particular post or place. Who should be transferred where and at what point of time, in administrative exigencies, is a matter falls within the exclusive domain of the employer to decide and the court and Tribunal cannot intervene and interdict on the said order of transfer which has been made in public interest or administrative exigency.

13. Considering the facts and law enunciated by the Hon'ble Apex Court, quoted above, we do not find that this is a fit case to admit and, therefore, granting the interim order does not arise. The applicant should immediately proceed to join in his new place of posting failing which the Respondents are free to take action as per Rules against him.

14. This OA is accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

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(Justice V.C.Gupta)
Member (Judl.)