

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1277/89.

DATE OF DECISION: January 18, 1990.

Shri Mahavir Prasad Sharma Applicant.
Ms. Subhadra Advocate for the Applicant.
V/s.
Union of India & Ors. Respondents.
Shri M.L. Verma Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member.

1. Whether Reports of local papers may be allowed yes to see the judgement?
2. To be referred to the Reporter or not? yes.
3. Whether his Lordship wishes to see the fair copy of no the judgement?
4. To be circulated to all Benches of the Tribunal? no.

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, in which the applicant who is a Junior Engineer under the Department of Communications, has prayed for quashing his transfer under Rule 38 of P.&T. Manual, Volume IV from Advanced Level Telecom. Training Centre, Ghaziabad (for short ALTTC) to Mahanagar Telephone Nigam Limited, New Delhi (for short MTNL) vide the impugned order dated 31.5.89 (Annexure A-1 to the application), and for a direction to the respondents that they shall not transfer him from ALTTC till the finalisation of the terms and final exercise of the option by him regarding remaining in Government service or opt for MTNL service.

2. Briefly stated, the facts relevant for this case are that the applicant joined the Telecommunication Department as Junior Engineer on 30.12.1976 at Bombay. He volunteered for deputation and on 19.11.1979 was transferred on deputation to the ALTTC, Ghaziabad. On 26.6.1985, he applied

for

for transfer to Delhi Telephones District under Rule 38 of the P & T Manual (Volume IV). He again applied for the same on 29.12.86. He sent a reminder on 2.3.87. On 1.6.1987, he wrote to the General Manager, MTNL, Bombay, that at present he was not willing for Rule 38 transfer from Bombay Telephones because of formation of Public Sector Corporation and that his case for Rule 38 transfer from Bombay Telephones to Delhi Telephones may be kept pending. On 25.5.89, he wrote to the Chief General Manager, M.T.N.L., Bombay, with reference to his applications dated 26.6.85 and 29.12.86 and his application dated 1.6.87, to the effect that due to some unavoidable circumstances, he wanted to cancel his Rule 38 transfer from MTNL Bombay to MTNL Delhi and that the same may kindly be cancelled.

3. I have gone through the papers on record of the case and have also heard the learned counsel for the parties. The respondents have filed their reply and the applicant has filed his rejoinder. The case can, therefore, be disposed of at the admission stage itself and I propose to do so accordingly.

4. Rule 38 in Chapter II of the P.&T. Manual relates to transfer of officials on their own request and for their own convenience. Sub-rule (4) of Rule 38 provides that a permanent official transferred from one unit to another will retain his lien in the old unit until he can be accommodated in the new unit according to his position in the new unit, but he will not have any claim to go back to his old unit even though he holds his lien there. Further, a declaration to the effect that he accepts the seniority on transfer in accordance with this rule, and that, he will not have any claim to go back to the old unit, should be obtained before an official is transferred under this rule. Admittedly, the applicant applied for such a transfer and gave the prescribed declaration first on 26.6.85 and again on 29.12.86. Copies of these are available at A-2 to the application and Annexure-2 to the reply filed

(See)

(2)

respectively. by the respondents. It is also not in dispute that on 1.6.1987, he wrote that his request may be kept pending. The respondents have, however, stated in their reply that the applicant again made such a request on 30.6.88 and a copy of the declaration filed by the applicant has been furnished at Annexure-4 to the reply. MTNL, Bombay, vide their letter dated 20.4.88, wrote to the General Manager, ALTTC, Ghaziabad to obtain and forward a declaration in the prescribed proforma from six officials, including the applicant, to enable that office to issue their transfer orders under Rule 38 to MTNL, Delhi Telephones. The proforma was made available to these officials vide ALTTC communication dated 1.6.88 and the learned counsel for the respondents showed a copy of the same at the bar, and it shows that a copy of the proforma was received by the applicant. Thereafter, he submitted a declaration on 30.6.88, according to which, he, *inter-alia*, declared that on his transfer to Delhi Telephones, he will abide by Rule 38 of the P.&T. Manual (Volume IV) and that he was willing to be posted to outlying exchanges, viz. Jan Path, Connaught Place Delhi-1, Laxmi Nagar Delhi-92. Copy of the declaration filed by the respondents shows that the various columns therein have been filled in by the applicant in his own hand-writing. This has not been denied by the applicant in his rejoinder. His letter dated 25.5.1989 conveying his request for cancellation of Rule 38 transfer from MTNL Bombay to MTNL Delhi is not relevant because the impugned order dated 31.5.89 has been issued by ALTTC, Ghaziabad, whereby the name of the applicant, along with of three other officials, was struck off from the strength of that office with effect from the afternoon of 31.5.89 and they were relieved in pursuance of CGMT, MTNL Bombay letter No. ST/95-4/Rule-38/Genl./Delhi, dated 6.12.88. Thus, the applicant's transfer under Rule 38 had been ordered before he addressed his letter dated 25.5.89. Moreover, the applicant had already been relieved as above

