

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 13 of 1989.
T.A. No.

DATE OF DECISION September 29, 1989.

Shri SARUP SINGH _____ Applicant (s)

Shri K.L. Bhatia _____ Advocate for the Applicant (s)

Versus
Delhi Administration & Anr. _____ Respondent (s)

Shri M.M. Sudan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

~~The Hon'ble Mr.~~

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. To be circulated to all Benches of the Tribunal ? *no.*

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a Lower Division Clerk in the Delhi Administration, has challenged order dated 13.12.1987 by which he had been transferred from the Department of Food & Supplies to the Department of TTE (Technical Training & Employment) and has prayed for the following reliefs: -

(i) That the Respondents may be directed to withdraw and set aside the said order No.14/4/87 S. III dated 18.12.1987 so far it concerns the posting and transfer of the applicant from the Food & Supplies Department to Technical Training & Employment Dept.

(ii) That the applicant may be allowed to work peacefully in the said Department of Food & Supplies so that he may gain sufficient knowledge, proficiency and experience of working in the present Department of Food & Supplies before he is shifted to any other so as to make him a rolling stone.

(iii) Such other relief as this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case may also be granted to the applicant in the interest of natural justice. "

2. Salient facts of the case, in brief, are as below: -

The applicant was appointed to the post of L.D.C. in the office of the Deputy Commissioner under Delhi Administration in 1969. In connection with a complaint lodged with the police against him, he was arrested on 12.11.74 and remained in custody upto 20.11.74 in case FIR No.799/74 under Sections 420, 467, 468, 471, 380/120-B IPC, in Police Station, Civil Lines, Delhi. He was placed under suspension with effect from 12.11.74 vide orders dated 23.11.74. His suspension was revoked without prejudice to the disciplinary proceedings to be initiated against him separately, vide order dated 16.8.78. He appears to have been transferred to the Planning Department on 1.11.79. He was transferred again to the Food & Supplies Department vide Services (II) Department's order dated 10.1.1980. He was again placed under suspension vide order dated 28.1.1980 in connection with a criminal offence under trial. It appears, by this time, the trial of the case registered against him commenced. The suspension order was revoked vide order dated 21.5.1986, again without prejudice to the proceedings in the pending court case or any action that may be departmentally initiated against him separately. He remained on leave with effect from 2.2.87 to 28.4.87, which was sanctioned to him in two instalments. The impugned order was passed on 18th December, 1987. According to him, he was not relieved by the Department till this application was filed. He has, however, since been relieved from the Department of Food & Supplies vide order dated 4.1.89 and posted to G.B. Pant Polytechnic, Okhla under order dated 12.1.89.

3. The applicant has challenged the impugned transfer order on the grounds of -

- (a) having been issued without any authority;
- (b) being discriminatory; and
- (c) being mala-fide.

He has not been able to show any rule or order on the basis of which he claims to be entitled to continue in the Food & Supplies Department. As regards discrimination, in Annexure X to the application, he has given the names of 22 Lower Division Clerks working in the Food & Supplies Department for the last 4 to 7 years and who have not been transferred but the applicant has been transferred even though he actually started working in that Department after he was allowed to resume duty after revocation of suspension vide order dated 21.5.1986.

4. On the point of mala-fide, no particulars of any mala-fide have been given, but a general plea has been taken based on the logic of a false complaint, so-called frequent transfers and having been suspended twice without initiating any disciplinary proceedings and without the trial of the criminal case making any headway.

5. The respondents, in the written statement, have refuted all these three grounds. In regard to the suspension orders passed and the orders revoking those suspension orders and the criminal case, the respondents have stated that the criminal case is being handled by the police and is pending trial in the court. The first suspension order was passed on the basis of the arrest of the applicant in accordance with the provisions contained in sub-rule 2(a) of Rule 10 of the C.C.S. (C.C.A.) Rules, 1965, and the second suspension order was passed when the charge-sheet had been filed in the court. They have further stated that the suspension orders were reviewed in accordance with the general instructions of the Government and these were revoked.

6. I have carefully gone through the material available in the case file and have also heard the learned counsel

of the parties.

