

⑥

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1192 of 1989  
T.A. No.

DATE OF DECISION 22.12.1989

H.S. Sodhi \_\_\_\_\_ Applicant (s)

Shri Umesh Mishra &

Shri R.L. Sethi \_\_\_\_\_ Advocate for the Applicant (s)

Versus

~~Union of India & Others~~ \_\_\_\_\_ Respondent (s)

~~Shri P.P. Khurana,~~ \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri H.S. Sodhi, Superintendent E/E-I, Office of the Garrison Engineer (P) 6355, against impugned order Nos. 41623/EM-I/18/E/D dated 31.3.89 and 41202/GE 865/59/EID(2) dated 17.4.89 passed by the Chief Engineer, Northern Command, regarding his transfer to Srinagar.

The brief facts of the case are that the applicant is employed as Superintendent E/E-I in M.E.S. Department and is presently serving under the Command of Garrison Engineer (P) 6355 C/O 56 A.P.O. and that during his service of 24 years, he has served in various stations in India, mostly in snow bound areas/field areas and in staff duties. The applicant contends that the present posting of the applicant has been made because of the partial and malafide intention of Respondent No. 2 (Chief Engineer, Northern Command) to harass him and his family. Vide Respondent NO. 2's orders dated 29.2.1988 the applicant was transferred to Rajouri but no movement orders were issued and the transfer orders were cancelled after six months without assigning any reason. According to the applicant, he has been transferred to Chief Engineer, Srinagar Zone who is instigating a false inquiry against the applicant on account

ma

of deficiency of Govt. stores during the period of service under the Commander Works Engineer 5242. An inquiry was initiated in 1986 but which was dropped by the court as the applicant had obtained a clearance certificate from the competent officer. The Chief Engineer Srinagar Zone has again ordered the same inquiry against the applicant with the same article of charges by an inferior authority than the first enquiry and with a malafide intention of the concerned officer against which the applicant made a representation to the General Officer Commanding-In-Chief, Northern Command, bringing out the facts of the case. According to the applicant, he has been transferred to Srinagar as he will be under the direct administrative control of the Chief Engineer Srinagar Zone and can punish him by involving the applicant in the illegal inquiry. The applicant prays that either his posting orders to Srinagar may be cancelled or he may be posted to any one of the following stations viz. Zol (H.P.), Dalhousi, Manali, Surnkot, Samba, Akhnoor, Ferozpur, Chandigarh and Khosli and also that the illegal inquiry against him may be dropped as the matter has already been examined carefully by the staff court of Enquiry headed by the Station HQ No. 2 and no charge was established against the applicant.

3. The respondents in their reply have stated that the transfer order dated 31.3.89 issued by Respondent No. 2 has the force of law and the same is not liable to be quashed. Regarding cancellation of his transfer orders issued in February, 1988, from Jammu to Rajouri, respondents have stated that the vacancy position at Rajouri underwent a change due to reduction in establishment as a result of which the applicant's posting order to Rajouri was cancelled and he was allowed to remain at Jammu. The applicant's claim to allow him to serve at Jammu could not be entertained as he was the longest stayee at Jammu and his posting out of the station was necessary to cater for repatriatees who were due for turn over from tenure stations. The applicant could not be allowed to choose the stations of his choice for the purpose of posting as postings/transfers are ordered keeping in view the availability of vacancies and also the exigency of service. The applicant has already been struck off strength of GE (P) 6355 w.e.f. 28th August, 1989, with directions to move to his new duty station. As regards the second order dated 17th April 1989, it has not been admitted by the court and the applicant has been granted liberty to file a separate application. The respondents admit

DP

that a Departmental inquiry has been constituted against the applicant at Srinagar and it was considered more appropriate to post him at Srinagar to avoid his frequent moves and to ensure <sup>it</sup> prompt finalisation. Due to this administrative requirement, the applicant has been posted to Srinagar.

4. The case of the applicant is that his transfer from Jammu to Srinagar is arbitrary, discriminatory and against the transfer policy applicable to him. He has been transferred during the mid session of the education of the children and has been transferred several times. He has already worked in very difficult areas, including snow-bound areas of Leh for more than 11 years and he is being transferred to Srinagar in order to harrass him so that the Chief Engineer, Srinagar, can initiate proceedings against him. The applicant has alleged malafide against the Chief Engineer, Srinagar. The learned counsel for the applicant said that the respondents have supported the transfer as being in accordance with the transfer policy laid down by the respondents and have also justified it under the administrative requirements. He said that the respondents treated the applicant as surplus at Jammu and posted him to Srinagar when there was a vacancy at Jammu itself. <sup>R</sup> <sup>He further stated that</sup> The respondents <sup>R</sup> have admitted that the applicant was transferred from Jammu to Rajouri on tenure basis, but have transferred him to Srinagar without any justification and a transfer from a peace station to another peace station is prohibited under the transfer policy. The respondents have admitted that the applicant was sent to Rajouri on a tenure basis whereas Srinagar is not a tenure station. Para 6 of the transfer policy requires that options should be taken from the employees where such transfers are to be done on administrative grounds and prior permission of the Engineer-in-Chief is also required but these formalities were not carried out in the present case. Similarly, if the applicant was surplus, efforts should have been made to adjust him in the same area and if there was no vacancy in the same area, in the same Zone and then only in the Command. That no exercise was done to this effect establishes the arbitrariness of the respondents. Srinagar not being a tenure posting clearing shows the malafide of the respondents. <sup>The Applicant</sup> <sup>R</sup> who had volunteered for posting at three places. His case was, however, <sup>with</sup> <sup>R</sup> considered and he has been transferred repeatedly for which there has been no justification at all. The learned counsel for the applicant, Shri Umesh Mishra, said that if any disciplinary proceedings were pending at Srinagar, this fact should have been taken into

consideration when the applicant was transferred to Rajouri. He denies that any departmental enquiry is pending at Srinagar as no chargesheet has been issued to the applicant. Shri Mishra said that the applicant was not against transfer and was willing to go to any tenure station, as has been clarified in the rejoinder, but he wants protection of transfer during mid session and not to be posted at Srinagar where he is likely to be harrassed.

