

Central Administrative Tribunal
Principal Bench, New Delhi.

6

OA-2461/95

New Delhi this the 28th day of May, 1996.

Hon'ble Sh. B.K. Singh, Member(A)

Shri Subash Kumar,
S/o Sh. Chhote Lal,
R/o 08/406, Khichripur,
Delhi-110091.

Applicant

(through Sh. Pratap Sahani - None present)

versus

1. Union of India
through the Chairman,
Telecom Commission,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. The Chief General Manager,
T & D Circle,
Sanchar Vikash Bhawan,
Residency Road,
Jabalpur(MP).
3. The Director (AT),
T & D Circle,
104, Eastern Court,
New Delhi-110001.

Respondents

(through Sh. M.L. Verma, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. B.K. Singh, Member(A)

No one appeared on behalf of the applicant
even on the second call. Heard the learned counsel
for the respondents and perused the record of the
case.

This application is directed against



7

Annexure A-1 of the paperbook which is extracted below:-

"Sh. Subash Kumar, TSM Q/o Director A/T New Delhi is hereby transferred and posted under DET A/T(Trans) New Delhi with immediate effect."

This order is dated 18.12.1995. The appointment letter of the applicant is at page 41 of the paperbook. It is dated 19.1.1993 and is extracted below:-

"With reference to Director A/T New Delhi Office letter No.D/TR/N/Transfer & posting dated 31.12.92, Shri Subash Kumar, D.R.M. of this office is hereby instructed to report Shri R.K.Sharma, AE A/T (Switching) in the Q/o Director A/T ND w.e.f. 1.1.1993 till any regular driver joins in that office."

This letter dt. 19.1.1993 makes it clear that it is only a stop gap arrangement to be continued till a regular person joins in the place of this man. He had not been appointed as a regular incumbent. His appointment will be treated as de hors the rules and he has no right to be treated as a driver. His status continued to be that of the temporary status Mazdoor. He worked as a Farash and subsequently on completion of 206 days as per Scheme he has been conferred the temporary status. The transfer is not from Delhi to outside Delhi but in the Delhi area. The competent authority has transferred him as TSM from the office of Director A/T New Delhi to DET A/T (Trans) New Delhi with immediate effect. The transfer

B

8

is from New Delhi to New Delhi and in the same capacity. He has not been appointed as a regular driver and he has been conferred temporary status as a Mazdoor and the transfer also is in that capacity. The transfer made by the respondents is in the exigencies of public service and such transfers cannot be interfered with as has been held by the Hon'ble Supreme Court in a catena of judgements.

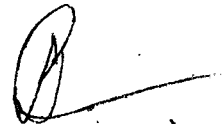
In case of Chief G.M. Telecommunications Vs. Rajendra Chandra Bhattacharya (1995 Vol.29 ATC 379) the Hon'ble Supreme Court have held that guidelines and instructions issued from time to time do not confer any vested right. These are merely directory and transfer being an incident of service, the court should decline to interfere unless malafides are proved or there is a breach of statutory rules.

In case of State of M.P. & Ors. V . S.S. Kaurav & Ors. (ATC 1995(29) P.553) the Hon'ble Supreme Court have held that hardship or exigency cannot be considered by the Court/Tribunal as a ground for interfering in the transfer order issued either on administrative ground or in public interest. In case of U.O.I. Vs. Ganesh Dass Singh (1995(30)ATC 629) the Hon'ble Supreme Court have held that judicial review under Article 226 of the Constitution in respect of transfers either in public interest or in the exigencies of

B

9

public service or on administrative grounds is impermissible. In several other judgements the same view has been reiterated. The transfer is neither mala fide nor it is in breach of statutory rules and, therefore, the Tribunal cannot interfere with such transfer orders. The application is devoid of any merit and substance and is dismissed but without any order as to costs.


(B.K. Singh)
M(A)

/vv/