

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1353
T.A. No.

1989

DATE OF DECISION 18 JANUARY 1990

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Shri Jai Dev Khajuria Applicant (s)

Shri K.L.Bhandula Advocate for the Applicant (s)

Versus
Union of India & Ors. Respondent (s)

Shri M.L.Varma Advocate for the Respondent (s)

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The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER (A)

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 ?

NO

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by Shri Jai Dev Khajuria, Upper Division Clerk, Northern Regional Electricity Board, New Delhi challenging the Office Order dated 31-5-1989 (Annexure-I to the application) issued by the Central Water Commission (CWC in short) transferring him to Upper Krishna Division, CWC, Pune. The applicant has prayed for quashing of the impugned transfer order and for issue of directions to respondent No. 2 to accede to his pending request for transfer to Jammu.

2. The facts of the case, as given by the applicant, are briefly given below :-

The applicant is borne on the Joint Ministerial Cadre of Subordinate office of the CWC and Central Electricity Authority. He was promoted as Upper Division Clerk on 17-8-1965 and is presently working in that capacity in the Northern Regional Electricity Board, C.E.A., New Delhi. According to the Transfer Policy of the CWC, Group 'C' employees should not normally be transferred from one station to another except to meet the following inevitable contingencies :-

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- (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 the promotes cannot be adjusted locally for various administrative and other valid reasons; and
- (d) For exigencies of service or administrative requirements.

3. The applicant contends that his transfer does not come under any of the above stipulations. He alleges that he is being transferred only to accommodate one Shri Chakra Dhar who is being rewarded, even after a stay of more than 5 years at Delhi/Faridabad with deputation allowance, by another posting at Delhi by disturbing the applicant and, that too, after the start of the academic year. The transfer is, therefore, arbitrary, discriminatory and violative of the Transfer Policy. According to para 10 of the Transfer Policy, officers due for transfer, including officers returning from deputation, 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 requirements, alongwith the requests of other officers in the grade, as entered in the Request Register. The applicant has been requesting for transfer to Jammu proper since 1980 where a number of posts of Upper Division Clerks are available. Even at present, there are about 10 Upper Division Clerks who are continuing in Jammu since 1970 onwards but they are not transferred in terms of the Transfer Policy.

4. The applicant was called in January/February 1989 by the Administration to inquire about his willingness for transfer outside Delhi. He reiterated his request for transfer to Jammu and he states that an undertaking was given to him that he would not be disturbed during 1989 due to his children's education but in 1990 he will be transferred to Jammu. This promise has been broken by issue of the impugned order. Applicant also seeks sympathy on compassionate grounds. His father is 85 years old, and being the only son, the applicant has to keep his wife at Jammu to look after his father. He along with his two sons who are studying are staying at Delhi and that if he is transferred to Pune at this stage he will have to maintain three establishments.

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5. The applicant represented against the transfer on 8-6-89 which was forwarded with the recommendations of the Director(Admn.) CEA on 12-6-1989. However, his representation has not yet been disposed of but he is apprehending that he may be relieved at any time.

6. The applicant prays for quashing of the impugned order and his retention in Delhi/transfer to Jammu on the ground that the order of transfer is in violation of the policy on the subject, the transfer is not in the public interest or exigencies of service or administrative requirement but only to accommodate another officer. The transfer is, therefore, arbitrary, discriminatory and violative of the Articles 14 & 16 of the Constitution and the promise of not disturbing him during 1989 has not been kept although there are about 10 Upper Division Clerks in Jammu against one of which he should be accommodated. He also questions the transfer order on the ground that it has been issued during the mid academic year. He also contends that the proposal for bifurcation of Joint Ministerial Cadre for subordinate officers of CWC/CEA having already been agreed to in principle, the applicant should not have been transferred as he has served the present office for about 15 years and has acquired vested right to join the C.E.A. Cadre when the bifurcation takes place.

7. In the reply to the application submitted on behalf of the respondents, most of the contentions raised by the applicant have been denied as being false and fictitious. It has been asserted that the transfer of the applicant has been made to the vacant post at Pune in the exigencies of service and in public interest. The applicant is the longest stayee in Delhi/Faridabad. Shri Chakra Dhar has been posted against the vacant post of the applicant as he has been in Delhi only for a period of 8 years and is going to retire in September 1990. For a long period of 12 years after entry in service, the applicant remained in Jammu region and was transferred to Delhi, at his own request, in 1973. He has been in Delhi continuously for the last 16 years. In September 1983, the applicant made a request that whenever he is transferred on promotion he should be posted to his home town i.e. Jammu proper. The applicant is not yet in the zone of promotion and, therefore, the question of his being posted at Jammu has not arisen. In February 1986 the applicant made a request in the prescribed proforma for transfer to Jammu but he was informed that at that moment no vacant post of U.D.C. was available at Jammu. However, the request of the applicant has been noted in the request register maintained in the

