

Central Administrative Tribunal
Principal Bench

O.A.No.835/98

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 3rd day of June, 1998

I.M.Issar
s/o Late Shri L.R.Issar
r/o Flat No.600, Sec-4
R.K.Puram
New Delhi.
Senior Scientific Assistant
Composite Food Laboratory
Army Service Corps
P-11, (Ground Floor)
Havlock Lines
Lucknow Road
Timarpur
Delhi - 110 054.

... Applicant

(By Shri K.S.Bobby, Advocate)

Vs.

1. Union of India
Ministry of Defence
Through Defence Secretary
New Delhi.
2. Director General of Supplies & Transport
QuarterMaster General's Branch
Army Head Quarters
DHQ Post Office
New Delhi - 110 011.

... Respondents

(By Shri K.R.Sachdeva, Advocate)

The applicant, a Senior Scientific Assistant, working in the Composite Food Laboratory of Army Service Corps, Delhi is aggrieved by his transfer order dated 3.4.1998, Annexure A-1 to CFL, Jammu.

2. The case of the applicant is that he was posted to Delhi on 1st July, 1995 and would be completing his normal three years of posting on 30.6.1998. However as he is due to retire on 30.4.1999, he would be having less than two years of service on the prescribed date of his being retired from Delhi. He also alleges malafide on

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the part of Respondent No.2 since on representation filed by him his date of release has been preponed from 15.5.1998 to 30.4.1998.

3. The respondents in reply have stated that one Shri Suresh Kumar who was posted in North Eastern region, exercised his choice of posting to Delhi under the provisions of the Government of India letter No.4(19) 83/D (Civ.I) dated 11.1.1984, Annexure R-1 and therefore the transfer of the applicant become necessary. They say that the applicant has already served in Delhi for more than 10 years and had also come to Delhi in his present posting on compassionate grounds.

4. The respondents have also filed an additional affidavit on 13.5.1998 enclosing therein a notification of Department of Personnel & Training dated 13.5.1998 whereby the date of retirement has been raised from 58 to 60 years. They submit that as a result the applicant has now more than two years service left and therefore his objection is no longer valid.

5. I have heard the counsel on both sides and perused the records. The Special Corps Orders No.06/91 dated 12.4.1994 regarding the posting and transfers (GP 'C' Posts and GP 'D' Posts) provides that "11(a) In the normal circumstances, pers in GP 'C' posts above 55 years and pers in GP 'D' posts above 57 years of age will not be posted out from one unit to another."

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6. It is argued by the learned counsel for the applicant that even if he has more than two years service left because age of retirement has been extended applicant is not open to transfer because he has already passed the age of 57 years.

7. I have carefully considered the matter. It has been held by the Supreme Court in Laxmi Narain Mohan Vs. Union of India, JT 1997(3) SC 441 that though convenience of officers for posting near home town has to be seen, yet transfer on administrative exigencies cannot be ruled out. In Union of India Vs. H.N.Kirtania, JT 1989 (3) SC 131 the Supreme Court observed that transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides. The respondents submit that there is an administrative exigency because the person serving in the North Eastern for over three years has to be accommodated in his place of choice, namely, Delhi. It has been urged on behalf of the applicant that this particular person has already arrived in Delhi and that it is presumed that he has already been adjusted. On the other hand, the respondents in their reply have stated that posting of applicant is necessary to make room for Shri Suresh Chand. The incentive for persons serving in difficult areas, by giving them a posting of their choice at the end of their tenure, is an important element of public policy that posts in certain difficult areas should be manned by suitable personnel. Therefore if the applicant has to make room for someone coming from their

2 hard posting the transfer of the applicant has to be treated as public interest. The applicant has by now

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also almost completed three years^{in Delhi}. It is also a fact now that he has more than two years of service left. For this reason the scope of interference by Tribunal would be limited. Since no malafide had been found, in the result, the OA is dismissed. No costs.

R. K. Ahoja
(R. K. Ahoja)
Member (A)

/rao/