

Central Administrative Tribunal
Principal Bench

O.A. 434/2000

New Delhi this the 4 th day of July, 2000

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

O.P. Jaluthria,
S/o late Shri Raghunath,
R/o 17/915, Lodhi Colony,
New Delhi-110003.

... Applicant.

By Advocate Shri A.K. Behera.

Versus

1. Comptroller & Auditor General
of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110002.

2. Director General of Audit,
Defence Services,
L-II Block, Brassey Avenue,
New Delhi-110001.

... Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

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

The applicant has impugned the action of the respondents in passing the order dated 29.2.2000 rejecting his application, requesting for reconsideration and cancellation of the earlier order passed by them promoting and transferring him as Supervisor in their office at Allahabad. The impugned orders are dated 29.2.2000 and 18.2.2000.

2. The brief facts of the case are that the applicant is working in the grade of Senior Auditor with the respondents since 1.3.1984. Under the Rules, his next line of promotion is to the grade of Supervisor. He was earlier considered and promoted as Supervisor vide order dated 13.5.1997 and posted at Chandigarh when, according to him,

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there were two vacancies of Supervisors in Delhi. He had represented against that transfer order and in pursuance thereof, that order was cancelled. However, during the arguments Shri A.K. Behera, learned counsel has submitted that the earlier order promoting and posting the applicant at Chandigarh and its cancellation has not been challenged, although it has been referred to, in order to establish malice in law on the part of the respondents. According to the applicant, as many as 21 officers in the Department have been promoted and posted in New Delhi, as given in the list on pages 4-5 of the O.A. Learned counsel for the applicant has submitted that one vacancy of Supervisor was available in New Delhi on the death of Shri M.R. Pipal on 18.7.1999 against which the applicant could have been posted on his promotion to the grade of Supervisor vide their letter dated 18.2.2000, instead of posting him to Allahabad. He has also submitted that there is no sanctioned post of Supervisor at Allahabad as all the four sanctioned posts are at Delhi only. Hence, he has submitted that the rejection of the applicant's representation vide impugned order dated 29.2.2000 shows malice in law for which he has submitted that there is no need to establish any mala fide action on the part of any particular officer of the respondents' office. He has further submitted that the impugned action of the respondents shows bias and discrimination against the applicant as others have been posted in Delhi whereas he has been shunted out on promotion to Allahabad.

3. The respondents have controverted the above averments made by the applicant and have alleged that the application is an abuse of the process of law and have

prayed that the same may be dismissed. They have stated that the applicant has been in service in the respondents' office at New Delhi since 31.5.1975. He has an all India transfer liability and in the interest of administration, they have decided not to continue the same person indefinitely in a particular station. The applicant has been considered for promotion as Supervisor on selection basis and posted at Allahabad. They have refuted the allegations made by the applicant that there is no post of Supervisor in Allahabad because, according to them, the posts of Supervisor/Section Officer and Assistant Audit Officer are to be treated as one cadre and can be operated any where, subject to the condition that the actual strength does not exceed the sanctioned strength. Shri M.K. Gupta, learned counsel, has submitted that earlier when the applicant was promoted to the same grade and transferred to their office at Chandigarh, he had requested for retention at Headquarters which was rejected by the competent authority. They have also stated that there is no arbitrariness in their action and it is for the Head of the Department in his discretion to operate the post of Supervisor in any particular Station. Regarding the contention made by the applicant that as many as 21 officials have been promoted and retained in New Delhi, they have clarified the position in para 4.3 of their reply. From this, it is, inter alia, noticed that some of the officers have already retired, others belong to a separate cadre/post, still others have less than 2 years of service before retirement and the person at Serial No. iv, i.e. Mr. N.S. Chauhan against whom the learned counsel for the applicant had made a specific submission is away on deputation while another officer had been promoted to the

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cadre of Supervisor much before the impugned promotion order of the applicant. Shri M.K. Gupta, learned counsel has also very vehemently submitted that the applicant cannot claim a right to be posted against the vacancy arising out of the death of Shri M.R. Pipal, Supervisor on 18.7.1999 as the posting is within the discretion and powers of the Head of the Department. According to him, the posts of Supervisor/Section Officer and Assistant Audit Officer being in one cadre, the same can be operated under the jurisdiction of the Director General of Audit, Defence Services, New Delhi, as per his discretion. Learned counsel has submitted that in the circumstances of the case there is no question of malice in law, as alleged by the applicant in the action taken by the respondents which is in accordance with the settled law and rules. In the circumstances, he has prayed that the O.A. may be dismissed, vacating the ad interim order which has been continued. He has relied on the judgements of the Supreme Court in Varda Rao Vs. State of Karnataka (1986 (4) SCC 131 and Union of India Vs. S.L. Abbas (1993(2) SLR 585).

4. In the rejoinder, the applicant has reiterated his averments in the O.A., namely, that the action of the respondents is discriminatory, biased and mala fide, particularly because he could have been promoted against the vacancy arising out of the death of Shri M.R. Pipal, Supervisor in Delhi Cantonment office.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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6. From the facts mentioned above, and having regard to the position under the settled law on the scope of judicial review in transfer matters, as seen from the relevant cases, for example, S.L. Abbas's case (supra), N.K. Singh Vs. Union of India & Ors. (1994(28) ATC 246) and Gujarat State Electricity Board Vs. A.R. Sungomal Poshani (AIR 1989 SC 1433), there is no merit in this case. Allegations of mala fide in law made by the applicant have not been proved and there is no infraction of any professed norms and principles in the transfer effected by the impugned transfer order, transferring the applicant on promotion from New Delhi to ^{the} Allahabad office. The contention of the learned counsel for the applicant that there is no sanctioned post of Supervisor at Allahabad and hence the applicant could not be transferred there cannot be accepted, as the respondents have clearly stated in their reply that within the sanctioned posts of Supervisors, the Head of Office can operate the same in any Station. It is not denied that the applicant has an All India transfer liability and has also continued in Delhi for nearly 25 years. In the circumstances of the case, it cannot be held that the action of the respondents to transfer the applicant to Allahabad on promotion is either mala fide ^{based on} or of extraneous considerations or not in public interest, justifying any interference in the matter. It is settled law that the Courts or Tribunal are not an appellate authority sitting in judgement over the orders of transfer which have been done on administrative grounds and in this case no element of prejudice or arbitrariness has been established by the applicant.

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7. In the result, taking into account the facts and circumstances of the case, there is no mala fide, arbitrariness or illegality in the impugned transfer order dated 18.2.2000 or in the rejection of his representation by the competent authority by the impugned order dated 29.2.2000. Accordingly, the O.A. fails and is dismissed. Interim order dated 14.3.2000 stands vacated. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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