

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1337/89
T.A. No.

199

DATE OF DECISION 12 March 1992Sh. Suraj Parkash Petitioner APPLICANTSh. S. S. Tiwari, Advocate for the Petitioner(s) Applicant

Versus

Union of India & Ors. RespondentsMrs. Raj Kumari Chopra Advocate for the Respondent(s)

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The Hon'ble Mr. D. K. Chakravorty, Member(A)

~~xxThe Hon'ble xx~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGEMENT

(DELIVERED BY HON'BLE MR. D. K. CHAKRAVORTY, MEMBER)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the Movement Order/permanent transfer dated 28.6.1989 issued by the Garrison Engineer(East), Delhi Cantt. transferring him from GE East Delhi Cantt. to GE(P) Sirsa.

2. The applicant, a Wireman under GE(East) and occupant of House No.67/3, Kabul Line, Delhi Cantt. had made numerous complaints to respondent 2 regarding grievances relating to the above premises but to no effect. He has alleged collusion between the respondents to harass him and in order to uproot his family, respondents 3&4 have issued the transfer order against him. His representation dated 29.6.1988 has not been replied to. He has contended that his wife is suffering from heart disease; his son

is also under treatment; under the Policy of Transfer of industrial personnel, he is not liable to be transferred out of Delhi; the transfer order issued with mala fide intentions is bad in law; according to circular dated 23.10.1986 no Movement Order can be passed against an employee while he is on medical leave and for all these reasons, the impugned order is liable to be set aside.

3. In the counter the respondents have taken a preliminary objection that the application is pre-mature for non-exhaustion of departmental remedies. The complaints made by the applicant against encroachment of Government land were looked into by the Board of Officers constituted for this purpose who concluded that the applicant as well as Shri Om Parkash, against whom allegations were made, have been misusing the Government accommodation and complaints arose only due to purely personal enmity. In order to end the continuous tension between the parties both had been allotted alternative Government accommodation but they have not accepted the change. They have also not heeded the advise given by the GE to settle their dispute themselves but instead continued unnecessary correspondence with higher officers on one pretext or the other. The applicant and his wife went to the extent of making complaints to various political parties etc. In this backdrop, the higher authorities decided to post out both the individuals on administrative grounds and, accordingly, Chief Engineer, Western Command, Chandimandir, issued the orders of posting the applicant to GE(P) Sirsa and Shri Om Parkash to GE(P) Lalgarh Jattan, both of which are three year "tenure" stations.

4. I have heard the learned ^{counsel} for the parties and considered the rival contentions. I have also perused the records of the case.

5. The main argument advanced by the learned counsel for the applicant is that Shri Suraj Parkash, Wireman, is a Group 'C' industrial employee appointed on 11.12.63 and in terms of the policy guidelines he is not liable for transfer. In any case, under no circumstances, he can be moved to a tenure station. He also alleged discrimination against the applicant inasmuch as the transfer order of Shri Om Prakash to Lalgarh Jattan, was cancelled on 6.9.89.

6. The learned counsel for the respondents vehemently opposed the application. According to her, the guidelines and policy on transfers are only advisory in character. These do not have mandatory force. In any case, all Government employees can be transferred in public interest in the exigencies of service or administrative requirements. Transfer of Government servants cannot be interfered with except where malafides, bias or discrimination are established. She relied on the two well known case laws- **Union of India & Ors. Vs. Shri H.N.Kirtania (J.T. 1989(3) SC 131)** and **Gujarat Electricity Board Vs. Atmaram Sungomal Poshani (J.T. 1989(3) SC 20)**. She also cited many other rulings* of courts and the Tribunal which I have duly considered.

7. The application can be disposed of on the short point whether the applicant is liable to transfer or not. The learned counsel for the respondents has made available a complete set of the orders dated 9.6.1966, 25.10.1984 and 31.10.1985 on policy regarding transfers of civilian subordinate personnel in the MES. Para 2 of the letter dated 9.6.66 states, "All civilian subordinate staff of the MES(Industrial and Non Industrial) except the industrial staff employed prior to 26th Nov.65 and in cases where they have not signed IAFZ-2055 are liable

✓ * ATR 1986(1) 415; SLJ 1989(3) SUPPL SC 46; 1989(1) SLJ CAT 643; 1989(2) SLJ CAT 29; 1989(2) SLJ CAT 11 and ATR 1989(1) CAT 10.

for all India service" and para 17 goes on to add that " Industrial employees recruited prior to 26 Nov.65 entertained at the CWE's level are not normally transferable outside the CWE's area unless they are volunteers or surplus"(/ added)
emphasis
Policy letter dated 25.10.84, lays down that " 2.....Normally civilian Group C and D subordinate will not be transferred from one non-tenure to another non-tenure station except to meet the following contingencies:-

- (a) Adjustment of Surpluses and Deficiencies.
- (b) Promotion.
- (c) Compassionate grounds and on mutual basis
- (d) Exigencies of service or administrative requirements."

Sub para 2(d) above, which provided for transfers in exigencies of service or administrative requirements, was deleted "in toto" under order No.30203/428/EIC(I) dated 31.10.1985 which also stipulates that "Postings/transfers of industrial personnel to meet the contingencies referred to in para 2(a) to (c) above shall, however, be ordered by the respective CWEs within their area(within the station or outside the station) ". However, the most important condition relating to the transfer of the applicant herein is laid down in paragraph 25 of the letter dated 25.10.1984, which for the sake of convenience is reproduced below:-

" Posting to Tenure station

25. The instructions/guidelines in Appendix E to this letter will be followed with regard to posting to/from tenure station.

APPENDIX 'E' Ref Para 25 of letter

INTRODUCTION/GUIDELINES REGARDING TRANSFER OF CIVILIAN SUBORDINATES OF THE MES TO TENURE DUTY STATION

Introduction

1. Instructions/guidelines in the succeeding paragraphs lay down the broad principles according to which transfer of civilian subordinates personnel of the MES both industrial and non industrial to tenure duty station will be carried out. These instructions/guidelines will however not be applicable to industrial personnel recruited prior to 16 Nov 65 as they are

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not liable to All India Service. (emphasis added).

8. From a careful perusal of the instructions cited supra, the inevitable conclusion that emerges is that the applicant, who is an industrial personnel, recruited prior to 26th November, 1965 is not liable for transfer to a tenure station even in exigencies of service or administrative requirements.

9. In the light of the above discussion, I have no hesitation in holding that the applicant could not be transferred to a tenure station and he is entitled to succeed in this application. Accordingly, the Movement Order dated 29.6.1988 is quashed and set aside. The interim order passed by this Tribunal on 4.9.89 is made absolute. In the circumstances, the parties are left to bear their own costs.

D.K.Chakravorty 12/3/1992
(D.K.CHAKRAVORTY)
MEMBER (A)

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