

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.99/2001

New Delhi, this the 29th day of the May, 2001

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Shri Bupender Kumar Sharma,
S/o Late F.C. Sharma,
Wireless Operator, Telemetry Unit,
(HOC Noida U.P.), Room No. 809 (N) C.W.C.,
Sewa Bhawan, R.K. Puram,
New Delhi
R/o B-8/145, Sector-5, Rohini,
Delhi - 110 085 Applicant

(By Advocate : Shri A.K. Trivedi)

V E R S U S

1. Union of India,
Ministry of Water Resources,
Sharam Shakti Bhawan,
New Delhi
Through its Secretary
2. The Chairman,
Central Water Commission,
IIIrd Floor (South), Sewa Bhawan,
R.K. Puram, New Delhi
3. Shri A.K. Sangle,
Member (River Management)
Central Water Commission,
IInd Floor (S), Sewa Bhawan,
R.K. Puram,
New Delhi ... Respondents

(By Advocate: Shri J.B. Mudgil)

O R D E R

By S.A.T. RIZVI, MEMBER (A):

The applicant has alleged malafide on the part of the respondents in the matter of his transfer from Upper Yamuna Division (UYD) New Delhi to Lower Yamuna Division (LYD) Agra by respondents' order of 23rd November 2000 which contains the further stipulation that the applicant will move first. The respondents deny malafide and submit that the applicant has been transferred out as he was the longest stayee in Delhi and further the Wireless

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Operators working in the Central Water Commission (CWC) have all India transfer liability. The respondents also submit that Shri A.K. Gaur has been transferred out from Agra to Delhi on the similar ground of being the longest stayee at Agra.

2. I have heard the learned counsel at length and have perused the material placed on record.

3. The learned counsel appearing for the applicant has brought to my notice respondents' Office Order dated 29.3.2001 enclosed with the rejoinder whereby the aforesaid Shri A.K. Gaur, Wireless Operator, whose place the applicant was supposed to occupy on reaching Agra on transfer has already been transferred to New Delhi against a vacancy in the UYD in Delhi. This has been done with the approval of respondent No.3, who has granted approval on 28.2.2001, his last day in Office before superannuation. According to him, it is a case of unusual interest taken by the aforesaid respondent to bring Shri A.K. Gaur to Delhi at the expense of the applicant. A perusal of the reply filed by the respondents would go to show that whereas the heart problem of Shri A.K. Gaur's father and the higher education/employment and marriage of Gaur's grown up daughter weighed with the aforesaid respondent as genuine considerations, the genuine need of the applicant whose wife has been suffering from a serious heart problem with a

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pace maker already fitted into her, has not been properly and sympathetically considered by the respondents.

4. The applicant has filed several representations for a prolonged stay in Delhi in the interest of treatment of his wife. He filed two such representations on 6.5.1998 and 4.7.2000, both much before the impugned order of transfer was issued on 23.11.2000, without any reply from the respondents. Immediately after the impugned transfer order was issued, the applicant filed yet another representation on 29.11.2000 which again has not been replied to.

5. While dealing with the request of the applicant, the respondents have, in their reply, mentioned that -

"Moreover, the medical ailment is a very common phenomenon among the family members of employees which is resorted to as a ground to make out a case to defer the postings/transfer etc, but the interest of Department/public has to be given over riding priority. At the time of replacement of pace maker, the applicant can either apply for leave to attend his wife in hospital/house or he can make a request to the Department for his transfer to Delhi and, in turn, the Department will consider his request judiciously, keeping in view the requirement of the employee and employer."

According to the learned counsel, the pace maker was fitted into the wife of the applicant some 8 years ago and will be replaced in about a year's time from now. The plea advanced by him is that if the

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respondents are prepared to consider the applicant's transfer again to Delhi as mentioned above, it would be much better to let the applicant stay on in Delhi for that much time more instead of sending him out on transfer to Agra. In any case, purely in terms of illness of dependants, Shri A.K. Gaur is a similarly placed person and, therefore, the applicant's case should receive sympathetic consideration in the same way in which the case of Shri A.K. Gaur has been considered. It is seen that in the case of Shri A.K. Gaur, the respondent No.3 has granted approval for his transfer to Delhi on the very last day on which he handed over the charge of his office on retirement. The transfer order, in question, was issued, as already stated, on 29.3.2001. Having regard to what has been stated in this paragraph and in paragraph 3 together with whatever has been mentioned by the respondents in their reply in regard to the felt needs of the applicant and Shri A.K. Gaur for their respective transfer, I have not failed to see a definite tilt in favour of Shri A.K. Gaur and that too at the expense of the applicant. The pace maker fitted into the wife of the applicant will be replaced in about a year's time. Considering, inter alia, this factor, I am inclined to think that it will be in the fitness of things if the applicant is allowed to stay on in Delhi for another one and half years upto December, 2002 by which time the pace maker would have been changed and also tested in follow up. The applicant should be prepared to shift out thereafter

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to whatever place he is then sent by the respondents on transfer. The respondents have by transferring Shri A.K. Gaur left the post of Wireless Operator at Agra vacant. The same can be filled by the respondents by making suitable arrangements without transferring the applicant to fill that vacancy. Filling of the aforesaid vacancy at Agra is obviously not an urgency for the respondents, otherwise they would not have transferred Shri A.K. Gaur from that place by their order of 29.3.2001 without making alternative and timely arrangement. I am sure, the respondents are competent and experienced enough to make appropriate arrangements in due course so that their affairs are looked after properly at Agra.

6. The impugned transfer order had also stipulated that the applicant will move first which implied that Shri A.K. Gaur could move out to Delhi only after the applicant had taken over charge at Agra. Now that Shri A.K. Gaur has already most likely to have moved out in consequence of the transfer order dated 29.3.2001, the impugned order cannot be implemented in the way it was supposed to be implemented. Nevertheless, the impugned order has not been modified to reflect the new ground reality.

7 During the course of hearing, the learned counsel appearing in support of the respondents has fairly conceded that in view of the felt need of the

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applicant, inter alia, on account of the illness of his wife, it would be possible to persuade the respondents to retain the applicant in Delhi till December, 2002. The applicant will have to be prepared to shift out on transfer thereafter to whichever place he is sent by the respondents without invoking any of the grounds taken by him in the present OA. The learned counsel appearing in support of the OA has also stated at the bar that subject to the above arrangement being made, the applicant will not seek any other relief in the matter of his transfer.

8. Transfers are incidental to service and cannot be regarded as punishment. Such orders should not be interfered with ordinarily unless there is a case of malafide or else statutory rules have been violated. The same can also be interfered with if found to suffer from the vice of arbitrariness. In the present case, even though I do not find any case of malafide directly operating against the applicant's interest, I do find that by their attitude by which they have favoured Shri A.K. Gaur, the respondents have created a strong impression of malafide while dealing with the various requests made by the applicant for being allowed to stay on in Delhi. By not replying to the various representations filed by the applicant, the respondents have only reinforced the aforesaid impression.

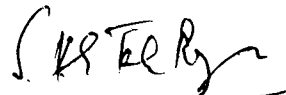
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9. In the circumstances, I would like to take the view that it will be just and proper in the present case to dispose of the OA with a direction to the respondents not to implement the impugned transfer order dated 23.11.2001 insofar as the applicant is concerned and to allow the applicant to stay on in Delhi till December, 2002. The respondents will be free to transfer out the applicant thereafter to Agra or to any other place in their discretion. They are directed accordingly.

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10. The OA is disposed of in the aforestated terms. No costs.


(S.A.T. RIZVI)
MEMBER (A)

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