

Central Adminisrative Tribunal  
Principal Bench

O.A.No.795/2003

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 25<sup>th</sup> day of August, 2003

B.R.Yadav  
s/o Shri Jagram  
ro village Dariyapur, Khurd  
P.O. Ujwa, New Delhi - 110 073.  
working as Programme Executive  
Under the Directorate General  
Akashvani Bhawan  
Parliament Street  
New Delhi. - 110 001. .... Applicant

(By Advocate: Sh. Ravi Kant Jain)

Vs.

1. Union of India through  
The Secretary  
Government of India  
Shastri Bhavan  
New Delhi - 110 001.
2. Chief Execute Officer  
Prasar Bharati  
(Broadcasting Corporation of India)  
Akashvani Bhavan  
New Delhi - 110 001.
3. Smt. Vijay Laxmi Sinha  
Dy. Director General (P)  
All India Radio  
Prasar Bharati  
Directorate General  
Parliament Street  
New Delhi - 110 001. .... Respondents

(By Advocate: Sh. A.K.Bhardwaj)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 30.1.2002 transferring him from All India Radio, Delhi to All India Radio, Nagpur as well as order dated 10.3.2003 rejecting his representation against transfer and relieving him w.e.f. 4.4.2003.

Quashment of the above orders have been sought.

2. Applicant had joined as Librarian in the year 1971 and was appointed as TREX (ad hoc) on 30.10.1976 and was regularised on 8.11.1985. Applicant was promoted as Programme Executive PEX from 24.10.1997.

3. Earlier, the applicant was transferred to AIR, Churu vide order dated 21.4.1988 and on his representation for cancellation of the aforesaid order and also on his undertaking through representation dated 28.11.1999 he may be allowed to stay in Delhi for atleast one year and thereafter transferred to Churu. His transfer was stayed due to domestic problems.

4. By an order dated 30.1.2002 applicant was transferred to AIR, Nagpur. A representation made against the transfer order was replied by the respondents by an order dated 10.3.2003, whereby applicant was directed to be relieved from 4.4.2003.

5. By an interim order dated 26.3.2003 respondents have been directed to maintain status-quo.

6. Shri Ravi Kant Jain, learned counsel for applicant, assails the impugned order by referring to Clause (ix) of transfer policy, it is stated that as a normal rule, a person with the longest continuous stay at the station, should not normally be transferred following the principle of 'first come first go'.

7. Applicant by referring to list of about 73 persons at Annexure-A4 contends that these PEX had longer stay than the applicant, yet they been retained and were not transferred. This, according to him, is in violation of policy guide-lines.

8. Shri Jain further contends that the action is mala fide. Applicant was an active member of Programme Staff Welfare Association (in short "PSWA") which is a break way fraction of PSA. As those who break away from PSA are being harassed. This caused annoyance to senior officers and transfer has been resorted to on punitive basis.

9. By referring to the transfer order, it is stated that those who had been transferred along with the applicant, namely, Smt. Meena Khare, Smt. Rita Kashyap and Smt. Masood Hashmi are yet not relieved, whereas in case of Smt. Susam Kohli, the transfer has been challenged before the Tribunal.

10. Applicant alleges hostile discrimination, violative of Articles 14 and 16 of the Constitution of India.

11. Highlighting the personal difficulties, it is stated that the applicant has three daughters of marriageable age for which proper arrangements for marriage have to be made. Moreover, it is contended that the wife of the applicant is chronic Asthma patient requiring consistent medical attention. Referring to a decision of a Co-ordinate Bench of this Tribunal in OA 1993/1999, Km. Indira Mathur vs.

Union of India & Others, decided on 26.6.2000 it is contended that therein the principle of longest stay has been upheld and the transfer in violation of policy guide-lines has been held to be illegal.

12. Shri Jain further contends that transfer of Smt. Meena Khare who had been at Sl. No.2 of the impugned order has been cancelled discriminating the applicant without any reasonable basis.

13. In so far as his working as Librarian and TREX is concerned it is stated that as per the policy no all-India liability was there but in case of PEX applicant had worked for 5 years and 9 months whereas the others, like, Smt. Meena Khare, Shri D.P.Banerjee and Masood Hashmi had been working in Delhi as PEX earlier to the applicant having longer stay.

14. Lastly, it is contended that respondents with a view to favour their own persons and to accommodate them, transferred the applicant which cannot be countenanced in law.

