

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2441 OF 2003
M.A. No.2184 OF 2003
M.A. NO.2227 OF 2003

New Delhi, this the 28th day of October, 2003

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

S.M. Haider
S/o Syed Mansoor Husain,
R/o H-230, Sarojini Nagar,
New Delhi-110023.

.....Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Union of India & Ors through

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi.
2. Director General, Doordarshan,
Mandi House, New Delhi.
3. Basharat Ahmad
The Addl Director-General
DD News, Asiad Village,
Khel Gaon, New Delhi.
4. The Chief Executive Officer,
Prasar Bharati,
Broadcasting Corporation of India,
Doordarshan Kendra,
New Delhi.

.....Respondents

(By Advocate : Shri S.Mohd. Arif)

O R D E R

OA 2441/2002.3 has been filed by the applicant
- Shri S.M. Haider under Section 19 of the
Administrative Tribunals Act, 1985 challenging the
order of transfer dated 19.9.2003 (Annexure-I)
transferring him from DDK Delhi to DDK Patna in the
same grade and capacity of Programme Executive.

2. The applicant has stated that he joined as
Production Assistant on 4.5.1979. He has been working
diligently and have got specialisation in making

Amrinder Singh

serial and documentaries. The claim of the applicant is that he has been transferred at the instance of one "Shri Basharat Ahmad, Additional Director General, DD News, Asiad Village, Khel Geon, New Delhi", who has been impleaded by name as respondent No.3. In order to substantiate his claim, certain events which took place some time in July, 2002 and July, 2003 have been stated in paragraphs 4.8 and 4.9 of the OA. The learned counsel of the applicant stated that the impugned order is the result of malafide exercise of power at the instance of respondent No.3. The learned counsel invited attention to the transfer policy dated 31.12.1992 (Annexure-II). This transfer policy provides that normal tenure at station categorised as 'A' and 'B' of officers will be four years. It has also been stated that the "local recruit" members of staff of Group 'D' and other low paid employees would normally not be transferred except on promotion or on receipt of a written request from the employee in question.

3. Referring to Item No.IX of Transfer Policy, learned counsel stated that when the question of transfer was considered, as a normal rule, a person with the longest continuous stay at the station, irrespective of the rank(s) held by him earlier should ordinarily be transferred first. While doing so, the services of the "local recruits" will not be taken into consideration. Learned counsel stated that the applicant being a "local recruit" was not senior enough to be transferred. As a matter of fact, he was

C. R. Sharma

not even regular Programme Executive as he was working only as ad hoc Programme Executive. Therefore, he should not have been transferred. The learned counsel also invited attention to the provision in the transfer policy that certain office bearers who are not posted in Delhi may be brought on transfer to Station Offices, Delhi/ New Delhi. According to him, this can be interpreted in the reverse also. Office bearer posted at Delhi should not be transferred out. In support of his contention, learned counsel also referred to the order of this Tribunal dated 24.12.2002 in OA No.1469/2002 in the case of Satish Vats Vs. Union of India and Others wherein this Tribunal had quashed the transfer of the applicant therein from Music Section to Transmission side. Referring to the order of Calcutta Bench of this Tribunal in the case of Pradip Kumar Banerjee Vs. Union of India and Others (1993 (2) ATJ 440), it was urged that guide-lines and transfer policy may be deviated in public interest but only it should be equally applicable to everybody and it should be reasonable and fair. Referring to the rejoinder filed by the applicant, he stated that certain Transmission Executives have been promoted as Programme Executives by order dated 10.10.2003. Therefore, the applicant could have been retained and one of the newly promoted persons could have been transferred in his place.

4. The respondents have opposed this Original Application. It is stated that respondent No.3 though made respondent no.3 in person has wrongly been

Am3/11/04

described. He was not a Addl. Director General but only a Director. It is also stated by the learned counsel of the respondents that all the allegations made against the respondent no.3 has no bearing on the transfer order of the applicant. Learned counsel stated that in pursuance to the directions of this Tribunal dated 21.10.2003, the transfer and posting file relating to the applicant has been placed for the perusal of the Tribunal and inference may be drawn from the facts as contained in that file. The learned counsel further stated that in stead of respondent no.3, the competent authority to transfer the applicant is DDG (A) in the office of Directorate General. Therefore, the transfer order could not be passed by respondent no.3. He also invited attention to the fact that in spite of order dated 19.9.2003 transferring the applicant to Patna, the applicant has not been relieved by the respondent NO.3. This shows that respondent No.3 has been favourable to the applicant in stead of being enemical to the interest of the applicant. Referring to the claim of the learned counsel of the applicant that office bearer of the Union should be retained in Delhi, he stated that the only provision is regarding transfer of office bearer from outside to Delhi and not vice versa. In this connection, he placed reliance on the orders of Bangalore Bench of this Tribunal in OA No.388/2001 dated 16.7.2002 in the case of J. Shivakumar Vs. Union of India and others (Annexure R-I) wherein this Tribunal has taken the view that all public servants who are working as office bearers of their

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unions/associations are liable to be transferred. The learned counsel of the respondents also placed reliance on the decision of the Hon'ble Supreme Court in the case of N.K. Singh Vs. Union of India and Others (JT 1994 (5) S.C. 298). In this case, the Hon'ble Supreme Court have held that the allegations of the appellant that he was transferred at the instance of the then Prime Minister was not based on any material. It was stated by the learned counsel that in this case, there is no basis to link any incident which happened between the applicant and respondent No.3 with the transfer order dated 19.9.2003.

