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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1328 of 1989
T.A. No.

DATE OF DECISION 26.10.1989

Shri G.C. Misra Applicant (s)

Shri B.S. Bindra Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Mrs. Raj Kumari Chopra 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 G.C. Misra, Executive Engineer in M.E.S. against the impugned order dated 23.3.89 passed by the Engineer-in-Chief transferring him from Avadi, Madras to the office of Chief Engineer, Calcutta Zone in spite of existing vacancies at Delhi.

2. The brief facts of the case as mentioned in the application are that the applicant joined service as Asstt. Executive Engineer with the Chief Engineer, M.E.S., Lucknow Zone on 1.6.1977 and was transferred to New Delhi

in June, 1981. The applicant was promoted as Executive Engineer on 1.6.1985 and on account of his special qualification of Post Graduate degree, he was selected for his present job at Madras in the capacity of Garrison Engineer (Project). Nearing the completion of the above project, the applicant made a representation on 15.9.89 that he may be transferred back to New Delhi, on the grounds that his wife was employed at New Delhi and specially because his wife was not keeping good health being a patient of diabetes.

3. Respondent No.3 was also posted in the same project as Chief Engineer. When the applicant was on leave at New Delhi, in August, 1988, having fallen sick and was under treatment at the Hindu Rao Hospital, Respondent No.3, based on sheer suspicion referred the applicant to the Army Hospital, Delhi, Cantt for second medical opinion on the sickness of the applicant. Respondent No.3 had assured the applicant that on completion of the project at Madras, he would get him transferred to New Delhi, but inwardly harboured ill-will towards the applicant. Respondent No.3 who had already stayed at New Delhi for 8 to 10 years got himself re-posted in New Delhi, while the applicant was sent to Calcutta. This shows a malafide intention towards the applicant.

4. The Head-Quarters, Southern Command Engineers Branch, Pune had recommended the representation of the applicant for transferring him to New Delhi but the same was not accepted by the respondent No.2. The applicant was relieved in April, 1989 for proceeding to Calcutta. The applicant, however, came to Delhi to attend urgent and adverse family circumstances, utilising his joining time but had been held up and camped in Delhi due to reasons beyond his control.

5. His case was also recommended by the Minister of State for Fertilizer to the Minister of State for Defence for posting him at New Delhi. There were other recommendations also but the Engineer-in-Chief did not accept any of the recommendations.

6 The case of the applicant is that the transfer order is void and discriminatory under Articles 14 and 16 of the Constitution.

7. Respondents in their reply have stated that the applicant has no claim to be posted at New ^{Delhi} as he has already been at New Delhi from June, 81 to January, 1986. The applicant is a Central Govt. Officer with an all India liability of posting and has been transferred to Chief Engineer, Calcutta Zone, on completion of his tenure at Avadi. It has been stated that the applicant had not informed the Tribunal that he had worked in the office of Engineer-in-Chief in New Delhi for 5 years and that he was struck off from the Avadi office w.e.f. 25.4.89. The impugned order of transfer has not violated Articles 14 and 16 of the Constitution. It has been stated that the applicant has no legal right to work at Delhi irrespective of availability of a vacancy there. There are a very large number of officers of the same rank through out India and it is for the competent authority who are the best judge to decide where to post an officer.

8. As far as the allegation of malafide made by the applicant, respondents have stated that the same is baseless and untrue. There is a clear provision for a second medical opinion in CSR (Leave Rules) and the respondents have acted within the rule without any malafide. Respondent No.3 has been posted at New Delhi on promotion as Additional Director General at Engineer-in-Chief's Branch, Army Head Quarters, under normal scheme of posting of senior officers.

9. The applicant was not posted in Delhi not because there was no vacancy at Delhi but because he had done a

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tenure at Delhi and this information was conveyed to the persons who had recommended his case. Both the Supreme Court and the Tribunal have held that Govt. has the power to transfer an officer in the exigencies of the administration and that any allegation of malafide has got to be clearly stated and also established.

10. Respondents have also mentioned the position regarding two officers of the rank of Executive Engineers mentioned in the application. Shri J.K. Goel has served for 3 years at Gangtok which is a hard tenure station after which an officer is entitled to a choice of posting which he was given.

