

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 1198/89

Date of decision: 8-6-90

Shri Sukhbir Singh

Applicant

versus

Union of India and others Respondents

CORAM: THE HON'BLE SHRI P.K.KARTHA, VICE CHAIRMAN (J)
THE HON'BLE SHRI D.K.CHAKRAVORTY, MEMBER (A)

For the Applicant Shri B.S.Mainee, Counsel.

For the Respondents Shri O.P.Kshatriya, Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri D.K.Chakravorty, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is working as a Travelling Inspector(Accounts), has prayed for quashing the impugned orders dated 23-2-1989 and 23-5-1989 transferring him from Kishanganj^{Delhi} to Shahjahanpur and directing him to take over the charge of TIA there. He has also sought for a direction to the respondents to retain him in Delhi.

2. The brief facts of this case are that the applicant was appointed as Clerk Grade II in 1979. He got regular promotions and is presently working as a Travelling Inspector(Accounts) in the grade of Rs.1640-2900. The applicant is an office bearer- the Treasurer- of the Northern Railwaymen's Union. According to the policy prevailing in the Traffic Accounts office, the union office bearers are not

to be transferred from one station to another.

The transfer of the staff is made according to the choice of stations entered in the priority register maintained for this purpose. The office bearers, whose turn fall for transfer outside Delhi in accordance with the rotational transfer, are retained in Delhi but in the priority register their names are entered for transfer to the stations of their choice and 'N' is marked against their names meaning 'Notional priority' for transfer. Although such trade union office bearers are not sent out of Delhi on transfer yet 'N' is marked against their names so that they may have their turn for transfer to the station of their choice. Even otherwise, the Travelling Inspectors(Accounts) are sent out of Delhi in accordance with the seniority position i.e. the seniors are retained /brought to Delhi and juniors are transferred out of Delhi. When the turn of the applicant for transfer came, he was not transferred out of Delhi because of the policy of the respondents not to transfer the office bearers out of Delhi. However, the respondents vide their order dated 8.6.87 transferred a number of Travelling Inspectors(Accounts), some of them seniors and the others juniors to the applicant but the applicant was retained at Delhi. Vide their Notice No.87/PA/DKZ/Adm.II/6/11/Union/Misc. dated 29.7.1988 the respondents decided to implement the Railway Board's as well as the General Manager's order by which

(6)

the Union Officials were liable to be transferred on promotion in the case of Traffic Accounts Office also with effect from 1.8.1988. Following the aforesaid order, the respondents promoted 17 Traffic Accounts Assistants and transferred them vide order dated 31.8.1988. The issue of transfer of Union Officials was subsequently discussed and it was decided that the office bearers of both the Unions covered by Office Order dated 31.8.1988 will be retained at Delhi as a special case. Consequently, order dated 31.8.88 was modified and some of the Union Officials were retained at Delhi. However, vide ^{order} S.O.O No.22 dated 23.2.89 the respondents ^{ordered} the transfer of some of the Traffic Accounts official including the applicant, who was transferred to Jullundhar. Subsequently the said order was modified ^{on} 27.2.89 and the applicant was transferred to Shahjahanpur ^{on} instead of Jullundhar.

3. The learned counsel for the applicant contended that the transfer of the applicant from Delhi to Shahjahanpur was contrary to the existing orders/policy/instructions because the decision to transfer the Union Office bearers on promotion was to be operated with effect from 1.8.1988 and the applicant who was promoted in 1986 and retained in Delhi, cannot be transferred out of Delhi. He further contended that the applicant cannot be transferred because neither he was promoted after 1.8.1988 nor he was the senior-most leave reserve TIA. Therefore, the impugned order of transfer is violative of the order of the respondents dated 29.7.1988 and the agreement entered into

by them on 30.12.88 regarding non-transfer of the Union Office bearers. He contended that not only the newly promoted office bearers had been retained in Delhi but even other two incumbents S/Shri Om Prakash and Ranaji Chauhan, who are not office bearers but have been promoted recently, have also been retained in Delhi. He also cited the names of some office bearers who were promoted after 1.8.1988 and retained at Delhi discriminating against the applicant. The learned counsel for the applicant pointed out that the applicant was not given any opportunity of hearing before transferring him out of Delhi and that the impugned order has been passed with mala fide intentions.

4. The learned counsel of the respondents has raised a preliminary objection regarding the maintainability of this application on the ground that the applicant has already taken charge of the post against which he was promoted and posted at Shahjahanpur which is the impugned order challenged by him in this application. He contended that there is no distinction between an office bearer of a Union or another employee as both of them can be transferred out of station on promotion. He further submitted that prior to 1.8.88 the Union office bearers were not transferred because of the agreement between the respondents and both Unions but from 1.8.88 both Unions have agreed that even office bearers are liable to be transferred on promotion whenever they are due.

It is averred in the counter-affidavit that a priority register is maintained to rationalise and to give the maximum benefits to the staff and the station of choice can be given only when there is turn of his priority

in this register subject to availability of vacancy. The concept of notional priority was started to keep Union Office bearers at Delhi but with effect from 1.8.88 the Union office bearers are treated at par with other employees including T.I.A and hence the allotment of beat after 1.8.88 will not attract the notional priority. Under the existing policy whenever any vacancy of T.I.A. arises, the senior most leave reserve T.I.A. will be posted and in case there are more than one vacancies, the senior most will get the nearest beat from the Headquarters and the junior most will get the farthest. The applicant was the senior most leave reserve T.I.A at the time of issuance of the order dated 23.2.1989. It is also stated in the counter-affidavit that the name of the applicant does not appear in the agreement dated 30.12.1988 and as such the said agreement will not be applicable in his case. There has been no violation of the rules of natural justice and it is nowhere mentioned in the service rules and conditions that the applicant will be given a hearing or consulted before his transfer. Since the post of the applicant is transferable, he can be transferred to any station of the Northern Railway.

