

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1215 of 1989
T.A. No.

DATE OF DECISION 11.1.1990

Tej Pal Singh _____ Applicant (s)

Shri G.D. Gupta _____ Advocate for the Applicant (s)
Versus
Union of India & Others _____ Respondent (s)

Shri M.L. Verma, _____ 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

Shri Tej Pal Singh, U.D.C. in the Planning Circle of the Central Water Commission, Faridabad, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against impugned order No.A-36020/8/88-Estt.VII dated the 1st June, 1989, issued by the Under Secretary, Central Water Commission, New Delhi, transferring him to Pune to accommodate Shri S.K. Kundra on his repatriation from deputation after 5 years from the office of Pay & Accounts Officer, Ministry of Water Resources, Faridabad.

2. Brief facts of the case, as stated by the applicant, are that he was promoted as U.D.C. on 1.4.74 and is born on the strength of the joint Ministerial cadre of the subordinate officers of CWC and CEA. The subordinate offices of the C.W.C. are spread throughout the country and a very few cadre personnel are based in Delhi/Faridabad. The Central Water Commission has formulated a Transfer Policy according to which Group 'C' and 'D' employees should not normally be transferred except to meet the following contingencies:-

- a) When transfers become essential for purposes of adjusting surplus

staff or making up deficiencies of staff.

- b) On the request of employees on compassionate grounds or on mutual transfer request basis.
- c) At the time of promotion, when promotees cannot be adjusted locally for various administrative and other valid reasons.
- d) For exigencies of service or administrative requirements.

The transfer of the applicant does not come under any of the above stipulations. They cannot be the maker and breaker of the transfer policy.

Para 10 of the transfer policy says as under:-

"Officers due for transfer, including officers returning from postings, should give their preference for places of posting, well in time, and the same would be considered subject to the exigencies of work and administrative requirement alongwith requests for of other officers in the grade, entered in the Request Register, maintained for the purpose(See 15)".

The applicant made a request for transfer from Faridabad to Delhi/ Ghaziabad in 1986 on ~~the~~ family grounds and he was informed that his request has been entered in the Request Register and the same will be considered at the appropriate time. In spite of the above quoted undertaking, the applicant has been transferred to a far place i.e. Pune.

The applicant is being harassed as he was suspended on filmsy grounds.

The applicant challenged the suspension orders and though suspension orders were revoked unconditionally within three months, the applicant was censured and disciplinary proceedings are being continued. To and ensure that the applicant is denied reasonable opportunity, Respondents 2 and 3 could justify their wrong, the applicant has been transferred to a far place, ^{arbitrary} Pune.

3. The transfer is arbitrary, discriminatory and illegal on the grounds that it is against the transfer policy of the C.W.C. to accommodate Shri Kundra who is not eligible for posting at Faridabad on return from deputation where he drew deputation allowance as per provisions in the transfer policy. Respondents cannot violate the transfer policy which they have themselves framed. Disciplinary proceedings on filmsy grounds are pending against the applicant who was earlier illegally suspended and the suspension orders were subsequently revoked.

Respondents No 2 & 3 fear that they may fail in their fabricated disciplinary proceedings if the applicant continues at Faridabad. So, they have planned to send the applicant from Faridabad/Delhi to Pune so that he may not be able to follow up the disciplinary proceedings. The transfer is, therefore, against the orders/instructions on the subject of disciplinary proceedings and also against the principles of natural justice as this amounts to denial of reasonable opportunity and is, therefore, penal and punitive in nature.

4. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. No cause of action has accrued in favour of the applicant against the respondents. The applicant has got the longest stay i.e. more than 16 years in Delhi/Faridabad. He has been transferred under clause 4(b) of the transfer policy. He holds a transferable post. Transfer has been made in the interest of administration as well as in the interest of the public. The application devoids any merit and is liable to be dismissed. They have cited the following cases in support of their contention:

K.K. Sharma Vs. U.O.I. 1988(2) AT C 175.