5. The learned counsel for the respondents said that he would not like to argue on merits whether the applicant should have been transferred or not as the applicant has himself agreed to go anywhere except Srinagar. He said that the applicant was the longest stayee at Jammu and had actually been transferred to Rajouri, but as the vacancy position at Rajouri underwent a change due to reduction in establishment, his transfer to Rajouri was cancelled and he was allowed to remain at Jammu. He could not continue at Jammu as he was the longest stayee at Jammu and his posting had become necessary to accommodate some repatriates who were due for turn over from tenure stations. He was allowed to remain at Jammu as long as a vacancy was available, but subsequently on implementation of the court decision in the case of Shri Surjit Singh of GE (P) 6355 Vs. Union of India, Shri Ssurjit Singh had to be promoted to the Grade of Superintendent in September 1987 and placed in position and as he was junior in stay in the formation, he had to be kept there. The applicant was not posted immediately on becoming surplus at the GE (P) 6355 but was allowed to stay due to the academic session of his children and was posted to Srinagar in March 1989 vide orders dated 31.3.1989. He said that two individuals, namely, the applicant and Shri Nirmal Chand had become due for posting out of Jammu. There was one vacancy at Udhampur and one at Srinagar. On administrative requirements, it was decided to post Shri Sodhi at Srinagar and Shri Nirmal Chand at Udhampur. Shri Khurana said that a departmental enquiry is to be held against the applicant at Srinagar and it was considered appropriate to post him at Srinagar to avoid his frequently going to Srinagar in that connection. The applicant knows about this departmental enquiry as admitted in his application itself. Shri Khurana said that the transfer in public interest should not be questioned and the respondents allowed to use the services of the applicant where they think his services can be best utilised. The reasons are the existence of a vacancy at Srinagar and the availability of the applicant at Srinagar where a departmental inquiry is to be held. He denied that

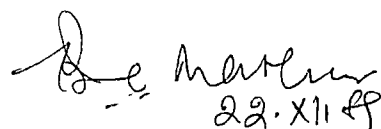
Man

there is any malafide in this transfer. The applicant had to be moved out of Jammu because he has been the longest stayee there and was sent <sup>to Srinagar</sup> because there was a vacancy at Srinagar and he would be <sup>involved</sup> ~~dealing~~ with this inquiry there. He said that the applicant could appear for the inquiry at Srinagar even if he was not posted at Srinagar, but posting him at Srinagar would avoid unnecessary travelling.

6. I have gone through the pleadings and have carefully considered the arguments by the learned counsel on both sides. It is true that the applicant has served in interior areas like Leh for a long time and deserves sympathetic consideration in the matter of posting. However, the principles governing transfers of Central Government employees have been well laid down by the courts. In the case of Gujarat Electricity Board & Another Vs. Atmaram Sungomal Pshani - Judgements Today 1989 (3) S.C. 20 - the Supreme Court has held that transfer is an incident of service and an employee has no choice in the matter. The Court has held that no Government employee has any legal right for being posted at any particular place. In another case Union of India & Ors. Vs. Shri H.N. Kirtania - Judgments Today 1989 (3) S.C. 131 - the Supreme Court has held that a Central Government employee on a transferable post is liable to be transferred from one place to the other in the country and such a transfer should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on grounds of malafide. In the case of Shanti Kumari Vs. Regional Dy. Director H.S.- 1981 (3) SLR - the Supreme Court has held that courts should not interfere in transfer orders in exigencies of service or due to administrative reasons. In that case, it was contended that the impugned order was in breach of Government instructions with regard to transfers but the Court held that this was a matter for the authorities to look into and redress the grievances of the employee, but courts should not interfere in such matters. This matter has also been discussed in the Full Bench case of Kamlesh Trivedi cited by the applicant in this case. The courts are to interfere with the transfer orders only where there is a malafide, colourable exercise of power or where there is violation of statutory rules. Normally guidelines issued by Government should be followed by the authorities, but these guidelines are not statutory and do not confer a judicial right on any person against such violation unless a malafide can be established. The transfer order of the applicant has been

<sup>param</sup>  
done by the Chief Engineer Northern Command against whom no malice has been established. The apprehension of the applicant is that he may be harassed by the Chief Engineer, Srinagar Zone. In this case we are not dealing with the departmental enquiry for which another application has been filed by the applicant, but the Chief Engineer, Northern Command, who has issued the transfer orders cannot be accused of malafide or arbitrary action nor can

h harass the applicant at Srinagar. It is not necessary to go into the details of the policy guidelines which are not statutory in nature, but there is reason to accept that the applicant has been transferred from Jammu to Srinagar as he had stayed for a long time at Jammu and has been posted on administrative grounds, namely, convenience in the matter of an inquiry. In case any illegality or arbitrariness is shown in the matter of departmental inquiry, that can always be examined in the Tribunal, but in view of the clear law laid down by the Supreme Court in the matter of transfers, I see no justification to interfere with the impugned orders. In the circumstances, the application is rejected. There will be no orders to cost.

  
22.XI.89  
(B.C. Mathur)  
Vice-Chairman