

IN THE CENTRAL ADMINISTRATIVE TRIBNAL

NEW DELHI

O.A. No. 2173/99
T.A. No. ~~xxxxx~~

19

DATE OF DECISION 25-10-2000

Shyam Singh Petitioner(s)
Shri K.L. Bhandula Advocate for the
Petitioner(s)


Versus

Union of India, Respondents
Shri A.K. Bharadwaj Advocate for the
Respondent(s)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)

1. Whether Reporters of local papers may be —
allowed to see the Judgement?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the —
fair copy of the Judgement?
4. Whether it needs to be circulated to —
other Benches of the Tribunal?


(Dr. A. Vedavalli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2173/99

New Delhi this the 25th Day of October, 2000

Hon'ble Dr. A. Vedavalli, Member (J)

Shyam Singh,
Chowkidar,
Upper Yamuna Division,
Central Water Commission,
Qutab Institutional Area,
New Delhi-110 016.

R/o Qr. No. 1126/Type-II, N.H. IV,
Faridabad.

Applicant

(By Advocate: Shri K.L. Bandula)

Versus

1. Secretary to the Govt. of India
(Union of India),
Ministry of Water Resources,
Shram Shakti Bhawan, New Delhi-110 001.
2. The Chairman,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.
3. Chief Engineer, Yamuna Basin Circle,
Kalindi Bhawan, Katwaria Sarai
New Delhi-110 016.
4. Superintending Engineer,
Plannin Circle, C.W.C.,
NH-IV, Faridabad.

Respondents

(By Advocate: Shri A.K. Bharadwaj)

O R D E R

Dr. A. Vedavalli, Member (J)

The applicant, Shyam Singh, who is working as a Chowkidar in the Central Water Commission (Upper Yamuna Division), New Delhi is aggrieved by his transfer from New Delhi to Dehradun by the Respondents by Office Order dated 4.6.1999 (Annexure I) and has impugned the said order in this OA. He is seeking a direction from this Tribunal to quash and set aside the aforesaid order.

(21)

2. The applicant had earlier filed a OA No. 2147/98 praying that his request for voluntarily retirement dated 27.5.1998 be disregarded and he may not be treated as voluntarily retired on 31.8.1998. The said OA was disposed of by the order of this Tribunal dated 6.8.1999 (Annexure V). It was held by the Tribunal, inter alia, that as the order accepting the applicant's voluntary retirement has been cancelled and the intervening period has been regularised, no orders on that score need to be passed by the Tribunal.

3. In regards to the applicant's complaint of harassment and transfer out of Delhi as a part of that harassment, the Tribunal observed thus: "we trust that if he represents to the authorities, the same will receive due attention at an appropriately senior level".

4. Pursuant to the aforesaid order of this Tribunal dated 16.8.1999, the applicant submitted a representation dated 23.8.1999 (Annexure VI) to Respondent No. 2 seeking cancellation of the order relating to his transfer inter alia on the ground that his transfer is against the transfer policy of the Central Water Commission as he is a Group 'D' employee having less than three years service left since he is due to retire on

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22

30.6.2002. As the said representation was not disposed of by the Respondents, the applicant filed the present OA on 5.10.1999.

5. Heard the learned counsel for both the parties. Pleadings and all the material papers and documents placed on record have been perused.

6. Learned counsel for the applicant Shri K.L. Bhandula contended that there is a clear violation of the relevant provision of the transfer policy by the Respondents and that the impugned order has caused a lot of harassment and mental agony to the applicant who is a Group 'D' employee towards the fag end of his service since he is due to retire on 30.6.2002 and that such illegal action should be quashed and set aside. He has also submitted that the Respondent's action is arbitrary since it is clear from the above Office Order dated 26.5.1999 (Annexure VIII) that he was transferred to Delhi from Faridabad against an existing vacancy.

7. Learned counsel for the Respondents in reply submitted that the aforesaid representation of the applicant was considered and rejected by the Respondents by their order dated 8.11.1999 (Annexure V to the counter). He has also contended that there is no vacancy of Chowkidar at New Delhi (HQ) and that the applicant's joining

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report was accepted temporarily against the existing vacancy of Chowkidar at Tuine, Dehradun, only to honour the decision of this Tribunal's order dated 11.11.1999 in OA No. 2173/99 ~~_____~~ on purely temporary basis and as per the Office Order dated 22.11.1999 (Annexure VI-B to the counter). He has also submitted that though the applicant's representation dated 23.8.1999 has been rejected by the Respondents, he has been given an opportunity to seek posting to additional stations which are available at present by the aforesaid order dated 8.11.1999 (Annexure V to the counter). Learned counsel for the Respondents has also contended that there is no illegality in the impugned order since the word "ordinarily" occurring in Clause 7 of the transfer policy is significant. He has submitted that the transfer of the applicant from Faridabad became necessary in view of the facts of the case viz., the order of his reinstatement was issued on 3.2.1999, and the vacancy created by his retirement had already been filled up on 4/99. Hence he had to be transferred to some other place where vacancy existed. He was, therefore, transferred in public interest to Executive Engineer (Upper Yamuna Division), New Delhi where vacancy existed and was further posted to Tuine, Dehradun, under his own jurisdiction where vacancy was available.

(24)

8. I have given my careful consideration to this matter .

9. The crucial question which arises for consideration is whether the impugned transfer order dated 4.6.1999 (Annexure I) is violative of the transfer policy of Central Water Commission as contained in their OM dated 16/23-12-1998 in respect of Group 'C' and 'D' employees.

10. The Relevant portion of Clause VII of the said transfer policy is extracted below:

"Employees due for retirement on superannuation within a period of 5 years before their superannuation shall not ordinarily be transferred if the persons of lesser age are available for manning the posts." The requests for transfer to the place of their choice, if made, would be considered (Amended vide O.M. No. A-49011/13(A)/85-E.IV dated 18.9.97 and again amended vide corrigendum No. A-49011/13(A)/85-E.IV dated 23.9.97." (Emphasis supplied)

11. The applicant is a Group 'D' employees who has less than 3 years service left before his retirement. "ordinarily" he should not have been transferred from New Delhi to Tuine in Dehradun. However, in view of the facts and circumstances of the case as explained by the respondents in their counter as well as by their learned counsel during the hearing as noted above, it cannot be said that the impugned order is violative of the aforesaid provision of the transfer policy. *N*

(25)

12. On the facts and circumstances of this particular case and in view of the aforesaid discussion, I am of the opinion that the applicant has not been able to justify the grant of the relief which he has claimed in this OA on any valid and sustainable grounds. In the result, the OA is dismissed. However, it is made clear with a view to secure the ends of justice that in case any vacancy of Chowkidar has become available in New Delhi during the pendency of the case, the applicant should be retained and posted against the said vacancy in New Delhi.

OA is disposed of as above. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

Mittal