15. On the other hand, respondents' counsel Shri A.K.Bhardwaj contends, relying upon the following decisions, that day to day working of the administration cannot be inducted by the Tribunal in a judicial review, and transfer which has been resorted to in administrative exigency and public interest cannot be interfered. It is also contended that being an incidence of service if no mala fide is alleged transfer cannot be interfered. The guide-lines do not

have force of law and not being statutory in nature are not binding. Personal problems cannot override the organisational interest or public interest.

1. Shri Kamlesh Trivedi v. Union of India Full Bench decision, 1989(1) ATJ 545.
2. State of M.P. v. S.S.Kourav & Ors., JT 1995(2) SC 498.
3. Chief General Manager (Telecom) N.E. Telecom Circle & Anr. v. Shri Rajendra Ch. Bhattacharjee and Others, 1995(1) SCC 448.
4. Papayya Dass v. Union of India, ATJ 2002(3) 290.
5. Enquiry Officer, KVS v. S.Ammajan, ATJ 20002(2) 484.
6. National Hydro Electric Power Corporation v. Shri Bhagwan & Others, SCSLJ 2001 (2) 396.

16. Sh. A.K.Bhardwaj, learned counsel for respondents contends that applicant has an all-India transfer liability and had been posted in Delhi for the last 32 years. He is also not within three years reaching to superannuation. Keeping in view of the experience gained by him at Delhi in the exigency of service, this experience has been found to be adequate for being used at other stations also.

17. In so far as the case of Smt. Meena Khare is concerned, it is contended that keeping in view the personal difficulties, the transfer of applicant therein was cancelled but in case of applicant personal problems are not as such to warrant cancellation of transfer as earlier also while being sent to Churu on his undertaking due to personal problems he had been retained at Delhi.

18. In rejoinder, applicant reiterated his pleas taken in the OA.

19. I have carefully considered the rival contentions of the parties and also perused the material on record. It is settled position of law that transfer which is neither in public interest nor administrative exigency and is mala fide issued by incompetent authority in judicial review can be interfered.

20. It is also not disputed that the applicant has all-India transfer liability. In so far as the transfer policy guide-lines are concerned an employee has no legal right to be posted for ever at his choicest place. As the transfer is not only an incidence of service but a condition of service, unless as an out come of mala fide exercise of power or violative of statutory provisions the same cannot be interfered.

21. In so far as the longer stay is concerned, first of all, the transfer policy of 1981 is a consolidation of the principle to regular transfer. Subsequent guide-lines which are still in vogue issued on 23.4.1987 are guide-lines and cannot assume character of statutory provision, and accordingly have no binding effect.

22. As per the normal rule person with longer stay at the station should ordinarily be transferred.

23. Applicant right from Librarian till PEX since 1971 had been posted at Delhi except one transfer during this interregnum. Applicant who had been earlier transferred to Churu on his request and undertaking on transfer, was allowed to stay for a year and now due to his experience and as there is an acute shortage of Programme Executives at Nagpur having all-India transfer liability in absence of any mala fide, the same is a routine transfer and is in the administrative exigency.

24. As regards the discrimination alleged is concerned, I find that in order to establish the principle of equality, it has to be established before hand that the person compared with is also similarly circumstance or situated.

25. The case of Smt. Meena Khare, whose transfer has been cancelled, is on different facts keeping in view of her personal difficulties. Having failed to establish any equality, Articles 14 and 16 of the Constitution of India and the plea of hostile discrimination would fail.

26. As far as list of 73 persons is concerned, learned counsel for respondents contends that those had longer stay cannot be countenanced.

27. Moreover, applicant has no vested right to be posted at a particular place. It is for the organisation to decide as to requirement of service with employee at particular place. Wheels of administration cannot be stalled in a judicial review.

28. In so far as the personal problems, like marriage of daughters, are concerned, transfer cannot be an impediment to marriage. Moreover, the Asthma being a common disease, wife of the applicant can undertake treatment at the transferred place where medical facilities are available. Moreover, personal problems cannot out weigh the paramount interest of administration.

29. In this view of the matter keeping in view of the decision of the Apex Court in State Bank of India v. Anjan Sanyal, AIR 2001 SC 1748. I do not find good grounds to interfere in the order passed by the respondents, OA found bereft of merit and is accordingly dismissed. Interim order already passed stands vacated. No costs.

S. Raju

(Shanker Raju)  
Member(J)

/rao/