Kamlesh Trivedi Vs. I.C.A.R. 1989 (1) SLJ 641.

B. Vardha Rao Vs. The State of Karnataka 1986 (4) SCC 131.

Deep Narayan Vs. UOI 1989 (1) SLJ 330.

Babu Lal Jain Vs. UOI 1988 (6) AT C 196

P.P. Dhamania Vs. UOI 1988 (8) AT C 901.

The applicant had to be posted out being one of the longest stayees at Delhi/Faridabad as the number of employees working in Delhi/Faridabad exceeded the sanctioned strength on account of repatriation of deputationists within India as per the transfer policy. Shri Kundra who came on repatriation from Central Ground Water Board, Pay & Accounts Officer, was considered for posting at Delhi/Faridabad in accordance with para 4(b) of the transfer policy. The respondents accept that the request of the applicant for transfer to Delhi was recorded in the request register as per the office procedure. But since the applicant is working in Faridabad since 1972, he ws not considered for transfer to Delhi as period of stay at Faridabad after 1.1.72 has to be counted as continuous stay in Delhi according to para 4(b) of the trans-

fer policy. Moreover, there is no office of the C.W.C. at Ghaziabad where the applicant could be transferred. The respondents have denied that any vigilance inquiry/disciplinary proceedings are pending against the applicant. The findings of the enquiry committee and its decision were conveyed to the applicant on 25.2.88 (Annex. R-II). The applicant made a representation on 6.6.89 against his transfer, but before waiting for his request to be considered, the applicant has moved the Tribunal for seeking judgment. The application may be dismissed as no relief at this stage is justified.

5. In his rejoinder the applicant has denied that he has got the longest stay i.e. more than 16 years in Delhi/Faridabad and that the transfer has been made in the interest of the public. The transfer has been made to serve the private interest of one Mr. Kundra. Para 4(b) of the transfer policy is in fact not applicable as this para is applicable only when para 3 of the transfer policy is applicable. The case of the applicant does not fall under any of the clauses mentioned in para 3 of the transfer policy. The respondents have also ignored his request for transfer to Delhi in accordance with the transfer policy and, therefore, it is Mr. Kundra who ought to have transferred and even if Mr. Kundra was to be adjusted in Faridabad, the applicant ought to have been transferred from Faridabad to Delhi. Mr. Kundra has no vested right in being transferred at Faridabad as he was not posted at Faridabad when he went on deputation. At that time he was posted in Bareilly. It is wrong to say that Shri Kundra was rightly considered for posting at Delhi/Faridabad in view of para 4 of the transfer policy. Para 4 of the transfer policy ^{deals with postings} after repatriation. On the one hand, Shri Kundra had been enjoying the deputation allowance while being in Faridabad itself and, on the other hand, he has been posted at Faridabad itself and then his coming dislodged the applicant whose request is already pending with the respondents for transfer to Delhi. In fact, the present case is a case where the actions of the respondents in transferring the applicant have been malafide and punitive in character in as much as the transfer has been made to teach the ^{on} applicant a lesson for giving the representation and appeal against the suspension and penalty of censure which has been wholly illegal.

Even if the applicant cannot be transferred to Delhi then in view of the request of the applicant, it is Mr. Kundra who ought to have been transferred to Pune and not the applicant. In this connection, the procedure laid down in the Note dated 1.1.88 (Annexe A-2) has been completely ignored.