7. The learned counsel for the respondents drew my attention to the Delhi Administration Subordinate Ministerial/Executive Service Rules, 1967 issued vide Notification No.F.3(16)/66-Services(C), dated 10.2.1967. These rules are called the Delhi Administration Subordinate Service Rules, 1967 (for short, DASS Rules, 1967). As per Rule 2(k), "service" means the Delhi Administration Subordinate Ministerial Service or the Executive Service. Vide Rule 3 (1), two Central Civil Services, namely, Subordinate Ministerial Service and the Subordinate Executive Service of the Delhi Administration were constituted and posts in Grade-I to Grade-IV were included in the service. The applicant ~~also~~ ^{also} belongs to Grade-IV. Vide Notification dated 4.12.1980 amending certain provisions of these Rules, both the definition of service as mentioned above and the provision of Rule 3 ibid were amended. "Service" was defined to mean the Delhi Administration Subordinate Service, and instead of two Services, one central service was constituted known as the Subordinate Service of the Delhi Administration. The posts in Grade-I were to be Central Civil posts Group 'B' (Gazetted) and those in Grades II, III and IV were to be Central Civil posts Group 'C' (Non-gazetted). Rule 13 states that all appointments to the service shall be made to Grade I/II/III/IV of the service on the basis of the combined lists and not against any specified post included in the service and that the Chief Secretary shall allocate the persons borne on the lists to various offices of the Administration. Rule 20 provides for transfer of cadre officers and states that the Chief Secretary may transfer the cadre officers from one office to another office within the service, from time to time. "Cadre" is defined in Rule 2(e) to be the group of posts of the four grades of service specified in Schedule I. In Schedule I, Grade-IV includes IDCs/Tracer/Telephone Clerk etc. and the number of posts in this Grade is shown to be 3318, including Leave Reserve and Training Reserve each @ 10 per cent.

See

Rule 21 deals with allocation of duty posts and authorises the Chief Secretary to allocate such number of duty posts to various offices of the Administration as may be deemed necessary by him from time to time. Rule 22 provides for posting of Cadre Officers and states that every cadre officer shall, unless he is on leave or otherwise not available for holding a duty post, be posted against a duty post of the appropriate grade in the service.

8. It is not disputed that the applicant is a member of the Subordinate Service of the Delhi Administration and belongs to Grade-IV. The existence and applicability of these rules to the applicant is also not in dispute. The impugned order of transfer also shows that transfer of the applicant, along with a number of others of Delhi Administration Subordinate Service, was ordered. It was argued at the bar by the learned counsel for the applicant that ~~the~~ Rule 20 empowers the Chief Secretary to transfer ^{office} the cadre officers "from one office to another/within the service", but the applicant in this case has been transferred from one Department to another Department and not from one office to another office, and as such, the transfer of the applicant is without authority.

9. From a reading of the rules, there is no doubt in my mind that the posts in this service include all offices under various Departments of Delhi Administration; in fact, the word 'office' in these rules is interchangeable with 'Department'. I, therefore, find that the contention of the applicant that the impugned order is without any authority of rule or law, is not tenable and is devoid of any merit.

10. On the plea of discrimination, para 4.16 of the written statement of the respondents states that all the old hands working in the Department of Food & Supplies before December, 1980 were transferred *vide* the impugned order. In para 5.2 of the written statement, the factual

position in regard to 22 names mentioned by the applicant in Annexure 'X' to the application, has been stated and it has been shown therein that of these 22 persons, two, namely, Ashok Sharma and Ram Kumar were transferred as they were working in the Department respectively from 19.9.78 and 22.7.80. In the remaining 20 cases, no-one was working in the Department before December, 1980. The learned counsel for the applicant argued that though the applicant was posted to the Department of Food & Supplies from 11.1.80, he cannot be said to have been 'working' from 4.12.1980 as during most of the period he was under suspension and for some period also on leave. It was also emphasised that the respondents have used the word 'working in the Department' and this should be read literally and no other inference should be drawn. As the applicant was not 'working' during this entire period in the Department of Food & Supplies, the plea of discrimination was reiterated at the bar. I am unable to agree with this contention of the learned counsel for the applicant. 'Working' in the parlance of Government procedure means period of posting and it would be illogical to give any other meaning to this word. Therefore, in my view, the plea of discrimination is not tenable.

11. On the plea of mala-fide, it has already been mentioned above that no particulars of mala-fide as such have been given in the application. No respondent has been made a party by name to enable him to refute the allegations of mala-fide. It is a well-settled law that the onus of establishing mala-fide has to be discharged by the party which alleges it. Vague allegations of mala-fide have no place in law. The fact of suspension twice is based on statutory provisions of CCS (CCA) Rules, 1965. Moreover, the issue of suspensions is not the issue for adjudication in this application. Except for one short transfer from the Planning Department, the facts do not support any contention of frequent transfers.

12. The applicant has relied on the judgement of the Panjim Bench (Goa) of Bombay High Court in the case of PRAKASH R. BORKER Vs. UNION OF INDIA AND OTHERS (1984(1) SLJ 61). Apart from a number of dissimilarities in the facts of that case and the facts of the case before me, it may be stated that in the case cited above, the proposition of law relating to transfer of a Government servant from one post to another; from one cadre to another cadre without the consent of the Government servant; and transfer of a temporary LDC from one Directorate to another Directorate having different cadres under F.R. 15 came up for consideration. In the instant case, the transfer is as per Service Rules notified under proviso to Article 309 of the Constitution of India and no resort to the provision of F.R. 15 has been taken by the respondents in connection with the impugned order.

13. In view of the above discussion, I see no merit in this application which is accordingly rejected. The parties shall bear their own costs.

*See
29/9/89*
(P.C. JAIN)
MEMBER (A)