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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 7th July, 2010

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W.P.(C) 814/2010

UOI & ANR. Petitioners

Through: Mr.R.V.Sinha, Advocate and
Mr.R.N.Singh, Advocate.

versus

SHRI H.PHANI RAJU Respondent

Through: Mr.A.K.Behera, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The petitioner, Union of India, is aggrieved by the order dated 13.11.2009 passed by the Central Administrative Tribunal allowing OA No.1658/2009 filed by the respondent, who is a member of the Indian Revenue Service, having joined in the year 1998.

2. The issue before the Tribunal was to the legality of the order dated 12.6.2009 transferring the respondent to the Tamil Nadu region, by treating as if he was still posted in the Mumbai region.

3. As per the respondent, he had already been transferred to Andhra Pradesh region vide order dated

10.9.2007; where, as per the transfer policy of the petitioner he was entitled to remain for a period of 16 years.

4. From the pleadings before the Tribunal, it may be highlighted, that it was not the case of the petitioner that notwithstanding the respondent being transferred from Mumbai region to Andhra Pradesh region vide order dated 10.9.2007 and notwithstanding its transfer policy which required an incumbent to be stationed in a region for 16 years, on account of exigencies of service, the tenure of the respondent in Andhra Pradesh region was curtailed. The specific stand of the petitioner was that the respondent was never transferred to Andhra Pradesh region or that in the facts and circumstances it could not be said that the petitioner stood transferred to Andhra Pradesh region.

5. The stand of the petitioner has been found faulty on the admitted facts.

6. Let us revisit the same.

7. Having joined service under the Union in the year 1998, as of the year 2007, the respondent was working in the Mumbai region, when a transfer order dated 10.9.2007 was issued, transferring the respondent to Andhra Pradesh region.

8. The respondent accepted the transfer order, but prayed that it be kept in abeyance inasmuch as his mother required medical treatment at Mumbai. The petitioner was kind enough to accept the request and issued an order dated 28.9.2007, keeping in abeyance the order dated 10.9.2007. From time to time, orders were passed, keeping in abeyance the transfer/posting order dated 10.9.2007.

9. On 26.5.2008, the respondent was selected by the Department of Personnel & Training for undergoing a Post-Graduate Program in Public Policy and Management at IIM Bangalore. The respondent joined the program at Bangalore on 9.6.2008 and when the training program was over, returned to

Mumbai on 14.5.2009, where he was relieved and the very next day i.e. 15.5.2009 he joined at the Andhra Pradesh region.

10. Treating as if the respondent was still in Mumbai region, order dated 12.6.2009 was issued transferring him to the Tamil Nadu region. When it was pointed out to the petitioner that the order in question has been passed on a wrongly assumed fact i.e. that the respondent was still posted in the Mumbai region, rather than to correct itself, the petitioner issued a supplementary order 15.6.2009, transferring the respondent from Andhra Pradesh region to Tamil Nadu region.

11. It is thus apparent that as a matter of fact there exists an order being the order dated 10.9.2007 transferring the respondent from Mumbai region to Andhra Pradesh region and thus the stand of the petitioner that the respondent was never transferred from Mumbai region to Andhra Pradesh region is factually incorrect and the Tribunal has rightly held so. Further, it is apparent that the petitioner was relieved from the Mumbai region and joined Andhra Pradesh region.

12. Now, what had happened all this while? The wife of the respondent who is in private employment, in view of the fact that the respondent was transferred to the Andhra Pradesh region, took up the matter with her employer and requested if she could be accommodated by her employer anywhere in the State of Andhra Pradesh. Mercifully for her, her employer agreed and transferred her to the City of Hyderabad in the State of Andhra Pradesh.

13. It is apparent that the instant case could not be debated on the issue of, notwithstanding the transfer policy, on account of exigencies of service the petitioner could be transferred.

14. From the facts noted herein above, the only issue was, whether at all the respondent was transferred from Mumbai region to Andhra Pradesh region and what was the effect of the

various orders issued from time to time, keeping in abeyance, the transfer order dated 10.9.2007.

15. The Doctrine of Eclipse guides the Court that when something is ordered to be done and the said thing ordered to be done is put under eclipse by and under an order, keeping the said order in abeyance, the moment the eclipse is over, the original order shines in its own strength.

16. This is what has happened in the instant case. This is what has been found to be so by the Central Administrative Tribunal.

17. We see no scope to consider the decisions cited at the Bar that notwithstanding a transfer policy, it is always open to the employer, on account of exigencies of service, to deviate from the same.

18. Indeed, the ratio of law in the said decisions is well recognized and accepted. But those decisions would come into play where the Union of India or the Government Department is able to demonstrate facts attracting 'exigencies of service'. Suffice would it be to state, in said circumstances, judicial review would not be permissible for the reason once objective facts are shown, the decision of the authority concerned has to be his or its subjective decision and the Court cannot sit over the same.

19. In the instant case, having already transferred the respondent from Mumbai region to Andhra Pradesh region, where the respondent duly joined and for the reason the respondent would be in Andhra Pradesh region, the wife of the respondent got herself transferred to Andhra Pradesh region, unless the petitioner could show exigencies of service, contrary to its transfer policy, the petitioner could not transfer the respondent. The matter can be seen from a different perspective, with the same result. The transfer order in question is passed on the presumption as if the respondent was

still posted in the Mumbai region, which presumption is factually incorrect. It is settled law that an administrative order passed on a wrong presumption of fact can be interdicted in a judicial review proceedings.

20. The writ petition is dismissed.

21. No costs.

PRADEEP NANDRAJOG, J.

MOOL CHAND GARG, J.

JULY 07, 2010
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