6. I have gone through the pleadings and have also carefully considered the arguments by the learned counsel on both the sides. The case of the applicant is based mainly on the grounds that in 1986 he had sought his transfer to Delhi and his request had been noted but instead of transferring him to Delhi, Shri S.K. Kundra who was on deputation has been accommodated in his place by transferring him to Pune which is an arbitrary act. His transfer to accommodate Shri Kundra is clearly illegal and against the transfer policy. Shri Kundra came from Bareilly Unit on deputation to Pay & Accounts Office, Central Ground Water Board, and instead of adjusting him at Faridabad, he should have been reverted to Bareilly. It has also been brought out that the Superintending Engineer, Shri Khurana, had illegally started disciplinary proceedings against him and also placed him under suspension. The proceedings are now over but he has made a representation against the penalty and the appeal is under consideration. While this appeal is still pending, the applicant has been transferred to Pune with a malafide intention in order to deprive the applicant to pursue his case. Even otherwise Class III employees are not to be transferred to distant places. The learned counsel for the applicant said that no public interest is involved in transferring the applicant to Pune and the argument that the applicant has been the longest stayee at Delhi is not relevant in the sense that his stay at Delhi/Faridabad cannot be compared with that of Shri Kundra who was on deputation from Bareilly and was also drawing deputation pay. Shri Kundra came to the present office on 15.6.89 against the post of a Stenographer and was regularised against the post of the UDC held by the applicant. On the other hand, the case of the respondents is that the applicant has had the longest stay in Delhi/Faridabad Zone and he being on a transferable post has been transferred strictly according to para 4(b) of the transfer policy for C.W.C.

employees. The learned counsel for the respondents emphasised the point that the applicant has no right to remain in Delhi Zone and as such cannot get any relief from the Tribunal. He also pointed out that the transfer of the applicant is not a solitary one, but he has been transferred along with 12 employees under the impugned orders dated 1.6.89. He said that Shri S.K. Kundra on repatriation from the Pay & Accounts Office of the Ministry of Water Resources has been brought to Planning Circle, Faridabad, in place of the applicant who has been transferred to Krishna Division, CWC, Pune. Similarly, Shri Chakra Dhar on repatriation from the office of the P.A.O. has been brought to Delhi in place of Shri J.D. Khajuria who has also been transferred to the Upper Krishna Division, C.W.C., Pune. The transfer order dated 1.6.89 shows similar other transfers. Shri K.S. Rawat on repatriation from the office of the P.A.O., New Delhi, has also been brought to the Northern Regional Electricity Board, New Delhi, in place of Shri S.C. Nigam who has been transferred to Agartala. Similarly, Shri Surinder Kumar on repatriation from the office of the P.A.O., New Delhi, has been brought to Faridabad in place of Shri Joginder Singh transferred to Shillong. Shri M.M.L. Puri on repatriation from the office of the P.A.O., New Delhi, has been brought to Faridabad in place of Shri S.K. Biswas transferred to Eastern Rivers Division, CWC, Bhubaneswar, and Shri B.R. Wadhwa on repatriation from Pay & Accounts Office, New Delhi, has been posted to P & T Division, CWC, Faridabad, in place of Shri Hari Har Das transferred to Ahmedabad. It will thus be seen that six officers who were on deputation to the Pay & Accounts Office, Ministry of Water Resources, New Delhi, have been posted to various units in Faridabad/Delhi and six officers whom they have replaced have been posted to Pune, Agartala, Shillong, Bhubaneswar and Ahmedabad. As such, the question of any malafide or arbitrariness does not arise and it is not a solitary case of Shri S.K. Kundra being specially brought in to replace the applicant, Shri Tejpal Singh. ^{C.W.C.} Shri M.L. Verma cited a number of cases to emphasise that the applicant has no case. He has come to the court without waiting for

