

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1244/99

New Delhi this the 15<sup>th</sup> day of February, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri Raja Ram Sharma,  
S/o Sh. Deen Dayal Sharma,  
R/o RZe 44/1, Gali No.17,  
Sadh Nagar,  
Palam Colony,  
New Delhi-110 045.

...Applicant

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India through  
The Secretary,  
Ministry of Agriculture,  
Dept. of Agriculture & Cooperation

2. Dy. Director (PP),  
Plant Quarantine Station,  
Rangpuri,  
New Delhi-37.

3. Plant Protection Advisor  
to the Govt. of India,  
Directorate of Plant Protection  
Quarantine & Storage,  
N.H.IV, Faridabad (Haryana)

...Respondents

(By Advocate - None)

O R D E R

By Mr. Shanker Raju, Member (J):

I proceed to dispose of this OA in terms of Rule 16 of the C.A.T. (Procedure) Rules, 1987 in the absence of the respondents' counsel after hearing the applicant's counsel and on the basis of the material on record.

2. The applicant has been working as an Assistant Plant Protection Officer (APPO for short) previously challenged an order dated 14.5.99 whereby the applicant has been transferred as APPO from New Delhi to Varansi. The applicant made a detailed representation against the said order of transfer, but as no orders have been passed by the respondents he filed the present OA whereby, by an order

dated 26.5.99 a direction has been issued by the Tribunal to the respondents to dispose of the representation of the applicant made against the order of transfer and meanwhile as an interim measure till the disposal of the representation the order of transfer was stayed. The interim order continued till 1.7.99 and thereafter also. Meanwhile, the respondents disposed of the representation of the applicant on 28.6.99 by rejecting it and stating that in future if any vacancy in the grade of APPO arises at Lucknow the request of the applicant would be examined on merits alongwith others.

3. Vide an order dated 12.8.99 the learned counsel of the applicant sought permission to amend the OA, impugning the order passed by the respondents on 26.6.99. The amended OA was brought on record. The interim order was not continued on 24.9.99, 29.9.99 and 4.10.99. The interim order was continued but no orders have been passed on 10.5.2000 for continuance of the same. On 22.5.2000 the interim order was continued and discontinued thereafter on 10.7.2000 and 21.7.2000. On 11.8.2000 the respondents have been directed two weeks' time to file reply to the amended OA and vide an order dated 21.8.2000 the Tribunal after taking note of the disposal o CP-140/2000 whereby the CP was dismissed, observed that the innterim stay order shall remain in force. We also find from the record that vide an order dated 22.5.2000 the interim order earlier granted has been continued till further orders. Lastly on 14.12.2000 after hearing both the parties on MA-1954/2000 for release of salary and allowances from April, 2000 onwards, it has been observed that after the amendment of the OA no inter order has been passed at all and the order passed at the time of filing of initial order stood

complied with. It was further added that no interim order exists on the file and there cannot be a direction to the respondents to comply with the order, as such the MA was rejected.

4. The case of the applicant is that after working at several places with the respondents the applicant was transferred from Hyderabad to Guwhati on 24.2.93 with a clear understanding that after the tenure at Guwhati he would be considered for his choicest posting and according to the applicant he accepted the said transfer order from Hyderabad to Guwhati till vacancy was available at Lucknow and in this connection he made a representation to the respondents as one post was vacant at Lucknow. Vide an order dated 15.3.95 the respondents instead of considering the claim of the applicant transferred Sh. A.N. Singh, APPO from Jodhpur to Lucknow. The applicant was transferred from Guwhati to New Delhi vide an order dated 7.6.96 and posted at Jamnagar House at Delhi. The applicant made a representation contending that as he had already put more than two years of fixed tenure at North-East Region from 1993-95 he should have been considered for his choicest place of posting and was illegally transferred to Delhi. The grievance of the applicant is that he had been allotting the work of a junior cadre of Technical Officer III. According to the applicant the respondents have no transfer policy for their employees and as a result several officers, including J.K. Singh, Y.P. Singh, A.K. Agarwal, K.P. Singh Yadav and others had been working at their choicest places for the last more than 10-15 years and then promoted by shifting the posts. The applicant further assailed the order on representation and contended that the applicant had been

