

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. _____
T.A. No. 1172/96

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DATE OF DECISION 27.9.96

Shri J.C. Joshi

Petitioner

Shri S.S. Dass

Advocate for the Petitioner(s)

Versus

UOI & Ors

Respondent

MS Aprana Bhatt

Advocate for the Respondent(s)

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The Hon'ble Smt. 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. 1172/96

New Delhi this the 27th day of September, 1996

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

J.C. Joshi,
S/o late Shri H.K. Joshi,
R/o C-2B/48-A, Janakpuri,
New Delhi-58.

...Applicant.

By Advocate Shri S.S. Dass.

Versus

1. Union of India through
Secretary,
Ministry of Water Research,
Govt. of India,
New Delhi.

2. Secretary,
Central Water Commission,
305, Sewa Bhawan,
R.K. Puram,
New Delhi.

...Respondents.

By Advocate Ms Aprana Bhatt, Central Govt. Counsel.

O R D E R

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

The applicant has filed this application impugning the validity of the transfer order dated 8.5.1996 transferring him from Delhi to Bhopal and the relieving order dated 10.5.1996.

2. The applicant had made representation dated 9.5.1996 which had been rejected by memo dated 21.5.1996. He had also made a subsequent representation dated 23.5.1996. The main grounds on which the applicant has impugned the transfer order are (1) based on the provisions of the clause (5) of the Office Memorandum

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dated 11.12.1989 of the Transfer Policy for Central Water Commission (CWC); and (2) because of his wife's acute medical problems for which she is being treated at All India Institute of Medical Science (AIIMS), New Delhi.

2. The respondents have filed a reply. I have also heard the learned counsel for the respondents. They have submitted that the medical condition of the applicant's wife was duly considered by the respondents when they considered his representation. They ^{have} submitted that the applicant has been posted in Delhi for a long period and that his transfer was made on administrative exigencies. Ms. Aprana Bhatt, learned counsel for the respondents, has submitted that the applicant had been sent in the newly created post of Director at Bhopal. With regard to the Clause (5) of the transfer policy on which the applicant is relying on, the respondents ^{only} have submitted that the said clause / ~~also~~ states that ^{within a period of two years before superannuation} the transfer shall not ordinarily be made. They have submitted that no suitable candidate with a comparative long stay was available and hence the applicant was transferred, which was also the point stressed by the learned counsel during arguments.

3. Clause 5 of the transfer policy relied upon by both the parties reads as follows:

"Clause 5:

Employees due for retirement on superannuation within a period of two years before their superannuation shall not ordinarily be transferred, if persons of lesser age are available for manning the posts. However, request for transfer to places of their choice, if made would be considered"

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4. It is an admitted fact that the applicant is to retire from service in October, 1997. Therefore, the transfer order dated 8.5.1996 transferring him from Delhi to Bhopal has been passed within a period of two years before the date of his superannuation. The respondents have not placed any materials on record to show that they had no other alternative but to transfer the applicant to Bhopal which, according to their own policy, should not ordinarily have been done or the fact that they did not have any younger person available for being posted at Bhopal. Although the respondents have stated that there was no suitable candidate with a comparative long stay available for this posting, this criteria does not satisfy the conditions laid down in the Office Memorandum dated 11.12.1989 of the transfer policy for Central Water Commission. The settled position of law in transfer cases is that the same can be interfered with only in limited circumstances in cases where it is justified on the ground of mala fides or infraction of any professed norms or principles or violation of any statutory provisions (See N.K. Singh Vs. Union of India & Ors. (ATC 1994(28) 246), Union of India Vs. Abhas (SLR 1993(2) 585)). As seen from the facts and circumstances given above, the respondents have not shown how they have fulfilled the criteria laid down in Clause 5 of the Office Memorandum on transfer policy dated 11.12.1989. The applicant was to

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1 superannuate within one and a half years time of the impugned transfer order. Therefore, having regard to the aforesaid decisions of the Supreme Court and the facts and the circumstances of this case, since the respondents have not followed their own policy, the impugned orders dated 8.5.1996 and 10.5.1996 are quashed and set aside.

5. In the result, the O.A. is allowed. No order as to costs.

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

'SRD'