

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. - 718/95  
T.A. No.

199

DATE OF DECISION 02-09-96

Sh. Baljinder Singh Petitioner  
Sh. Sant Lal Advocate for the Petitioner(s)  
 Versus  
V.C.T. of Ors Respondent  
Sh. M.M. Suleman Advocate for the Respondent(s)

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, M(J)

The Hon'ble Mr.

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? ☒

Lakshmi Swaminathan  
 (Smt Lakshmi Swaminathan)  
 M(J)

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PRINCIPAL BENCH, NEW DELHI.

OA-718/95

New Delhi this the 2nd day of September, 1996.

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

Shri Baljinder Singh,  
S/o Sh. Gurdev Singh,  
R/o B-2/57, Paschim Vihar,  
New Delhi-110035. Applicant

(through Sh. Sant Lal, advocate)

versus

1. Union of India through  
Secretary,  
Ministry of Communication,  
Sanchar Bhawan,  
New Delhi-1.
2. The Secretary-cum-Director General,  
Deptt. of Telecommunication,  
Sanchar Bhawan,  
Ashok Road,  
New Delhi-1.
3. The Chief General Manager,  
(Maintenance)  
Northern Telecom Region,  
Kidwai Bhawan, Janpath,  
New Delhi-1.
4. The Chief Superintendent,  
Central Telegraph Office,  
Janpath, New Delhi.
5. Shri Nandan Singh Bisht,  
Circle Service Telegraphist,  
Central Telegraph Office,  
Janpath, New Delhi.
6. The Chief General Manager,  
Himachal Pradesh Circle,  
TDelecom Circle, Shimla-171004. Respondents

(through Sh. M.M. Sudan, advocate)

ORDER(ORAL)

delivered by Hon'ble Smt. Lakshmi Swaminathan, M(J)

The applicant is aggrieved by the order  
dt. 12.1.93 passed by Respondent No.3 bearing  
endorsement dt. 20.2.93 dealing with the relieving  
and taking over charge of Sh. Nandan Singh Bhist.

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His appeal against the transfer out of Delhi to Himachal Pradesh was rejected by the Appellate Authority's order dated 17.8.94 which he ~~also~~ has <sup>also</sup> challenged.

2. The brief facts of the case are that the applicant joined Central Telegraph Office Delhi Circle as Circle Service Telegraphist in 1985. According to him in 1991-92 he had a family dispute and in a fit of anger he requested that he be transferred out of Delhi. The date on which he had made the application for mutual transfer is, however, not mentioned in the O.A. According to the applicant before the consent for the transfer request made by him had been accorded by the respondents, because of the sudden change of the domestic circumstances, he withdrew his request for transfer to Himachal Pradesh vide his representation dt. 5.2.1993. Then, he submits he fell sick on 8.2.1993 although he managed to see the Assistant Chief Superintendent (G-2) on that date in response to the telegram asking him to meet him. Thereafter he submitted another application dated 13.2.1993 for withdrawal of his request for mutual transfer as contained in his representation dt. 5.2.93.

3. The learned counsel for the applicant submits that when the applicant submitted his request for withdrawal of the mutual transfer which he had also requested earlier on 5.2.93, he had not been relieved from Delhi. He further submits that in accordance with the order dt. 12.01.93, the

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conditions mentioned therein had to be fulfilled, ~~namely~~ including the written declaration to be signed by the applicant. He also referred to the letters dated 30.4.93 and 6.7.93 from the Delhi Office reciting therein that if the office at Shimla are prepared to accommodate the request of the applicant sympathetically they can accommodate him back at Delhi. The applicant has ~~also~~ challenged his transfer to Shimla mainly on the ground that it is in violation of the extant instructions as he being a Scheduled Caste person, he could not be transferred away from his home town without his will/consent. In the circumstances, the prayer has been made that the respondents may be directed to take him back in the original post at Delhi on which he was working prior to the withdrawal of the request for mutual transfer or take him back at Delhi in a suitable post in accordance with their own letters.

4. The respondents have filed a reply controverting the above. They have submitted that the applicant has himself applied for mutual transfer vide his application dated 5.10.92. In this application he has stated that his wife is frequently ill because of Delhi's climate and so he wanted a transfer to Shimla. According to them, approval of the competent authority had been obtained on his request on 31.12.92 and thereafter the approval letter was issued on 12.1.93. In pursuance of the above letters they have submitted that by the telegram sent from the office of STI Dharamshala dt. 2.2.93, the applicant was directed to report to the office at Telegraph Office, Nahan w.e.f.

