

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1148
T.A. No.

1989

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DATE OF DECISION 10.8.1989

V.K. Wadhwa Applicant (s)

Shri Mahesh Shrivastav Advocate for the Applicant (s)
Versus
Director, Printing Press & Ors. Respondent (s)

Shri N.S. Mehta, Sr. Central Govt. Advocate for the Respondent (s)
Standing Counsel.

CORAM :

The Hon'ble Mr. L.H.A. Rego, Member (A)

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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

The applicant has impugned herein, the order dated 28.4.1989 (Annexure A1), passed by the respondents (respondent 2), transferring him, from his posting as Accountant in the Government of India Press, Ring Road, New Delhi, to Nilokheri in Karnal Distt. of Haryana State, and has prayed, that the same be annulled, and that appropriate directions be given to the respondents, restraining them from implementing the said transfer order.

2. The following is the salient background. The applicant was posted to the Government of India Press, Ring Road, New Delhi, as an Accountant on 23.2.1983. While he was working in the said Press, he seems to have come for adverse notice on 12.2.1986 and again on 7.6.1986, on account of altercation with his colleagues and certain other misdemeanour. A departmental enquiry (DE) is said to have been instituted against him on 3.5.1988 (Annexure A3), in regard to the earlier incident and the same is said to be in progress. As

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regards the second act of misdemeanour, the case seems to have been dropped for want of concrete evidence. On 6.4.1989, he, among 11 other Accountants, was transferred by respondent No. 2. The applicant was transferred from the Government of India Press, Ring Road, New Delhi, to the Government of India Press at Koratty, in Kerala State. This transfer of the applicant seems to have, later on, been cancelled on account of certain administrative difficulties. As on the date of this transfer, the applicant had put in nearly four years of service as an Accountant in the Government of India Press, Ring Road, New Delhi. The respondents state that the above order of transfer, was issued, on the principle of 'rotational transfers'. The applicant alleges, that his subsequent transfer on 28.4.1989, is by way of punitive measure and, therefore, calls for interference by the Tribunal. He also avers, that his wife is serving as a teacher in the Government Girls Senior Secondary School, Uttam Nagar, New Delhi, run by the Delhi Administration and that, according to the policy of the Government of India, enunciated in its Memo. dated 24.4.1986, husband and wife in Government service should be posted at the same station, to enable them to lead a normal family life, in the interest of education and welfare of their children. The applicant states, that he had represented to the concerned authorities, for cancellation of his transfer to Nilokheri in Haryana State but to no avail. He has, therefore, come before this Tribunal for justice, through his present application, which has been resisted by the respondents. The applicant has also filed a rejoinder, to the written statement of the respondents.

3. Shri Mahesh Shrivastava, learned counsel for the applicant alleged, that the transfer of his client, was actuated by mala fides and was by way of a punitive measure, to substantiate which, he referred, in particular, to pages 6 and 10 of the reply of the respondents and Annexure IV thereto. It was evident therefrom, that the respondents had issued the impugned order of transfer of his client, he said, because of his misbehaviour, with both the Manager and the Assistant Manager of the Government of India Press, Ring Road, New Delhi, as also on account of disharmony between him and his colleagues

in the said Press. The other misdemeanour attributed to him was the late attendance on duty at the Press, which was impairing the efficiency of disposal of works of an urgent nature, in the Budget & Accounts (B & A) Section of the Press, in which he was working. This was, in fact, a contributory factor, he said, which led to the transfer of his client to Nilokheri, by the impugned order dated 28.4.1989.

4. It was, thus, evident, Shri Shrivastava asserted, that the said order of transfer of his client to Nilokheri was by way of a punitive measure, as revealed by piercing the veil, though the said order, on the face of it, appeared innocuous.

5. Relying on the decisions of the Principal Bench, Central Administrative Tribunal in ATR 1986 (1) CAT 304 : 1986(2) SLR 69 (K.K. JINDAL Vs. GENERAL MANAGER, NORTHERN RAILWAY), and (1988) ATC 253 : ATR 1988 (2) CAT 116 (KAMLESH TRIVEDI Vs. INDIAN COUNCIL OF RESEARCH & ANOTHER), Shri Shrivastava pleaded, that his client could not be transferred to Nilokheri, by the aforesaid impugned order, by way of punishment, particularly when the D.E., referred to above, instituted against him, was not concluded, and the guilt was not established against him.

6. Refuting the above contentions, Shri N.S. Mehta, Senior Central Government Standing Counsel, appearing for the respondents, asserted, that the impugned order of transfer of the applicant, dated 28.4.1989, was an order of transfer simpliciter, and nowhere, did it indicate, that the said order of transfer was by way of penal measure, as alleged by the applicant. Besides, he submitted, that the said order was not a lone transfer order, in respect of the applicant, as there was another Press employee, namely, Shri M.P. Damodaran, who was also shown therein, as transferred to the Government of India Press at Aligarh. Though the application was replete with instances of altercation of the applicant, with his colleagues, in the Government of India Press, Ring Road, New Delhi, and though in the relevant para. of the reply to the application, inclusive of certain annexures, there was a reference to the alleged misdemeanour of the applicant,

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these instances, Shri Mehta stressed, did not weigh on the mind of the respondents, while issuing the impugned order of transfer of the applicant to Nilokheri. The said order of transfer, he urged, was in public interest and was not discriminatory against the applicant, as alleged by him. The said order of transfer was effectuated on the avowed policy of the Department of 'rotational transfers', he asserted.

7. Calling in aid, the dictum of the Supreme Court in a recent case, in 1989(3) SC 20 'Judgments Today' (GUJARAT ELECTRICITY BOARD AND ANR. Vs. A.S. POSHANI), Shri Mehta urged, that the Supreme Court had made it abundantly clear, that transfer was only an incident of service and no legal right vested in an employee, to be posted to a particular office, that transfer is a condition of service and the employee has no choice in the matter and cannot avoid reporting himself for duty at the place of transfer, except with proper permission. The applicant was, therefore, duty-bound, he pleaded, to report for duty at Nilokheri, in accordance with the impugned order of transfer dated 28.4.1989.

8. I have bestowed careful thought on the rival averments and have gone through the relevant papers placed before me by either side. The impugned order of transfer dated 28.4.1989 (Annexure A1), ex facie, may seem innocuous, or as an order of transfer simpliciter, but one cannot be oblivious of the background to the transfer of the applicant, on the evidence that stares on the face, as one goes through the very reply of the respondents and the relevant documents. It is apparent, that the applicant became a thorn in the flesh of the respondents in the Government of India Press, Ring Road, New Delhi. The right course of action for the respondents, was to conclude the disciplinary proceedings initiated against him, to its logical end, and take condign action against him. Instead of doing so, the respondents have given a short shrift to this mandatory procedure and have transferred the applicant, by way of a penal measure, to Nilokheri in Haryana State by their impugned order dated 28.4.1989.

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The dictum of the Supreme Court, relied upon by the respondents, in POSHANI's case, does not come to their avail in the face of these glaring facts. The respondents cannot gainsay that the said impugned order of transfer of the applicant was not actuated by way of punishment. In the result, I have no hesitation in setting aside the impugned order dated 28.4.1989 (Annx. A1) passed by respondent No. 2, transferring the applicant from his present posting, in the Government of India Press, Ring Road, New Delhi, to Nilokheri in Haryana State, as illegal.

9. The application is disposed of, as above, but, with no order, however, as to costs.


(L.H.A. REGO) 10.8.89
Member (A)
10.8.1989.