11. In the case of Shri S.K. Gupta, Executive Engineer, he was posted in Delhi from 1978 to 1982 and at Shimla Hill Kasauli from 1982 to 1984 and at Kanchanbag from 1984 to 1987. There is no colourable exercise of power by the authorities and the applicant has been posted to Calcutta after due consideration of all aspects.

12. In the rejoinder and the written arguments, it has been stated on behalf of the applicant that the reply filed by the respondents is illegal and invalid as respondent No.3 has been impleaded by name in person on malafide ground and he should have filed an affidavit under his own hand. The respondents in their counter have mentioned that the applicant has filed the present OA with a view to make wrongful gains, which according to the applicant casts a serious stigma on the applicant. The grounds urged in the application against the transfer have been based on the guidelines laid down by the Hon'ble Supreme Court,

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on the subject, in the cases of B.V. Rao, E.P. Royappa and Vardha Rao as extracted in the judgement of the Full Bench of the Tribunal in Kamlesh Trivedi's case (ATR-1988 (2) CAT-FB-116).

13. It has been further argued that the arbitrariness of the respondents can be seen from the fact that while his case has been rejected on the ground that he has done one tenure at New Delhi, others who have done one tenure have been re-posted at New Delhi and some have been in Delhi for very long periods. In the written statement, the Learned Counsel for the applicant has cited a very large number of cases in which he has shown the arbitrariness and malafide on the part of the respondents. To establish the malafide of the respondent No.3, it has been stated that while he was telling the applicant that he would be posted at New Delhi, in fact he got the applicant posted in Calcutta while he himself got reposted at New Delhi for another tenure. The only likelihood is that his plea for transfer from Madras to New Delhi was rejected at the instance of respondent No.3 who had also asked for a second medical opinion having a grudge against the applicant. He also made adverse entries in the ACR of the applicant. The respondent No.3 saw to it that the request of the Director Designs asking the applicant to be posted at New Delhi should be rejected.

14. The Learned Counsel for the respondents denied that there has been any arbitrariness or malafide on the part of any respondent resulting in the impugned order which was issued in the normal course. She stated that the applicant has no right to be re-posted at any

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particular place when the applicant had already been relieved from his post on 25.4.89. He has no choice at this stage but to accept the transfer. The courts cannot take over the responsibility of issuing posting orders which is within the competence of the respondents only. She prayed that the court should not order the transfer of any officer to any particular place but leave it to the Competent Authority. She stated that the charge of the malafide against respondent No.3 has not been made out. Even if the respondent No.3 had wanted to help the applicant for being posted at New Delhi, he could not over-ride the Competent Authority. While deciding the matter, the Engineer-in-Chief took into consideration the fact that the applicant had an earlier posting at New Delhi. Respondent No.3 was posted to New Delhi on promotion. No case whatever has been made out indicating any malafide on the part of the respondents. She stated that as far as the adverse entries in the Character Roles are concerned, there is also a case pending before the Tribunal and this matter cannot be taken up at this stage. In support of her arguments, the Learned Counsel for the respondents cited the Supreme Court case -the Union of India & Ors. Vs. Sh. H.N. Kirtania-Judgement Today 1989(3) S.C. 132-wherein it has been held that Central Govt. employees on transferable post are liable to be transferred from one place to the other in the country. Govt. servant has no legal right for being posted at any particular place. He can only make representations to the Competent Authorities, but transfer on the grounds of administrative exigency or in public interest should not be interfered with unless

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there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide.

15. I have gone through ~~xxx~~ the pleadings in the case including the written arguments on behalf of the applicant as well as the respondents. It is true that there are guidelines like posting of husband and wife at one place but it has been held that these are not mandatory. The Supreme Court have held that the guidelines do not give any legal base to a Govt. servant to resist a transfer order but he can only make a representation. It has to be seen whether there is any illegality in the transfer order and such ^{il}legality should be due to violation of statutory rules or malafide. Normally, the courts should not interfere with the transfer order. In view of the clear decision of the Hon'ble Supreme Court in Sh. H.N. Kirtania's case, the application is liable to be rejected as no case of illegality or malafide has been established. Mere allegations are not enough, these have to be established. I am satisfied that the applicant has no right to be posted at Delhi because his wife is there or because some others have been in Delhi longer or on a second tenure. These are administrative matters and best ^{left} to the authorities concerned. In these circumstances, the application is dismissed.

Parties to bear their own costs.


(B.C. MATHUR) 26.10.89
VICE-CHAIRMAN(A)