

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 734/2000
T.A.No.

195

(20)

DATE OF DECISION 20-9-2000

Sh. A. Chaudhary

....Petitioner

Sh. R. P. Kapur

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors.

....Respondent

Sh. K. R. Sachdeva

....Advocate for the
Respondents.

CORAM

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

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan
Member/J)

Central Administrative Tribunal
Principal Bench

O.A. 734/2000

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New Delhi this the 20 th day of September, 2000

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

Shri A. Chaudhary,
S/o Shri P.K. Chaudhary,
R/o Flat No.1, Q-6-3, Sector-XIII,
R.K. Puram, New Delhi-66. Applicant.

(By Advocate Shri R.P. Kapur)

Versus

1. The Union of India,
Ministry of Urban Development
and Employment,
through its Secretary,
Nirman Bhawan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan, New Delhi.
3. The Deputy Director (Administration-I),
Directorate General of Works,
Central Public Works Department,
Nirman Bhawan, New Delhi.
4. Shri K.A. Ananthanarayanan,
Superintending Engineer (E),
CPWD, Jaipur, Rajasthan.
5. Shri Ashim Sinha,
Superintending Engineer (Electrical),
CPWD through Respondent 3 above. Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R

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

The applicant is aggrieved by the order passed by the respondents dated 13.4.2000 transferring him with immediate effect from SE (E) (P&A), NZ, New Delhi to SE (E), CCEC-II, Calcutta.

2. The aforesaid transfer order has been challenged by the applicant on a number of grounds set out in the O.A. One of the grounds he has taken is that he had

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filed another O.A. (OA 2065/97) which is pending in this Bench. That O.A. has been disposed of by Tribunal's order dated 6.9.2000 (copy placed on record). He has also alleged 'administrative bias' and 'system's bias' against the respondents but these allegations have neither been proved nor mala fides alleged or proved against any particular officer of the respondents in passing the impugned transfer order. Shri R.P. Kapur, learned counsel, has emphasised that when the respondents had called for options to be exercised by Office Memorandum dated 17.1.2000 by the concerned officers for posting, the applicant had opted to be posted in order of preference, (1) Bombay; and (2) any station in Northern Region. He has contended that as the applicant had exercised his option, this should have been considered by the competent authority while effecting posting of the concerned officers which, according to him, has not been done. He has, therefore, very vehemently submitted that the official records must be produced by the respondents and perused by the court to verify these facts. He has also submitted that although the applicant had admittedly mentioned his second option as any station in the Northern Region, the respondents had correctly understood these as Jaipur, Chandigarh and Lucknow, as mentioned by them in paragraph 4.8 of the counter affidavit. He has, therefore, submitted that there is no infirmity in the manner the applicant has exercised his option by indicating "any station in Northern Region". His further contention is that at the time when the first transfer order was issued, he could have been very well posted at Jaipur where Shri V.K. Kapoor was posted on his return from deputation in Nepal. He has also

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submitted that not all the persons included in the transfer order had exercised their options for posting in pursuance of respondents' O.M. dated 17.1.2000 and the applicant having stated that his first preference was Bombay, that option should have prevailed on the respondents.

3. The respondents in their reply have submitted that as the applicant is a Group 'A' officer, he is liable to be transferred anywhere in India in public interest. They have stated that the impugned transfer order is a general transfer order in the grade of Superintending Engineer (Elect.) issued by the respondents in which 18 officers, including the applicant, have been dealt with. Learned counsel has submitted that as the transfer order has been passed in public interest, in exercise of the powers conferred on the competent authority in the exigencies of the administration, this is not a case which warrants setting aside of the order. He has emphasised on this based on the judgments of the Supreme Court in **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), where it has been held that interference would be justified only if there is any mala fide or infraction of any professed norm or principle. His contention is that the applicant has failed to establish any of these grounds and has, therefore, prayed that the O.A. may be dismissed and stay order dated 1.5.2000 vacated.

4. An ad-interim stay order had been passed on 1.5.2000 to maintain status quo regarding the transfer qua the applicant. This order has been continued by order

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dated 1.6.2000 after hearing both the parties in which it has been stated that no decision has been taken on the merits of the O.A. Accordingly, learned counsel for the parties have been heard on the O.A. and I have also perused the relevant records submitted by the respondents.

5. Much reliance has been placed by the learned counsel for the applicant on the option exercised by the applicant in which he had indicated his choices as (1) Bombay and (2) any station in Northern Region. In the Office Memorandum dated 17.1.2000 issued by the respondents calling for options for further posting of officers on completion of tenure, they have clearly indicated that the officers may indicate the names of four stations in order of preference. Considering that the applicant is a Superintending Engineer which is a Group 'A' post, the contention of Shri R.P. Kapur, learned counsel that the option exercised by the applicant is not only perfectly in order and sufficient but totally binding on the respondents cannot be accepted. The O.M. of 17.1.2000 also clearly indicates the position that there is no commitment on the part of the Department to post the officers to the station of their choice. The respondents have also stated that the applicant has already done previous postings at Bombay. Further the contention of the applicant that he should have been posted in Jaipur, in place of Shri V.K. Kapoor, is again without any merit because it is settled law that who should be posted and where is for the competent authority to decide, taking into account the relevant facts and administrative exigencies. In the present case, no mala fides have been alleged against any particular officer, let alone proved and administrative or systems bias as alleged

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are vague and unsubstantiated. It is also relevant to note that the applicant has an All-India transfer liability. In the facts and circumstances of the case, there appears to be no good grounds on which the impugned transfer order dated 13.4.2000, with regard to the applicant should be quashed and set aside. In N.K. Singh Vs. Union of India (*supra*), the Supreme Court has held as follows:

....Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated".

6. I have also perused the relevant records and I am satisfied that the option exercised by the applicant had been placed before the competent authority before the aforesaid decision to transfer the officers had been taken and the plea to the contrary taken by the applicant also fails.

7. As mentioned above, O.A. 2065/97 filed by the applicant has since been disposed of by order dated 6.9.2000 and, therefore, that ground also fails.

Yours

8. In the result, for the reasons given above, as
there is no merit in this application. O.A. fails and is
accordingly dismissed. Consequently, the stay order stands
vacated. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'