

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1920/95
T.A. No.

199

DATE OF DECISION 17-9-96

| | |
|---------------------|--------------------------------|
| Shri Jagdamba Kumar | Petitioner |
| Shri K.B.S. Rajan | Advocate for the Petitioner(s) |
| Versus | |
| U.O.I. & Ors. | Respondent |
| Shri B.Lall | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr.s Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. _____

1. To be referred to the Reporter or not? yes
2. Whether it needs to be circulated to other Benches of the Tribunal? X

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No. 1920/95

New Delhi this the 17th day of September, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Shri Jagdamba Kumar
S/o Shri L.M. Kandwal,
R/o D-64, Sector 56,
Noida (UP).

.. Applicant

By Advocate Shri K.B.S. Rajan.

Versus

1. Union of India,
through its Secretary,
Department of Telecommunication,
Sanchar Bhawan,
New Delhi.
2. Shri G.S. Sikand,
Architect-in-Chief,
Department of Telecom,
13th Floor, Devika Tower,
Nehru Place, New Delhi.
3. Director of Architect,
Deptt. of Telecom,
1st Floor, Dak Tar Bhawan,
Parliament Street, New Delhi.

.. Respondents

By Advocate Shri B. Lall.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

js.

The applicant is aggrieved by the transfer order passed by the Respondents dated 20.6.1995 from Delhi to Mandi (HP). The applicant has contended that till date of filing of the O.A. dated 10.10.1995, he has not received a copy of this transfer order. According to the applicant, the transfer order is illegal, bad in law and has been passed with mala fide intentions at the instance of Respondent No.2 - Shri G.S. Sikand, Architect-in-Chief, Deptt. of Telecom.

2. The transfer order dated 20.6.1995 has been challenged by the applicant mainly on the ground that it is issued by Respondent No.2 in a mala fide manner. This ground, however, can be dealt with under the following two sub-heads:

(i)(a) That at the time of applicant's deputation to National Security Guard (NSG), he had applied for the same in 1985 along with certain other persons. According to him, Respondent No.2, who was the Head of the Section in which the applicant was working, did not send his complete records/ACRs to the National Security Guard, so that his case could not be properly considered by them. Thereafter, the applicant made a detailed representation to the Chief Architect. This fact was also taken up by Shri V.N.Patil, Member of Parliament, who took up the matter with the Minister incharge. Then, Respondent No.2 had to relent and the applicant was considered for deputation in the National Security Guard in 1986.

(b) In this connection, Shri B.Lall, learned counsel for the respondents, has drawn my attention to the letter dated 23.7.1985 from the National Security Guard asking for nomination of persons who have completed five years of service as Architectural Draughtsman, to which the reply has been sent by Respondent No.2 by letter dated 13.8.1985. In this letter, Respondent No.2 had forwarded the names with the bio-data and ACRs of three persons in the Assistant Architectural Grade-I; in addition, he states that three additional names have been sent who are competent, in the grade next below, which includes the name of the present applicant at Serial No.2. In the letter from the National Security Guard dated 20.8.85,

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addressed to the respondents, they have stated that the six ACRs received with the letter forwarding the nominations of Architectural Draftsman, including that of the applicant were returned. By the letter dated 29.1.1986, the applicant's nomination for deputation was also accepted by the National Security Guard.

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(i) From the above, it is evident that the allegations of mala fide alleged by the applicant against Respondent No.2 on the ground that he has deliberately not sent the complete records of ACRs of the applicant to the National Security Guard for sanction on deputation is incorrect and not borne out by the facts, contained in the aforesaid documents. Respondent No.2 has in the forwarding letter, referred to the applicant also as a competent person but in a lower grade than what the National Security Guard had probably required at that time, but he has acted fairly and sent the name of the applicant as a person who is qualified so that the National Security Guard may take their own decision in the matter. It is also relevant to point out that all the names of the six Architectural Draftsman had been forwarded in the same letter on 13.8.1985 and any delay on the part of the National Security Guard cannot be attributed to mala fide actions on the part of Respondent No.2. This argument is, therefore, totally baseless and is rejected.

(ii) (a) The next incident relied upon by the applicant showing mala fide on the part of Respondent No.2, is that he has been frequently transferred, namely, first to Lucknow, then Chandigarh and thereafter to Shimla and now by the impugned order to Mandi (Himachal Pradesh)

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(b) In this regard, the respondents have pointed out that in a period of over 19 years of service, the applicant

