

4

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 770/1994

NEW DELHI THIS THE 24TH DAY OF AUGUST, 1994.

**MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN  
MR.B.N.DHOUNDIYAL, MEMBER(A)**

Shri P.P.Sudha  
S/o late Shri G.C.Das  
R/o 97-A, Chandralok  
Shahdara, Delhi  
BY ADVOCATE SHRI GYAN PRAKASH.

APPLICANT

Vs.

1. Union of India,  
through Secretary,  
Ministry of Defence  
South Block  
New Delhi.
2. Director General  
National Cadet Corps  
West Block IV, R.K.Puram,  
New Delhi-110066. ...

RESPONDENTS

SHRI J.BANNERJI, PROXY COUNSEL  
FOR SHRI MADHAV PANIKAR, COUNSEL.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The applicant, a Scheduled Caste, is a Junior Hindi Translator in the National Cadet Corps (N.C.C.). He is holding a transferable post. His transfer can be effected throughout the country. He feels aggrieved by the order of transfer from Delhi to Madras. Hence this original application.

2. On 2.5.1991, an order was passed bringing the applicant to Delhi on a supernumerary post of Junior Hindi Translator. Before that, it appears, the applicant was transferred to N.C.C. Directorate of West Bengal & Sikkim and the said posting at Delhi was given to him under delegated powers as a special case. On 7.7.1993, an order was passed by the Director General N.C.C., posting the applicant to N.C.C. Directorate of Tamilnadu, Madras. On 28.3.1994, an order was passed directing the applicant to report to N.C.C. Directorate, Madras on permanent posting. The applicant, it appears, did not comply with the order dated 7.7.1993, therefore,

Suy

the order dated 28.3.1994 was passed. It was also recited in the order dated 28.3.1994 that the applicant's name will be struck off the strength of DGNCC with effect from 25th April 1994. It was also recited in the said order that the applicant was allowed time till March 1994 to enable him to settle his domestic problems after considering his representation and personal request.

Two orders, namely of 7.7.1993 and 28.3.1994 are being impugned in the present application.

3. A counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The applicant joined N.C.C. Directorate of West Bengal and Sikkim, Calcutta on 8.12.1988. He requested for transfer to Delhi vide his application dated 12.11.90. No post of Junior Hindi Translator was available at Delhi. His request was kept on record for consideration in future. On the recommendations of the Dy. Director General, N.C.C. Directorate West Bengal & Sikkim, Calcutta, the applicant was posted on supernumerary strength in Delhi. This posting was given to him in order to sort out his domestic problems. The supernumerary post was created to accommodate the applicant after keeping one vacancy of Junior Hindi Translator unfilled in one of the N.C.C. Directorates. The transfer of the applicant was effected under the exercise of special powers despite the fact that no post of Junior Hindi Translator was available at Delhi. The applicant has already completed three years in Delhi. The Parliamentary Committee on Official Language visited N.C.C. Directorate Tamil Nadu on 2.1.1993. The Committee in its report had recommended that the vacancy of Junior Hindi Translator authorised to the Directorate should be filled up on priority for promotion of Hindi in Tamilnadu. This vacancy was kept unfilled to accommodate the applicant in Delhi. Since the absence of Junior Hindi Translator in Tamilnadu was hampering the pace of promotion

of Hindi in a non-Hindi speaking State like Tamilnadu, the applicant, who was on supernumerary strength of the Directorate General N.C.C, was transferred to the N.C.C Directorate, Tamilnadu due to exigencies of service.

4. It appears that this Tribunal did not grant any interim relief. However, in spite of the said fact, we are informed at the Bar, the applicant was continued in Delhi till 20.6.1994 and he was relieved of his duties on that day.

5. The learned counsel for the applicant has urged that the applicant being a Scheduled Caste, due consideration should have been shown to him on that count while posting him outside Delhi. He has brought to our notice, certain authorities supporting his submission. He has also relied upon a circular of the department. This circular provides that the Scheduled Castes should not be discriminated against in the matter of postings. The counter-affidavit makes out a case of non-discrimination towards the applicant. The decision of the Jodhpur Bench of this Tribunal in OA No.532/92 (B.S.VERMA Vs.UNION OF INDIA & ORS) given on 18.9.1992 on which considerable reliance has been placed by the learned counsel for the applicant says that in that case the department concerned failed to bring to the notice of the Bench any compelling circumstance or any administrative exigency to transfer the applicant in that case from Jaipur to Bombay. It is observed in that case that the mere fact that a Railway servant had completed three years was not a valid ground of transfer of a Scheduled Caste. This case is distinguishable. The counter-affidavit, as already indicated, has brought out compelling circumstances and the exigencies of service which necessitated the transfer of the applicant from Delhi to Madras.

Sly

7

6. Reliance has also been placed by the learned counsel for the applicant on a decision of the Ernakulam Bench of this Tribunal in OA No.1411/93(K.RAMACHANDRAN VS.THE DIRECTOR GENERAL, ALL INDIA RADIO (1994(2) S.L.J. (CAT) 89). This judgement is by a learned Single Member of this Tribunal. This was a case before the Ernakulam Bench where the applicant had been repeatedly transferred and the department had failed to satisfy the Tribunal as to why the applicant, a Scheduled Caste was being repeatedly transferred. It was held to be a mala fide ~~handi~~. This case again is distinguishable. The counter-affidavit, as already indicated, gives full reasons of transfer of the applicant from Delhi to Madras and we are satisfied with those reasons.

7. This application fails and is dismissed. No costs.

B.N.Dhoudiyal  
(B.N.DHOUNDIYAL)  
MEMBER(A)

S.K.Dhao  
(S.K.DHAON)  
ACTING CHAIRMAN

SNS