subjected to transfer several times during a span of 7 years. The applicant contended that his transfer is neither in public interest nor on the basis of administrative grounds on account of pick and choose policy of the respondents. The applicant alleges discrimination in the matter of transfer and contended that the respondents have applied their discretion to their favourites by transferring the posts alongwith the incumbents. The applicant further contends that the incumbent at Lucknow Sh. V.N. Singh had already made a request to the respondents for his transfer from Lucknow to New Delhi and contended that the mutual request of Sh. V.N. Singh and the applicant has not been acceded to by the respondents. According to the applicant no detailed reasons have been given b the respondents in their orders disposing of applicant's representationn. The applicant submits that he has not requested the respondents for his transfer to Varansi and as the respondents have themselves made a statement to consider the applicant in future along with others his request for mutual transfer with Sh. V.N. Singh at Lucknow may be acceded. The applicant alleges violation of Articles 14 and 16 and contended that the guidelines on transfer provides for transfer to a choicest place if an incumbent had already worked at a hard station in a Region for a period of two to three years there should be consideration of individual's transfer request. Applicant's counsel relies on the ratio of N.K. Suparana v. Union of India, 1991 (15) ATC (CAT) 1, to contend that in absence of any administrative exigencies the transfer is to be stayed. The applicant's counsel contended that the Tribunal stayed the transfer till a representation on 26.5.99 and thereafter the interim order continued on 8.6.99 and 21.12.2000 the interim order had been continued

till further orders. As such the applicant is under the protection of the Tribunal since 26.5.99 and cannot be compelled to carry out the transfer orders. The applicant seeks pay and allowances for the intervening period. According to him the respondents admitted that the applicant was under the protection of the order of the Tribunal w.e.f. 26.5.99 till 11.2.2000 and the stay is continuing till today and the grievance of the applicant is that since April, 2000 he has been denied his salary and allowances which amounts to a punishment.

5. The respondents in their reply took exception to the contention of the applicant and contended that the transfer of the applicant is in the interest of administration and as it is not issued in violation of any rules and is neither malafide the same will not be interfered by the Court. According to the respondents the applicant was not transferred to his choicest place at Lucknow because Shri A.N. Singh had been transferred to Lucknow on medical grounds and also on the ground that his wife was also employed in the State Government and as there was a policy of the Government of India to accommodate both husband and wife in the same station as far as possible as such his request was validly turned down by a speaking order passed on the representation of the applicant. As regards the allotment of work is concerned, it is contended that the applicant was allocated the same work on the basis of his technical competence, capability and efficiency. The respondents have resorted to uniform transfer policy of the Directorate and contended that the action of the respondents was neither illegal nor arbitrary or malafide. The respondents contended that no employee has got any vested right to posted at a particular place of

posting and that depends upon the administration and exigency of service. The respondents rely on the ratio of the Apex Court in Union of India v. H.N. Kirtania (1989) II ATC 269=(1989) 3 SCC 445 and Gujarat Electricity Board v. Atmaram Sungomal Poshani, (1989) 2 SCC 602 to contend that the transfer on administrative grounds or in public interest should not be interfered unless the same is vitiated on account of violation of statutory rules or malafide.

6. The applicant in his rejoinder reiterated the plea taken by him in the OA and further contended that Sh. A.N. Singh, APPO was transferred from Lucknow to Raipur and Raipur to Jodhpur and from Jodhpur to Lucknow not on medical grounds as the respondents have failed to show any proof in support of their claim. According to the applicant in the matter of transfer of Sh. A.N. Singh on the matter of his choice posting keeping in view the guidelines which are to be applied as far as possible the applicant has been discriminated. According to the applicant a vacancy arose on 12.8.94 on the demise of Sh. S.C. Yadav, APPO at Lucknow and the applicant made his representation but Sh. A.N. Singh was preferred. The applicant further contends that Sh. A.N. Singh had requested for his transfer to New Delhi or Faridabad and simultaneously the applicant also submitted an application for posting to Lucknow but the same has not been considered by the respondents even for mutual transfer. The applicant had quoted the examples of few officials, e.g., S/Sh. K.K. Srivastava, Narain Ram, Rajender Kumar and Kailash Chand whereby they were given place of their

choice and transferred alongwith the posts. The applicant further refuted the averment of the applicant that Varansi is nearer to his home town.

7. I have carefully considered the contentions of the learned counsel of the applicant and perused the counter reply of the respondents as well as the material on record. In my view the transfer of a Government servant is an incident of service and if it is made in public interest or in the exigencies of service on administrative grounds it should not be interfered with unless the applicant shows or proves that the same is malafide or against the rules. In this view of my I am fortified by the ratio laid down by the Apex Court in Gujarat Electricity Board's case and H.N. Kirtania's case (supra). To ascertain whether in the instant case the transfer has been made with any malafide or against the rules I have perused the relevant record to this effect. The respondents have annexed along with their reply the existing policy of the Directorate in the matter of transfer where in clause it has been stated that the transfer is resorted on the consideration of individual transfer request and also on the ground that an official who had worked at a posting in a hard station/region for a period of two to three years he would be given a choice posting as far as possible. The respondents while disposing of the representation of the applicant stated that as the applicant had already remained posted at Lucknow from August 1984 to September, 1991 as TO-III and as no vacant post of APPO was available at Dimapur he was posted at Guwhati. As regards his request for postinng at Lucknow is concerned, the same could no be acceded to for want of a vacancy. According to the respondents the vacancy of APPO arose at Lucknow in August, 1994 and his