has remained in Delhi for about 17 years, other than the initial period of 8 months when he was at Ambala and later at Chandigarh for about two years, which was on his promotion there, though it was on an ad hoc basis. Regarding his transfer to Lucknow, the respondents have submitted that it was done by the predecessor of Respondent No.2 and, in fact, Respondent No.2 had helped the applicant to be posted back in Delhi on 24.1.1994. It is also clear from the order of appointment of the applicant that the appointment carries with it the liability of serve in any post in India or outside. When the office of Architect at Chandigarh was sanctioned on 31.12.1992 and on the retirement of one Shri M.G.Dangri, the respondents have stated that the applicant indicated his willingness to go to Chandigarh on promotion. This fact has not been denied in the rejoinder and accordingly he was promoted on ad hoc basis and posted in Chandigarh in February, 1993. Arising out of this posting at Chandigarh, the applicant has tried to make out a case against Respondent No.2 that it was at his instance that his pay has not been fixed properly on the higher post, as the Last Pay Certificate(LPC) had not been sent from Respondent No.2's office on his transfer to Chandigarh in February, 1993. This plea also cannot be accepted as the respondents have produced a copy of the LPC dated 23.3.1993 which had been sent from the New Delhi office to GM(T), Punjab Circle, Chandigarh. It has also been pointed out during the course of the arguments by the learned counsel for the respondents that the pay of the applicant in the higher scale has also now been fixed by order dated 20.4.1996. In the representation dated 10.1.95

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annexed to the O.A., the applicant has not made any reference to any mala fide action taken by Respondent No.2 in respect of non payment of pay and allowances on the higher post, which appears to have been taken as a ground only in this application. Therefore, the plea of mala fide against Respondent 2 has not at all been proved and it is, therefore, rejected as baseless.

3. Another argument advanced by the applicant was that instead of transferring him, there were other persons in the office who could have been transferred to Mandi and therefore, the action of the respondents is illegal. In short, the learned counsel for the applicant relying on the judgment of the Supreme Court in State of Punjab v. Gurdial Singh (AIR 1980 SC 321), put forward the argument that if any action taken by the competent authority is not bonafide, or has been taken in colourable exercise of the powers vested in him to reach the object by extraneous considerations, and therefore, not in good faith, this order should be struck down as being illegal. According to the learned counsel, various instances narrated in the O.A. show the mala fide intention and colourable exercise of powers of Respondent No.2 which have vitiated the transfer order.

4. The respondents have on the other hand stated that since new units have been opened at Mandi and other places, the applicant had been transferred to Mandi in administrative exigencies. They have also submitted that Respondent No.2 has not acted in any mala fide manner and had, in fact, helped the applicant to be retained in New Delhi in spite of his predecessor's order transferring him to Lucknow in 1992. Shri B.Lall, learned counsel for the respondents, submits that since the

applicant is liable for transfer on all India basis, he can be transferred anywhere in the country but he has, in fact, only been transferred in a nearby place at Mandi(H.P.). In the circumstances, he has submitted that the application may be dismissed.

5. In the representations made by the applicant dated 28.7.1995 and 8.8.1995, ^{he} refers to his knowledge of the transfer to Mandi as Architectural Assistant Grade-I and in the later representation also to the fact about his having been relieved from the strength of the Delhi Office. In the representation made on 28.7.1995, he has also stated that he may be relieved from the Delhi office after certain requests of pay, namely, LPC, arrears of pay, upto date service book, etc. are made. Further a telegram was also sent to him which was acknowledged by him in the letter dated 31.8.95 (copy placed on record) in which he had also stated that 'he never refused to go to Mandi! From a perusal of these documents, therefore, it is clear that the applicant was very much aware of the order transferring him from Delhi to Mandi and that he has also been relieved from the Delhi Office before he filed the O.A. on 10.10.1995. By the ad interim order dated 13.10.1995 the Tribunal had stayed the transfer order initially for a period of 14 days, 'if he has not already been relieved from that office'. In the order dated 27.10.1995, to the statement made by Shri V.K.Rao, the then learned counsel for the applicant that the applicant has not been relieved as yet, the respondents' counsel had submitted to the contrary that the applicant had been relieved. The respondents have further submitted that the applicant was actually relieved on

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5.7.1995. From the above facts and a perusal of the representations made by the applicant himself, it is, therefore, clear that not only the applicant was aware of the transfer order transferring him from Delhi to Mandi, but that he also knew that he stood relieved before he made the representations in July+August, 1995, and in any case before this O.A. was filed.

6. Regarding the question of mala fide, from the materials on record and for the reasons given above, I find that the applicant has failed to establish his case. Respondent No.2 cannot be stated to have exercised his power in a colourable or mala fide manner in this case. In the short affidavit that Respondent No.2 has filed, he has clearly stated that he has authorised filing the reply on behalf of all the respondents and he has also denied all the allegations of mala fide. In the facts and circumstances of the case, the posting of the applicant on transfer to Mandi by order dated 26.9.95 cannot be held to have been vitiated by any wrong or illegal action on the part of Respondent No.2. It is also clear that the applicant was very much aware of his transfer and the fact that he has been relieved from the Delhi Office before filing this application in the Tribunal. The Supreme Court in a number of decisions (see Union of India v. S.L. Abbas (1993(2) SLR 585, N.K. Singh v. U.O.I. & Ors. (1994(28) ATC 246) has categorically held that it is for the competent authority to take an appropriate decision in such matters as to who is to be transferred and where and this Tribunal cannot sit as an appellate authority over that decision in exercise of the power or judicial review. I have also considered the other

arguments advanced by the learned counsel for the applicant but do not find any merit. In this case, since nothing has been shown to vitiate the transfer order as held above, there is no justifiable ground to interfere in the matter.

¶. For the reasons given above, this application fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'