5. The learned counsel for the respondent s averred that there are many authorities of the Hon'ble Supreme Court and the Central Administrative Tribunal wherein it has been held that if the transfer is made in the exigencies of service and not with mala fide intentions, the courts would not interfere with it. The applicant having already resumed the charge of the xxxxx post at Shahjahanpur on 10.6.89, the present application has become infructuous and deserves to be dismissed.

67

6. We have heard the learned counsel of both parties and have also gone through the records of the case carefully.

7. There are no disputed facts in this case. There is no doubt that the applicant is holding a transferable post. Shorn^{of} ~~of~~ inessential details, the applicant's main contention is that his transfer from Delhi to Shahjahanpur is violative of the guidelines covering the case of office bearers of the recognised Unions. Further, he has been given discriminatory treatment inasmuch as some other office bearers have not been transferred and some non-office bearers, junior to him, have been retained in Delhi in violation of the normal guidelines. The preliminary objection taken by the respondents that as the applicant has already taken over the charge of the post at Shahjahanpur, the application is no longer maintainable is not valid.

8. In view of the ^{two} recent decisions of the Supreme Court in Gujarat Electricity Board & another Vs. Atma Ram Sungomal Poshani (Judgements Today 1989(3) SC 20) and Union of India & Ors V. H.N. Kirtania (Judgements Today 1989(3) S.C.131), the transfers should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal. The operative part of the judgement in Gujarat Electricity Board Vs. Atma Ram Sungomal Poshani reads as under:-

"Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer....."

There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State of Gujarat. The respondent

had no legal or statutory right to insist for being posted at one particular place".

9. In Union of India & ors v. H.N. Kirtania, the Supreme Court observed as below:-

" The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest 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 ground of mala fides. There was no good ground for interfering with the respondent's transfer."

10. In the light of the ratio of the above pronouncements of the Supreme Court there is very little justification to interfere with the action taken by the respondents unless any gross violation of the statutory rules or guidelines or mala fides are established. The applicant in this case is an office bearer of one of the recognised unions namely, the Northern Railwaymen's Union. He was treasurer of the Union and it has been averred that later on he became the Vice President. He was promoted to the post of Travelling Inspector (Accounts) in 1986. In accordance with the normal rules of transfer on promotion, he would have been posted out of Delhi at that time. However, in accordance with the ^{then} guidelines relating to office bearers of the recognised unions he was retained in Delhi. However, the policy relating to transferability of office bearers of recognised unions in so far as it affects the Traffic Accounts ^{Department} was changed with effect from 1-8-88. We are unable to uphold the applicant's

contention that since he was promoted in 1986, the revised guidelines regarding transferability of the office bearers of the union applicable from a subsequent date, namely 1-8-88 would not be applicable to him. The transfer order issued on 23-2-89 was held over as the applicant had represented against it and his union also had apparently taken up the matter with the respondents. However, in May 1989, it was decided by the respondents that the applicant should be relieved to take over charge at Shahjahanpur. The applicant has alleged discrimination against him by quoting the agreement which was entered into between the recognised unions and the respondents on 30-12-1988. It has been averred by the respondents that this agreement is not applicable in his case. Respondents have also brought to our notice a note dated 22-5-89 recorded by the Deputy CAO. Paragraph 1 of the note dated 22-5-89 is reproduced below:-

" Divisional Secretary, NRMU(A/cs Divn) Shri K.D. Sarsen and Divisional Secretary, URMU (A/cs Divn) Shri J.C.Arora met me on date. After a short discussion it was agreed by both the Divl. Secretaries that transfer orders of Shri Sukhbir Singh, TIA issued on 23-2-89 may be implemented. These orders were earlier pending on request from one of the Unions."

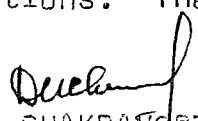
In view of the above, it is quite clear that the applicant does not have any valid ground to protest against his transfer. It is for the recognised unions and the respondents and not the Tribunal to decide whether in a given situation the office bearers of the union should or should not be transferred on promotion.

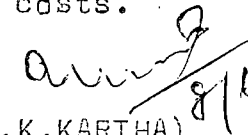
11. In the light of the above discussion, we do not find any merit in the present application and the same is dismissed.

12. We, however, direct the respondents to keep in view the notional priority for transfer in respect of the

applicant for the period during which he was retained at Delhi while functioning as an office bearer of a recognised union. It is seen from Annexure A-4 of the paperbook that the applicant's name occurs at Sl.No.14 under Delhi in the list showing the priority position of beat holder TIA's as on 30-4-89 as per their choice of stations. Notwithstanding any change in the guidelines or policy regarding transferability/or otherwise of union office bearers, it is directed, in the interest of justice, that the applicant's notional priority should be maintained during the period of his posting at Shahjahanpur and his case for transfer to a place of his choice should be duly considered in accordance with the notional priority at the appropriate time.

13. The application is disposed of with the above directions. The parties will bear their own costs.


(D.K.CHAKRAVORTY)
MEMBER


(P.K.KARTHA)
VICE CHAIRMAN