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5.2.93 (afternoon) for further duties. In this telegram it was also mentioned that Sh. Nandan Singh Bhist will be relieved on the same day for CTO, New Delhi. They have stated that the applicant made another application on 4.2.93 requesting that he may not be sent to Nahan Telegraph Office following which the Delhi Office sent a Telegram not to relieve Sh. Nandan Singh Bhist till further orders, as the applicant refuses to be relieved for DTO Nahan. However, on the same date another application was submitted by the applicant in which he mentions that he may be relieved for Nahan w.e.f. 5.2.93 (afternoon). They have also enclosed the required form which he has filled on 4.2.93, in terms of the order dated 31.12.92. They submit that the applicant thereafter contacted the office at Nahan on telephone which was then conveyed to the Delhi Office by a Telegram dt. 4.2.93 that he is willing for transfer to T.O. Nahan. Accordingly, Sh. Sudan, learned counsel for the respondents submits that the transfer of the applicant to Himachal Pradesh has been done in accordance with his request made on 5.10.92 alongwith his subsequent request of 4.2.93 in terms of Rule 38(a) of P & T Manual. He has also submitted that on another request made by the applicant that he may not be transferred to Nahan but to Shimla, his request has been acceded to by the Shimla Circle. He, therefore, submits that from the facts it can be seen that at each point the request of the applicant has been sympathetically considered and the averments made to the contrary that he has been forced to go on transfer

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to Shimla are not correct. The respondents have, therefore, submitted that the applicant is not entitled to any relief.

5. I have considered the pleadings on record and the submissions made by the learned counsel for both the parties.

6. The applicant's case is that the respondents insisted on his transfer out of Delhi to Himachal Pradesh, even though he had already withdrawn his request for such transfer. On perusal of the application and the annexures thereto, one cannot help noticing that the applicant has given contradictory facts and reasons for his request for transfer out of Delhi initially in 1991-1992. While in this application the applicant states that he made such a request to go out of Delhi because of some family disputes, this is believed in the application submitted by him to the respondents dated 5.12.92, where he states that it is because of his wife's illness in Delhi. This application is countersigned by Shri Nandan Singh Bhist who had agreed for mutual transfer from Shimla on the same date. In this application, there is no mention about the family dispute at all. This is striking. Further it is noticed that in the OA the applicant has not given the date when he made his request in 1992 for transfer out of Delhi nor has he mentioned the date when he made the subsequent request on 4.2.92, as seen from the annexures given in the reply.

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7. The 1d. counsel for the applicant has taken a plea that he respondents have not communicated the fate of applicant's request for transfer to Shimla/Himachal Pradesh till much after the relevant dates mentioned above. He submits that the letter dated 12.1.93 itself mentions an ~~amendment~~<sup>endorsement</sup> dated 20.2.93 and even this has not been served upon him. However, from the copy of the letter filed with the reply, issued by the New Delhi office on the same date i.e. 12.1.93, it is seen that a similar letter had been issued to the applicant and Shri Nandan Singh, who ~~was~~ also informed that the mutual transfer was subject to the terms and conditions mentioned therein. This letter also contains an endorsement of 9.2.93 which refers to the approval of the competent authorities of Delhi and HP Circle to the transfer dated 31.12.92, 16.1.93 and 8.2.93, respectively. These letters have to be read together in the context of the two applications admittedly made by the applicant on 4.2.93, which starts with the sentence "I am to state that I have been mutually transferred to Nahan Telegraph Office, but I do not want to go there. So I may not be sent there", and the other "I am to state that I have been transferred mutually under para 38 to D.T.O. Nahan. So I may kindly be relieved w.e.f. 5.2.93 A/N". These applications clearly show that he was fully aware of his transfer to Nahan on 4.2.93. Taking into account these facts and the circumstances of the case, therefore, the submissions made by the applicant that he had not at all been communicated the fate of his request for mutual transfer before he was forced on transfer, <sup>is therefore, rejected.</sup> is rejected.

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8. Another relevant factor is that on 4.2.93 itself alongwith his application to be relieved w.e.f. 5.2.93, the applicant has also submitted the necessary proforma duly signed in accordance with the provisions of Rule 38(a) of P&T Manual. Shri Sant Lal, learned counsel, however, pointed out that in this proforma, the applicant had mentioned that he was working as Circle Service Telegraphist in DTO, Prasad Nagar and on his transfer to DTO, Prasad Nagar he gives the declaration. He, therefore, submits that the delcaration does not deal with the applicant's transfer from New Delhi to Himachal Pradesh. No doubt there appears to be some mistake in the declaration as to the place of transfer. However, on reading the request made by the applicant dated 4.2.93 to be relieved w.e.f. 5.2.93 <sup>for Delhi to</sup> ~~for out of~~ DTO, Nahan together with the proforma, which he had filled up on the same date and considering the fact that there will be no necessity to give such a declaration under para 38 if he was only to be retained as DTO Prasad Nagar, New Delhi, there is no merit in the applicant's arguments. It is clear from these facts that the applicant himself had given the declaration under para 38 of the P&T Manual, <sup>for B</sup> ~~for~~ his transfer from New Delhi to Shimla/Himachal Pradesh with respect to his request for mutual transfer as per the rules and wanted to be relieved from 5.2.93 (AN).

9. In the above facts and circumstances of the case, there is no merit in this application. The respondents have not acted arbitrarily, unreasonably or contrary to the rules which justifies any interference in the matter.



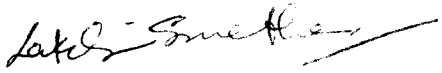


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10. However, in view of the respondents' own letters later on, in case the applicant makes any representation for transfer back to New Delhi, they may consider the same sympathetically if they so wish and in accordance with the rules.

11. In the result, the application fails and is dismissed. Parties to bear their own costs.

  
(Smt. Lakshmi Swaminathan)  
Member(J)

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