

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No. 2294 of 1995

New Delhi this the 17th day of January, 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. K. Muthukumar, Administrative Member

Shri Surinder Kumar,
S/o Late Shri Jagdish Chander,
Age 34, Resident of B-75,
Fateh Nagar (Near Tilak Nagar),
New Delhi-110 018
Working as Interpreter,
Cabinet Secretariat, Room No. 8-B,
South Block, New Delhi-110011

..... Applicant

By Advocate : Mr. J.K. Bali, Ld. Counsel

Versus

1. The Secretary,
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi - 110011

2. Additional Secretary(N),
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi - 110011

3. Joint Secretary(Pers),
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi - 110011

..... Respondents

Advocate by : Mr. M.K. Gupta, Ld. Counsel

O R D E R

By Hon'ble Mr. Justice A.K. Chatterjee, VC

The applicant Shri Surinder Kumar is working as an Interpreter in the Cabinet Secretariat since February, 1993 at New Delhi Headquarters and by an order made on 9.8.95 (Annexure-A1) to the application, he has been transferred to MS Patna, against which he made a representation on 22.8.95 to the appropriate authority drawing his attention to the fact that some of his

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✓ colleagues have longer stay at Headquarters and to certain domestic problems which made it inconvenient for him to move to M.S. Patna. This, however, did not find favour and the applicant made another representation to higher authority, which too was lost and it was followed by ^{another} ~~an~~ order dt. 29.11.95, which conveyed a decision to relieve the applicant from Headquarters on transfer to M.S. Patna by 12.12.95. The instant application has been filed to quash the order of transfer to M.S. Patna as well as the order relieving him from Headquarters on the ground that this transfer is against the established transfer policy of the Government under which the employees are to be transferred out of Headquarters according to their length of stay therein. It has been urged that at least four of the colleagues of the applicant are in Headquarters since before the appointment of the applicant in February, 1990 and, therefore, he should not have been picked up for transfer to M.S. Patna.

○ 2. The respondents contend that the representation of the applicant was considered objectively and three of the colleagues of the applicant, who, according to the applicant, had longer stay at Headquarters, were considered less suitable in public interest than the applicant for the posting at M.S. Patna. The fourth colleague, one Miss Paramjit Kaur, aged about 44 years, who is a Spinster was not transferred as the location of the Patna office was far away from Patna City and so it was considered inexpedient to expose her at such a place for security reason.

○ 3. We have heard at length the submissions made by the learned counsel for both the parties ^{and also} ~~as well as~~ perused the application, the reply ^{as well as} ~~and also~~ the rejoinder filed by the applicant

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together with the annexures thereto besides a copy of the transfer policy bearing Memorandum No.11/1/95-Pars.5-2723 dt. 20.9.95 produced by the Learned Counsel for the applicant and the relevant files produced by the Learned Counsel for the respondents. The Learned Counsel for the respondents has pointed out that all the colleagues of the applicant except Miss Paramjit Kaur, whose stay at Headquarters is said to be longer than the applicant, were in fact first appointed as L.D.C. in 1987, but they were appointed as Interpreter between April, 1993 and February, 1995, while the applicant was appointed as ^{an} Interpreter in February, 1990. Thus, the Learned Counsel for the respondents contends that as a matter of fact, the stay of the applicant as Interpreter in the Headquarters is much longer than any of these three colleagues. In answer to this contention, the Learned Counsel for the applicant has drawn our attention to para-12 of the transfer policy, which lays down in effect that transfers are to be made out of Headquarters according to their length of service and total stay in the Headquarters in all ranks combined together. By this criterion, it was argued on behalf of the applicant that the stay of three of the colleagues of the applicant as L.D.C. since 1987 should also be considered for the purpose of transfer out of Headquarters to M.S. Patna. Now, it appears that ^{this} transfer policy was made on 20.9.95, while the applicant was transferred by an order made earlier i.e. 9.8.95 and it has not been shown that in the transfer policy ^{prevailing} previously at that time, length of stay in all the ranks combined together was the criterion for transfer out of Headquarters. Moreover, Para-12 of the transfer policy applies in case of only rotational transfer, which should normally coincide with academic

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session, while in the present case, it appears that only one transfer order was issued, whereby the applicant was posted at M.S. Patna vice one Shri C.M. Khosla, who has been transferred to Headquarters in place of the applicant. Transfer of the applicant was necessitated because of completion of tenure by Shri Khosla and, therefore, it is not quite correct to say that this is an instance of ~~only~~ rotational transfer to which para-12 is attracted. Regarding ^{the} 4th colleague, Miss Paramjit Kaur, cogent reason has been adduced on behalf of the respondents for not shifting her to M.S. Patna and we are not satisfied with the answer of the applicant in this regard namely that Miss Kaur could ^{have} ~~have~~ posted to S.B. Patna located within the city, where she could perform her duty without having to go to M.S. Patna as it is entirely for the administration to decide whether the posting should be made at S.B. Patna or M.S. Patna.

4. On the top of it, the Learned Counsel for the respondents has pointed out that the transfer policy itself lays down that operational requirements and exigencies of service are over-riding consideration in the matter of transfer and it has been pointed out that all the ^{four} ~~three~~ colleagues of the applicant except Miss Kaur have experienced as Interpreter only for about 10 months in case of two of them and less than three years in case of the 3rd colleague and because of such inadequate experiences, they were not thought to be suitable for posting in view of exigencies of service. We find no reason to reject this contention.

5. The Learned Counsel for the applicant has cited two decisions, which are also referred to in the rejoinder. Only one sentence from each of the two judgments by the Supreme Court has been quoted in the rejoinder, but a perusal of these two decisions will

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✓ indicate that on fact the instant case is materially different and we are not disposed to hold on the basis of the cryptic quotation that the applicant is entitled to the relief claimed by him. It is a firmly settled law that an order of transfer ought not to be interfered with unless any malafide or arbitrariness are found. In the case before us, no malafide has even been alleged and the consideration, which weighed with the authority in transferring the applicant to M.S.Patna rule out the possibility of any arbitrariness.

○ 6. In the rejoinder, the applicant has stated that on 6.12.95, which was also the date on which he filed the U.A., he was asked by the Director of his Branch to state if he was willing to be posted at Shimla instead of Patna to which he did not give his consent as his grievance was against his very transfer out of Headquarters. It has been stated in the rejoinder that such offer of transfer to Shimla proved that the plea of the respondents that his transfer to Patna was passed after examining all aspects in detail, was not correct. It has also been stated in the rejoinder that the respondents are prepared to post the present incumbent at M.S.Shimla one Shri P.C.Dwivedi to Patna and to post the applicant at his place. It has been stated further that Shri Dwivedi joined as an Interpreter on 1.6.93 and thus it was contended that the plea taken by the respondents that one of the colleagues of the applicant, who is working as an Interpreter since April, 1993 was not suitable, could not be sustained. We are unable to make much of these arguments as this contention having been raised for the first time in the rejoinder, the respondents hardly had any opportunity to countenance the

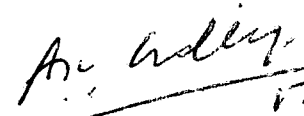
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✓ same. Even if the offer of transfer to Shimla was made to the applicant after the D.A. was filed, even though on the same day, he could very well come up with a supplementary affidavit, which would give an opportunity to the respondents to make out their case in this regard. We, therefore, dismiss this contention as well.

7. On the aforesaid premises, we see no merit in this application, which is rejected. Interim orders are vacated. Parties to bear their own costs.


(K. Muthukumar)
Member(A)


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(A.K. Chatterjee)
Vice-Chairman