(1a).

before he filed this application on 29.6.89.

5. The decision of the Government to set up a Public Sector Corporation for Delhi and Bombay/Districts and the matters connected therewith was issued ^{under the} by the Government of India, Ministry of Communications, Department of Telecommunications, New Delhi, vide No.1-116/85-NCG, dated 25th February, 1986. It is laid down in these orders that pending finalisation of the terms and conditions for the staff of the MTNL and to give an opportunity to the various staff working in or recruited by Delhi and Bombay/Districts to exercise options, interim arrangements were decided upon. Until finalisation of options as above, the staff working in the areas transferred to the MTNL, as clarified in the orders *ibid*, will be deemed to be on deputation with the MTNL without payment of deputation allowance and will continue to be subject to all rules as Government servants till such time as they were finally absorbed by the Corporation in the light of the options which would be exercised by the concerned staff. The respondents have stated in their reply that the terms and conditions of the staff are yet to be finalised by the MTNL. The same was stated at the bar by the learned counsel for the applicant also. This means that the applicant still continues to be governed by Rule 38 of the P.&T. Manual (Volume IV) and that in accordance with the declaration submitted by him on 30.6.88 (Annexure-4 to the reply), he could be transferred. This is exactly what has been done in this case and I find no legal infirmity in the transfer order. Incidentally, it may be mentioned that the contention of the applicant in para 4 of the application that he was asked to exercise his option for absorption in MTNL and 'he categorically said 'NO' to the proposal' cannot be taken as correct. The respondents have stated in their reply that no option was asked for from the applicant. Further, the question of asking for and exercising the option would arise only after the terms and conditions are finalised by the MTNL, which admittedly have not yet been finalised.

Uma

6. The applicant has relied on para 5 (iv) of the Government orders dated 25.2.86, referred to above. It is herein provided that staff originally recruited by Delhi or Bombay Telephones, but working in other units of the D.O.T, such as the GMM, GMP, T&D Circle, ALTTC, TRC, etc., will continue to work in such units for the time being, even after the Corporation takes over operations. The learned counsel for the respondents argued that this sub-para cannot be read in isolation and the whole scheme as given in the orders dated 25.2.1986 has to be read together. As mentioned above, the applicant continues to be governed by the departmental rules / orders, including Rule 38 of the P.&T. Manual (Volume IV). His transfer was ordered in pursuance of his request under that rule; therefore, reference to sub-para (iv) of para 5 of the orders dated 25.2.1986 is not relevant in the facts and circumstances of this case.

7. The respondents have also raised some preliminary objections. They have pleaded that respondent No.4 in this application is outside the jurisdiction of the Central Administrative Tribunal as the employees of the MTNL have not yet been notified by the Government for purposes of jurisdiction of this Tribunal. The applicant, in his rejoinder on this point has stated that as the main respondent is the Union of India through the Secretary, Communications under whose control all the other respondents function, the Tribunal has jurisdiction over respondent No.4. This contention of the applicant is not legally sustainable and, therefore, respondent No.4 has been wrongly made a party in this case.

8. The respondents have also pleaded that as the services of the applicant were on loan to ALTTC, Ghaziabad, he could be repatriated at any time without any notice. In this case, the applicant was transferred on his own request and having been on deputation for nearly 10 years to ALTTC, he has no legal right to continue to be on deputation; therefore, his prayer for a direction to the respondents that they shall not transfer

(12)

him from ALTTC is devoid of any merit.

9. In view of the above discussion, the application is devoid of merit and is accordingly dismissed at the admission stage itself. Parties to bear their own costs.

(C.C.) 18/1/90
(P.C. JAIN)
Member