

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.111/2000

New Delhi, this the 13th day of November, 2001

Shri Y.K.Bangia
Deputy Director of Training
Presently in Advanced Training Institute
for Electronics Process Instrumentation
(ATI-EPI). Hyderabad. .. Applicant

(By Advocate: Shri B.S.Mainee)

Vs.

1. Union of India through
The Secretary
Ministry of Labour
Shram Shakti Bhawan
New Delhi.
2. The Director General
Directorate General of Employment &
Training
Ministry of Labour
Shram Shakti Bhawan
New Delhi.
3. The Dy. Director General (Training)
Ministry of Labour
Shram Shakti Bhawan
New Delhi.
4. The Dy. Secretary
to the Govt. of India
in the office of Director General of
Employment & Training
Shram Shakti Bhawan
New Delhi.
5. The Director of Training
Directorate General of Employment &
Training
Shram Shakti Bhawan
New Delhi. .. Respondents

(By Advocate: Shri M.M.Sudan, through Shri Rajeev
Sharma)

O R D E R

By Shanker Raju, Member (J):

Applicant, who is holding Group 'A' post and
is working as Deputy Director of Training in the
Directorate General of Employment and Training (DGE&T)
has assailed an order dated 7.9.2000, passed by the
respondents, whereby he has been transferred from

DGE&T (Headquarters) to API-EPI, Hyderabad. The applicant has also assailed an order dated 1.11.2000 whereby his request, against the transfer order, has been rejected. The applicant has sought for quashing of the aforesaid orders with accord of all the consequential benefits.

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2. Briefly stated, the applicant had been working with the respondents w.e.f. 20.7.1994. By an order dated 30.8.2000 the applicant was directed to report the Joint Director (Training) in T.T.Cell. It is contended, on behalf of the applicant, that due to non-continuation of some of the posts, in another Department under the same Director General, i.e., C.P.I.U., the approval of the Joint Secretary had been obtained and circulated for handing over the Court cases of T.C. Section to Shri Aswani Agarwal, DDT, CPIU Section. According to the applicant the approval was accorded by the DG (JS) on 30.8.2000. During the absence of Dy. Director General, who proceeded on leave, an order was passed on 7.9.2000 whereby 12 Assistant Directors have been promoted as Deputy Directors and were transferred from one place to another. The applicant in the same order is subjected to transfer from New Delhi to ATI-EPI, Hyderabad despite the fact that he has already been promoted as Dy. Director and has been continuing since 1994. The learned counsel for the applicant has stated that having been declared surplus on surrender of two posts of Dy. Directors the junior is to be shifted first which has not been done in the present case and as such the order of transfer is neither in administrative exigency nor in public interest but

vitiated by legal malafide and is discriminatory. It is stated that at ATI, one Manjeet Singh who has been promoted on 7.9.2000 has been retained at a near place, i.e., Dehradun whereas the applicant not having longest stay has been transferred. Whereas, the juniors have been retained. It is also stated that the posts have been declared surplus from CPIU and not from the T.C. Section. While the applicant is working in T.C. Section as such his transfer from New Delhi to Hyderabad is arbitrary, and discriminatory. It is also stated that the applicant has neither having longest stay nor the juniormost has not been considered to be posted at Dehradun although the applicant has joined at Hyderabad but has come back. The applicant has further stated that his request made against the transfer has been rejected on 1.11.2000. Due to mitigating circumstances, whereas the mother as well as mother-in-law are sick and are to be taken care by the applicant, his request has been arbitrarily rejected. The learned counsel for the applicant has contended that the discrimination in the matter of transfer cannot be countenanced. It is also stated that the person which longest stay is to be transferred and in judicial review the Court cannot loose sight of human angle in transfer matters. The following case law is placed reliance by the learned counsel for the applicant, Shri D.R.Gupta Vs. Union of India, ATR 1992 (2) CAT 316; Sengal Vs. CPMG, ATJ 1991(1) 243; Man Mohan Dass Vs. Union of India & Others, ATR 1990(1) 68; S.Manivannan Vs. Union of India & Others, SLJ 2001(2) CAT 133.

3. It is also the contention of the learned counsel for the applicant that non-continuation of two posts of Dy. Director in CPIU would not entail transfer of the applicant as he is working under a separate Director and in pursuance of the promotion orders of 12 Assistant Directors who have been posted at different places the applicant has not been considered for being deputed at Deharadun on transfer, which is a colourable exercise of the power. The request of the applicant against transfer has also been arbitrarily rejected. But the gravamen of challenge to the transfer is that in case of post being found surplus, it is the juniormost person with longest stay has to be transferred.