5. MA No.2184/2003 has been filed by the respondents seeking vacation of interim order dated 3.10.2003. It has been stated in that application that the impugned order of transfer dated 19.9.2003 was in respect of three persons, including the applicant. But instead of staying the transfer of the applicant this Tribunal has issued the interim order as follows:-

"The impugned order is stayed till further orders."

It has, therefore, been urged that the ex parte interim order dated 3.10.2003 be vacated.

6. The applicant has also filed MA No.2227/2003 seeking quashing of the impugned order dated 19.9.2003 qua applicant only.

C. S. Singh

7. The arguments of learned counsel of both the parties have been taken into account, including the facts of the case and case law as brought to the attention to this Tribunal has also been perused carefully. At the instance of this Tribunal, the file relating to the transfer and posting of the applicant was produced in the Court, which has been perused. The perusal of the file indicates that there is no link between the transfer of the applicant and any incident which was stated to have taken place between the applicant and respondent No.3. Therefore, it is not necessary to go into the allegations as made by the applicant against respondent No.3. On the other hand, contention of the learned counsel of the respondents is that the applicant has been favoured by not being relieved in pursuance to the order dated 19.9.2003. It goes to show that the respondent No.3 has been quite helpful to the applicant.

8. There is no denial of the fact that the applicant has all India transfer liability. Therefore, the applicant could be transferred to any place, including Patna where he has been transferred by the impugned transfer order. The applicant has placed reliance on the decision of Calcutta Bench of this Tribunal in the case of Pradip Kumar Banerjee (supra) that transfer guide-lines should not be deviated. This Tribunal in that order has observed that Govt. is the best judge to decide how to distribute the services of its employees. If deviation from the guide-lines is based on exercise of

Chandrasekhar

discretion on extraneous consideration and for achieving alien purpose and colourable exercise of power the transfer order may not be justified. In this case, as has been observed earlier, there is no link between the alleged incidents of the applicant with respondent no.3 and the order of transfer is in routine manner. The Hon'ble Supreme Court in the case of National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan and Anr. (2002 (1) SLJ 86) have held that unless an order of transfer is shown to be an outcome of malafide exercise of power or said to be in violation of statutory provisions prohibited such transfer, the courts/tribunals cannot interfere with such orders as a matter of routine as though they are the appellate authority substituting their own decision for that of management. Even though there is no specific mention in the impugned transfer order that the transfer of the applicant and two others by the impugned order is in the public interest but from the perusal of transfer and posting file, it is clear that three Programme Executives have been posted to Patna in the exigency of service and considering the administrative requirements of the organisation. The transfer order of the applicant cannot be said to be on account of some malafide action of the respondents. The claim of the learned counsel of the applicant is that he has been transferred inspite of the fact that the persons with longer stay at Delhi were available. In this connection, it is for the administration to decide who is better suited for work assigned to him

Concurrence

at what place. This Tribunal cannot sit as an appellate authority against such orders of transfer.

9. The learned counsel of the applicant has also raised a ground in the rejoinder that certain Transmission Executives were promoted as Programme Executives by order dated 10.10.2003, they should have been transferred instead of the applicant. This argument is fallacious inasmuch as at the relevant time in September, 2003, the persons promoted by order dated 10.10.2003 were not at all available for such a posting. However, the respondents will be at liberty to modify the transfer order of the applicant to Patna, if they found that any newly promoted Programme Executive by order dated 10.10.2003 should replace the applicant at Patna. This cannot be treated as a direction. It is only a liberty granted to the respondents. The respondents have also placed reliance on several decision of the Hon'ble Supreme Court to the effect that the transfer cannot be interfered by courts/tribunals. There is no dispute about the legal position. Therefore, those cases are not discussed. Suffice to say that in spite of applicant not being the person with longer stay at Delhi could be transferred in the administrative exigencies and public interest. Similarly, the transfer guide-lines are only general guide-lines and they do not take away the basic right of the administration to transfer a particular person assigning him a particular job at a particular station, considering the efficiency of the applicant

Chinmay Kumar

and requirement of the post where he is being allocated. In this case, there is no material to suggest that the impugned order of transfer dated 19.9.2003 is vindictive order on account of malafide activities on the part of the respondents. The applicant having all India transfer liability could be transferred to Patna if the administration so considered necessary. Therefore, at this stage, there is no need to interfere with the impugned transfer order issued by the respondents and the reliefs claimed by the applicant cannot be granted by this Court.

10. In view of decision to uphold the order of transfer, there is no need to pass any order separately regarding the misc. applications bearing MA No.2184/2003 and MA No.2227/2003.

11. For the reasons stated in the foregoing paragraphs, this Original Application is rejected. MA No.2184/2003 and MA NO.2227/2003 are disposed of. Interim order dated 3.10.2003 also stands vacated.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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