

Union of India and Another

Vs

N. P. Thomas

Civil Appeal No. 3933 of 1992

(S. R. Pandian, R. M. Sahai JJ)

22.09.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. Leave granted.

2. This appeal is directed by the appellants, namely, Union of India and the Telecom Commission challenging the correctness of the judgment and order of the Central Administrative Tribunal, Ernakulam. Bench dated 12-7-1991 made in O.A. No. 1058 of 1991.

3. The respondent herein is a Kerala based permanent employee in the Department of Telecommunications, Government of India. He was selected in 1972 and posted as Engineering Supervisor. On successful completion of training, he was appointed in that, capacity on 30-3-1974. Subsequently, he was redesignated as Junior Telecom Officer (for short 'JTO') and allotted to the Kerala Circle. The next higher post for promotion was Telegraph Engineering Service Group 'B' (for short 'TES') under the provisions of TES (Group B Post) Recruitment Rules, 1981. The applicant passed the Departmental Qualifying Examination in 1985 and became eligible for promotion to TES Group 'B' post but he was not given the promotion because of stagnation in that post. The Administration of the Department in 1991 upgraded 3200 posts of JTOs to TES Group 'B' after the approval of DPC. The appellant No. 2 ordered the promotion of 3200 JTOs to TES Group 'B' posts on all India basis. Out of these, more than 200 JTOs were borne on Kerala Circle which, however, had only 118 posts of JTOs promoted to TES Group 'B' allotted to it.

4. The respondent claimed that he was entitled to be posted in Kerala Circle by including his name in the above 118 posts. But he was allotted to Maharashtra Circle though some of his juniors were allotted to Kerala itself on promotion. He made a representation to the Government but failed. Therefore, he filed O. A. No. 1058 of 1990 in the Central Administrative Tribunal, Ernakulam praying for a direction to the Central Government to re-allot him to Kerala Circle. It appears that the appellants before the Tribunal undertook to consider the claim of the applicant along with other similarly situated persons taking into account the vacancies that were existing as well as such those which might arise in future within a period of one year. Having regard to the facts and submissions made by the parties, the Tribunal quashed the impugned order of transfer of the respondent from Kerala Circle to any other circle and directed the appellants to consider posting the respondent in Group 'B' post in Kerala Circle itself within a period of one year from the order of the Tribunal and also passed certain other directions. On being aggrieved by the judgment and order of the Tribunal,

the present appeal is preferred by the appellants.

5. According to the appellants, the Tribunal had exceeded its jurisdiction by interfering in the normal orders of transfer and posting on promotion of a Government servant and that the Tribunal was not justified in quashing the order of transfer especially when an Officer of Group 'B' to the Telecom Commission have got a liability for service all over India. In support of their contentions, two decisions were relied upon; those being (1) Union of India v. H. N. Kirtania, (1989) 3 SCC 447 : (AIR 1989 SC 1774), and (2) Shilpi Bose (Mrs.) v. State of Bihar, 1991 Supp (2) SCC 659: (AIR 1991 SC 532).

6. In H. N. Kirtania's case (AIR 1989 SC 1774), it has been held that when the transfer order is legal and not vitiated by any unfairness and mala fide the Tribunal had no jurisdiction in issuing directions.

7. In Shilpi Bose's case (AIR 1991 SC 532), the Court observed thus (Para 4):

"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post as no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

8. In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.

9. Learned counsel for the appellants brought to our notice the order of the Government of India, Telecom Commission dated 20-4-1992 showing that the case of the respondent for modification of posting to Kerala Circle has been considered on compassionate grounds by giving due weightage and consideration to employment of spouse and other personal problems in such cases, but it is not possible to accommodate such Officer in Kerala Circle itself as several Officers who have completed their tenure postings are waiting for their postings in Kerala Telecom Circle.

10. For all the aforementioned reasons we hold that the Tribunal was not justified in quashing the order of transfer of the respondent and accordingly we set aside the order of the Tribunal.

11. Before parting with this judgment, we, in the light of the observation made by the Tribunal reading that "the respondents 1 & 2 are prepared to consider the claims of the applicant along with

other similarly situated persons taking into account the vacancies that are at present existing and such of those which may arise in future within a period of one year", would like to observe that the appellants herein, notwithstanding the allowance of this appeal, may consider the case of the respondent along with the case of the other similarly situated persons within a period of one year from today since there was an ex parte interim stay dated 25-11-1991 of the order of the Tribunal and then the modified order dated 27-1-1992 directing status quo instead of interim stay which orders, in our opinion, might have stood in the way of considering the case of the respondent along with others as agreed upon by the appellants before the Tribunal.

12. The appeal is allowed subject to the above observation. Appeal allowed.

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