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the result of his representation and has sought more than one remedy. He said that transfer is not within the jurisdiction of the court unless there is malafide and no malafide has been established against any of the respondents. Shri S.K. Kundra who has been posted in place of the applicant has not been made a party although various allegations have been made, but Shri Kundra has been posted to Faridabad according to the transfer policy itself. Shri Verma said that no vigilance case was pending against the applicant at present, but even if there was a case, it does not stop a transfer. He cited the case of the **Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani - Judgements Today 1989 (3) S.C. 20** - where the Supreme Court has held that transfer is an incident of service and an employee has no choice in the matter. A Government servant on a transferable post can be posted at any particular place and the applicant can at best make a representation if he has any genuine difficulty. Shri Verma said that the Tribunal in the Full Bench case of **Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research 1989 (1) SLJ 641** has ruled that transfer per se is not a penalty and that it is an incident of service. Government has a right to transfer an employee in exigencies of service and that transfer against a policy by itself is not to be questioned although in the present case, the transfer is according to the policy itself. In this case there is no colourable exercise of power and as such, the application must be rejected. He also cited the Supreme Court case **Union of India Vs. H.N. Kirtania - Judgements Today 1989 (3) SC 131** - where it has been held that courts shall not interfere in transfers unless there is violation of the statutory rules or malafide. There is no violation of any statutory rules in the present case. Shri Verma also cited the case of **Shri V.R. Datania Vs. U.O.I. - ATR 1989 (1) CAT(Ahmedabad) 385** - where it has been held that even a low-paid employee can be transferred from one place to another place.

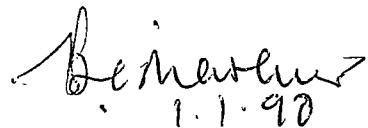
7. The learned counsel for the applicant in his reply mentioned that although the Respondents say that the transfer is within the transfer policy, but it is not so. Shri Kundra is not a man of the Department but belongs to a different Circle at Bareilly. The Central

Water Commission has many Circles and the length of stay has to be seen within a Circle. He said that Shri Kundra should have been sent back to Bareilly and accommodating him in place of the applicant is exercise of arbitrary powers. The applicant was not surplus at Faridabad and para 7 of the guidelines is not applicable in his case. He said that there is no exigency and posting of the applicant to Pune is clearly a discrimination violative of Articles 14 and 16 of the Constitution. He cited the case of **Shri Amar Nath Vaish Vs. U.O.I. 1987 (1) ATR - CAT (Jodhpur) 357** - to establish that transferring the applicant to Pune is colorable exercise of power.

8. Two points become very clear; that the applicant has been working in Delhi/Faridabad Zone for over 17 years and even though he may have requested for a posting to Delhi, a Government employee cannot have a right to be posted to a place of his choice. It is a different matter that the respondents have stated that there was no post at Ghaziabad to accommodate the applicant, but even if there was a post available at Ghaziabad, the courts have to be guided by the Supreme Court's judgments in the cases **Gujarat Electricity Board & Another Vs. A.S. Poshani and Union of India & others Vs. H.N. Kirtania - Judgments Today 1989 (3) S.C. 20 and 131 respectively held** - where it has been clearly that a Government servant can be transferred from one place to another and the transfer should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal due to violation of some statutory rules or malafide has been established. In view of the fact that at least six UDCs who were on deputation to the Pay & Accounts office, C.W.C., New Delhi, on completion of their deputation have been adjusted now at Delhi/Faridabad Zone and six persons who were working there have been sent to far away places like Pune, Agartala, Shillong, Bhubaneswar etc. there is clearly no case of discrimination. All these employees are part of the Ministry of Water Resources. It is true that the transfer of the applicant to Pune will cause him a lot of problems in that his home town is near Ghaziabad, his old parents are dependent on him and that his children are studying in U.P. with Hindi media etc., but these are matters for the competent authority to examine and the courts would not like to interfere in

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transfer cases unless a malaide is established. The fact that as far as the departmental case is concerned, the same has already been completed and is not the subject matter before me at the moment. Since a representation has already been made by the applicant to the Chief Engineer, he would no doubt examine the same on merits. For that purpose alone, it is not necessary that the applicant must stay at Delhi/Faridabad. In view of the clear directions of the Supreme Court that courts should not interfere with transfer matters unless there are strong and pressing grounds rendering the transfer order illegal, I see no reason to interfere with the transfer orders. In the circumstances, the application is dismissed. There will be no orders as to cost.


1.1.90

(B.C. Mathur)
Vice-Chairman