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Commission. It is denied that respondent No.2 has made any promise to the applicant regarding his non-transfer during 1989. On the contrary, in January, 1989, the applicant himself had made a request that he was unable to leave Delhi for certain reasons and he may not be posted to Jammu during 1989. It has been, further, averred that the Central Electricity Authority has already relieved the applicant of his duties with effect from 21.7.1989. He has also been sanctioned/paid Travelling Allowance of Rs.5250 on 27.7.89 for performing the journey to Pune on transfer. Since the transfer of the applicant to Pune has been made in the public interest and strictly in accordance with policy on transfer and also because he has already been relieved of his duties with effect from 21.7.1989, the application may be dismissed.

8. The main arguments advanced by the learned counsel for the applicant against the impugned order are that normally Group 'C' employees are not transferable, the transfer to Pune has not been made in the public interest and the applicant has been discriminated against as compared to more favourable treatment given to some other employees. The promise made to him about non-disturbance in 1989 and his posting to Jammu in 1990 has not been kept, and that the transfer during mid academic session will upset the education of his two sons. He, therefore, pleaded for cancellation of transfer the impugned/order or, in the alternative, the transfer of the applicant to his home town in proper Jammu.

9. In reply, the learned counsel for the respondents has affirmed that the transfer has been made strictly in terms of the general policy and guidelines on transfer of staff as the applicant is the longest stayee at Delhi and that there is a vacant post of U.D.C. at Pune for which there are no volunteers and the exigencies of service require the posting of an officer against that post immediately. The applicant's representation dated the 8th June 1989 for cancellation of his transfer order was considered and

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ultimately, it was decided that his request cannot be acceded to. In the circumstances of the case, the transfer made in the public interest should not be interfered with and the application deserves to be dismissed.

10. In his final submissions, the learned counsel for the applicant vehemently asserted that the so called relief of the applicant under Office Order dated 21.7.1989, which is stated to have been sent by post on 24.7.1989 to the applicant's residence while he was on medical leave, was not proper as the Original Application challenging the transfer order had already been admitted by the Tribunal on 11.7.1989 and hearing was fixed on 25th July, 1989. Further, on 25.7.1989, the Tribunal passed an interim order that "in the circumstances, the applicant shall not be moved from his present position till the next date of hearing". This interim direction which was continued till further orders on subsequent hearings is still in operation. He also drew attention to the compassionate aspects of the case - the applicant is the only son of his old and ailing father who cannot be shifted and transfer to Pune will upset his children's education. The long standing request of the applicant, who is a U.D.C. for the last 24 years with no immediate prospect of promotion, for posting in his home town registered in 1986 is still pending and his representation dated 8.6.1989 has not yet been replied to.

11. I have heard the learned counsel of both sides and have perused the records of the case carefully.

12. The respondents have transferred the applicant in the interest of the State and apparently, according to the guidelines issued by them. The applicant has not been able to produce any evidence that his stay has not been the longest in Delhi and I would accept the contention of the respondents that it is so. In Gujarat Electricity Board and Another vs. Atmaram Sugnmal Poshani - Judgments Today 1989 (3) SC 20 - the Hon'ble Supreme Court have held that

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transfers being an incident of service, an employee has no legal right for being posted at any particular place. He can only make a representation to the competent authority in case of genuine difficulty. In this case, a representation has been made to the competent authorities, which has not been replied to. The applicant has also prayed for an alternative relief that his request for transfer to Jammu may be acceded to. The question whether the applicant may be given this relief or not on compassionate or other grounds is purely an administrative decision left for the respondents to take. The respondents may do so.

13. In Union of India & Others vs. H.N. Kirtania - Judgments Today 1989 (3) SC 131 - the Hon'ble Supreme Court have held that there is no valid justification to interfere in orders of transfer made against an employee of the Central Government holding a transferable post. A Central Government employee holding a transferable post is liable to be transferred from one place to the other in the country and has no legal right to insist for his posting at any place of his choice. It has been held that 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 the statutory rules or on grounds of mala fides. There has been no illegality or any violation of the transfer policy in the transfer. The applicant has also not established any mala fides or discrimination. In the circumstances, I have no other option but to reject the application.

14. With these observations, the application is disposed of. There will be no order as to costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

18 January, 1990