4. The learned counsel for the respondents, strongly rebutting the contentions of the applicant and at the outset has stated that the applicant has challenged and relied upon an internal noting of the department dated 30.8.2000 which is not legally tenable. It is also stated that as per the transfer policy of the respondents, Group 'A' officers on direct recruitment have all India transfer liability and their minimum tenure is three years, and the applicant having completed three years in administrative exigency has been transferred. It is also stated that CPIU and EPI are under one department and the posts are inter-transferable as the post is vacant for the last six months the respondents have resorted to the transfer. He also placing reliance on a decision of the Apex Court in Union of India Vs. N.P.Thomas, 1993(1) SCC (Supl.) 704 wherein it is held

that in absence of any proof of malafide or violation of any statutory rules or guide-lines the transfer is not to be interfered with and the person has no right to a particular place of posting of his own choice. As regards the medical grounds is concerned, it is stated that having considered the same the representation of the applicant has been rejected after due application of mind. The respondents have stated that as the applicant is having good experience and noting that his services are to be best utilized in more effective manner at Hyderabad he has been transferred. The note dated 30.8.2000 was circulated amongst the officers after the proposal of alteration in work distribution was approved by the DG/JS. These internal notes cannot have overriding effect over the Office Orders which are issued by the Cadre Controlling authorities. Having regard to the administrative exigency, the impugned order dated 7.9.2000, has not been passed by the Deputy Secretary as the promotions were duly approved by the Minister concerned and the consequent transfer was approved by the Director General (JS) and was only communicated by the Deputy Secretary. The applicant has also failed to show any malafide. Note dated 30.8.2000 has been overridden by the formal posting order dated 7.9.2000, which was issued with the approval of the competent authority. Non-continuation of two posts of Deputy Director (Training) in CPIU is one of the factors and as the applicant is a B.E. (Electronics) and his services are to be utilized in an effective manner was also one of the reasons to transfer him to an Advanced Training Institute for Electronic Instrumentation (ATI-ETI) at Hyderabad. As the applicant has stayed

for more than six years at New Delhi and the work at Hyderabad has been hampered and the post has remained vacant for more than six months, in the administrative exigency, the applicant has been transferred. The concept of juniors have been retained at New Delhi would not have any application as consequent upon the recommendations of the Internal Work Study Unit the CPIU was not closed fully and is still functioning. No other officer has been declared surplus as there has been no separate cadre created to post Officers or Staff to work in CPIU. These posts are filled up from the existing officers/staff of the DGE&T Organisation and officers are inter changeable and transfer and posting from CPIU was controlled by the Administrative Sections of the respective cadres. The 'last come first go' principle is applicable only when the department is closed and the staff is found surplus. As the transfer of the applicant was a routine transfer, the same cannot be interfered with in any manner.

5. Having carefully considered the rival contentions of the parties and on perusal of the material on record, I do not find any legal infirmity in the transfer order as well as the order passed on the representation of the applicant. The transfer of the applicant has been done in the public interest and in administrative exigency without any violation of the statutory rules. In absence of any malafides established the transfer order is not to be interfered with having found legally sustainable.

6. The contention of the learned counsel for the applicant that in case of a post declared surplus, while transferring the incumbent, the principle of 'last come first go' is to be followed would have no application in the facts and circumstances of the present case. As it has been reflected from the facts that CPIU on the recommendations of the Internal Work Study Unit, only few posts have not been continued but the Unit as such has not been closed. It is also stated that no officers have been declared surplus and no separate cadre was created to post the staff working under CPIU. As CPIU/TT/DGE&T are being controlled under administrative sections of the respective cadres and the staff/officers are entitled for internal transfer there is no violation of any guide-lines on the subject.

7. The contention of the applicant that working in different Directorates is not correct. The principle of 'last come first go' is applicable only in case where the department is closed and the staff have been sent to surplus pool. The transfer of the applicant is on account of his experience in the Electronic side which is decided to be an asset to the Department and as the post at Hyderabad has been lying vacant for more six months and in administrative exigency as well as in public interest as per the requirement of the Institute at Hyderabad, the transfer of the applicant is neither malafide nor punitive one, the same has been in accordance with the transfer policy keeping in view of the administrative exigency. Apart from it, as per the transfer policy a

Group 'A' officer has all India transfer liability and having minimum tenure of three years in the post and as the applicant has completed more than six years, the transfer is nothing but as per the policy and in administrative exigency. As held by the apex Court in N.P.Thomas supra one has no vested right to be posted indefinitely at a particular place or the place of his own choice.

8. The contention of the learned counsel for the applicant that in the note dated 30.8.2000 the Director General has approved posting of the applicant under a T.C. Section shall not be of any avail to him. The internal note of the Director has been circulated after the proposal of alteration of work distribution and would not have any overriding effect the ^{on the} Office Order passed on 7.9.2000 by the controlling officer/authority. Having regard to the administrative exigency the same cannot be given any credence. The note is only an inter departmental communication regarding distribution of work among the officers posted under Dy. Director General (T). As there has been no separate cadres, the posts in CPIU are interchangeable akin to the other posts of DGE&T Organisation, the same is to be treated under one department and the transfer cannot be observed to be malafide or against the decision of the Director General.

9. The issue regarding the order passed by the Deputy Secretary is also not correct as though it has been communicated by Dy. Secretary but the decision has been taken by the respondents at the

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ministerial level and having been recommended by the competent authority the same is a valid communication. Apart from it, the respondents have considered the request of the applicant against his transfer and having recorded justifiable reasons the same has not been acceded to. The learned counsel for the applicant has failed to establish any malafide and there has not been any contravention of statutory rules or guide-lines. In this view of the matter, the transfer order of the applicant cannot be interfered with. In the result, the OA fails and is dismissed. No costs.

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S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/