

(1982) 11 KL CK 0008
In the High Court Of Kerala
Case No : W.A. 648 of 1982

Director, Telecommunications (South) Trivandrum and another APPELLANT
Vs
K.G. Sukumaran Thampi RESPONDENT

Date of Decision : 04-11-1982

Acts Referred:

Citation : (1984) KLJ 236

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; T. J. Chandrasekhara Menon, J

Bench : Full Bench

Advocate : P.V. Madhavan Nambiar, for the Appellant;

Final Decision : Dismissed

Judgement

P. Subramonian Poti, Ag. C.J.

1. The respondents in the Original Petition, the Director, Telecommunications (South), Trivandrum and the Divisional Engineer, Telegraphs, Quilon, are the appellants in this appeal. They challenge the judgment of the learned single Judge quashing Ext. P2 order transferring the petitioner in the Original Petition who was a Section Supervisor from Quilon to Trivandrum. While he was working at Kottayam disciplinary proceedings were commenced against him in April, 1973 and pending such proceedings he was transferred to Quilon on 5-2-1979. Admittedly the disciplinary proceedings have not been completed. The normal rule is to keep a person in a station for a period of 4 years, but Ext. P2 order has been passed in violation of the normal rule transferring the petitioner to Quilon and accommodating one Krishnakumari who was a promotee in the petitioner's place. That is challenged as against the guidelines which are normally applied. When such a challenge is made the charge of discrimination has necessarily to be met. If in normal cases a period is fixed for a person to anticipate to remain in a station any transfer before the expiry of the period in the case of any individual employee would be a discriminatory exercise unless such transfer is for valid reasons such as the need to hold an enquiry and the need to keep away the

person concerned from that station pending that enquiry. Of course there may be administrative reasons for transferring a person before the expiry of the normal period, for, exigencies of service may perhaps require the transfer of the person concerned to another station either because of his extreme efficiency by reason of which his services are required elsewhere or because of his inefficiency which makes him unsuitable for the place he occupies. In either case it is due to the existence of valid reasons which are directly relevant to the interests of service that his transfer is thought of. If there be no reason and even then he is transferred while others are normally kept in a station for four years it would be a discriminatory treatment meted out to such persons. That is the reason why when a person comes to Court challenging a transfer why he has been moved out of a station earlier than the expiry of the normal period for which he could expect to be in the station this charge of discrimination has to be met by the Government by disclosing to the court the real reason for his transfer and the materials which enabled an opinion to be formed that there was such a reason. Of course the court will not sit in judgment over the decision of the authority effecting the transfer, but will certainly scrutinise the explanation offered for the transfer to see how far the reason stated is relevant and is supported by relevant material. This Court and the Supreme Court has said time and again that even in the matter of a transfer the mere whims and fancies cloaked by the expression "interests of service" or "public interest" may not by itself justify the transfer contrary to normal guidelines or rules. We have come across cases where nevertheless the respondents who are responsible for the transfer not only fail to disclose reasons in the counter affidavit, but take the stand that it may not be necessary. We once again make it clear that if there is a challenge to an order of transfer and the challenge is prima facie sustainable as it is in contravention of normal guidelines or rules adopted by any Department of the Government in regard to transfers we expect the Department of the Government to tell us the reason why such transfer against the normal rule has been made. May be the order of transfer is silent on this, but the reason could be supplied in the counter affidavit filed in court. Even if there be an omission in the counter affidavit the reason can be substantiated by reference to the files. But where the order is silent and the counter affidavit does not choose to answer except to justify that the authority was satisfied that transfer was necessary either in the public interest or the interests of service and no files disclosing relevant material is brought to the notice of the court, the court could adopt no other course, but quash the order of transfer. That is done in this case by the learned single Judge. We see no reason to interfere. Dismissed in limine.