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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

November
DATE OF DECISION: ~~October~~ 3, 1989.

(1) O.A. No.1541/1989.

Tarsem Lal Applicant.

V/s.

Union of India &
Others Respondents.

(2) O.A. No.1540/1989.

Sundar Lal Applicant.

V/s.

Union of India &
Others Respondents.

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

For the Applicants Shri R.K. Kamal, Counsel.

For the Respondents Mrs. Raj Kumari Chopra,
Counsel.

JUDGEMENT

These two applications have been filed under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants have challenged the same impugned orders of transfer dated 12th May, 1989 (Annexure A-1 in both the applications). Applicant in O.A. 1541/1989 was working as Upper Division Clerk in the office of Chief Engineer Delhi Zone, Delhi Cantt. and applicant in O.A. No.1540/1989 was working as Upper Division Clerk in the office of Garrison Engineer (P) No.3, Delhi Cantt. Since the impugned order in both the applications is the same and the facts given in the two applications are also similar, these applications can be conveniently disposed of by a common judgement.

2. The facts of the two cases, in brief, are as under: -

Applicant in O.A. No.1541/1989, who was working as U.D.C. in the office of Chief Engineer, Delhi Zone, Delhi Cantt. has been transferred to the office of GE (Army) Suratgarh which is a tenure station. He had been posted in Delhi since 6th January, 1979. In the transfer order dated 12th May, 1989, (Annexure A-1 to the application), his name appears at

Sl. No.14. His appeal against the transfer order was rejected vide HQ CE NC Chandimandir letter/Signal No.07532 dated 10.7.89 and conveyed to him vide communication dated 18th July, 1989 (Annexure A-2 to the application). Similarly, applicant in O.A. No.1540/1989, who had been working as U.D.C. in the office of Garrison Engineer (P) No.3, Delhi Cantt., has been transferred to the office of CNE (P), Bhatinda, which is a tenure station. He had been in Delhi since 16.5.79 and his name appears at Sl. No.24 in the transfer order dated 12th May, 1989 (Annexure A-1 to the application). His appeal was rejected by order at Annexure A-2 to the application. Both the applicants have prayed for the following reliefs: -

- "8.1. The impugned orders of transfer (Annexure A-1) and rejection of appeal (Annexure A-2) be set aside and quashed in respect of the applicant.
- 8.2. Para 6 of the impugned policy order (Annexure A-5) be quashed as violative of Articles 14, 15 and 16 of the Constitution.
- 8.3. Any other relief deemed fit, including costs."

3. I have carefully gone through the pleadings and have heard the learned counsel for the parties.

4. It is pleaded that the applicants are governed by a declared and accepted policy framed by Army Headquarters, New Delhi which lays down that officials are to be transferred from peace stations to hard-tenure stations strictly in order of the date of last return from tenure station. The applicants have annexed to their applications a 'Command Seniority Roster of U.D.C.s who have already done 'Tenure' (Annexure A-3 to the applications). The name of the applicant in O.A. 1541/1989 appears at Sl.No.21 and that of the applicant in O.A. 1540/1989 at Sl.No.37 in the said Command Seniority Roster of UDCs. Learned counsel for the applicants has pleaded that their transfers not only violate the policy instructions regarding transfers of civilian subordinates, but also infringe Articles 14, 15 and 16 of the Constitution of India, inasmuch many

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other U.D.C.s having longer stay in Delhi vis-a-vis the applicants have been excluded from the transfer orders while the applicants have been transferred out of Delhi to tenure stations.

5. Learned counsel for the respondents has, however, pleaded that transfers have been effected strictly in accordance with the date of return from the tenure stations and further posted to tenure stations in accordance with the date of arrival to the station seniority. She has pleaded that some senior U.D.C.s who have been exempted from the transfers are either over-aged or protected due to various reasons which are covered by the policy guidelines/instructions issued in this regard.

6. It is not disputed that there are no statutory rules in regard to transfer of the applicants. It is also not in dispute that the applicants belong to a cadre which has a transfer liability. The case of the applicants rests primarily on two grounds, namely, (1) that in the absence of statutory rules, the administrative instructions assume the force of statutory rules and the administrative instructions have not been followed in these two cases as employees senior to the applicants in the roster of station seniority for posting to tenure stations have not been transferred and, therefore, the impugned order is arbitrary and thus violative of Articles 14 and 16 of the Constitution; and (2) that the provisions in the administrative instructions in favour of female employees are violative of Articles 14, 15 and 16 of the Constitution.

7. In regard to posting of female employees, the administrative instructions provide as follows: -

"Posting of Female employees"

6. Female employees except a volunteer may be exempted from tenure posting irrespective of the fact whether the tenure station has the normal living facilities or not. However, in case of promotion, if there is no vacancy at the present station, the female employees will be posted to a station where vacancy exists. "

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It was argued that this provision operates as discrimination against the male employees and is, therefore, violative of Article 14 i.e., Equality before law and equal protection of the laws; Article 15 (1) under which the State shall not discriminate against any citizen inter-alia on the ground of sex; and Article 16 (2) under which no citizen shall be ineligible for, or discriminated against in respect of, any employment or office under the State, inter-alia, on the ground of sex. As these are not cases of employment or appointment, Article 16, *prima-facie*, does not apply. Article 15 (3) of the Constitution provides that nothing in this article shall prevent the State for making any special provision for women and children.

8. In the case of Shri Charan Singh and others Vs. Union of India and others (1979 (1) SIR 553), this issue came up for detailed examination. In that case, orders of the Railways for reservation of posts of Enquiry and Reservation Clerks in four Metropolitan cities in favour of women were challenged in the Delhi High Court and their lordships dismissed the writ petition. It was held that Article 15(3) is so widely worded that it can successfully help women and in that process can make men ineligible so long as this is done as a "special provision for women". It was also observed that if classification based on caste is valid according to State of Andhra Pradesh v. U.S.V. Balram in spite of Articles 15 (1) and 16 (2) because of Articles 15(4) and 16(4), it necessarily follows that classification based on sex is valid in spite of Articles 15 (1) and 16 (2) because of Article 15 (3). Posting to a tenure station admittedly involves hardship and, therefore, the above special provision in the matter of ^{transfer of} / female employees to a tenure station can be considered as justified and cannot be said to be either arbitrary and thus violative of Article 14 or discriminatory under Article 15 as there is a special provision in favour of women and children in Article 15(3).

9. On the point of discrimination in favour of male employees who are admittedly senior in the roster of station

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seniority for purposes of posting to tenure stations; six names have been mentioned by the applicant in OA 1541/89 and eight names in OA 1540/89 of which six names are common in both the O.As. In the case of Sunder Lal (O.A. 1540/1989), the respondents in their counter-affidavit have given the reasons as to why these employees were not posted out by the impugned order. One has been granted protection for two years as he had not completed three years in the previous formation. One is said to be protected on compassionate grounds upto February, 1991. One is said to be overage in terms of the policy guidelines and the remaining five are said to be protected upto different periods, i.e., three upto September, 1989, one upto February, 1990 and one upto October 30, 1989. These details have not been given in the counter-reply in the case of Tarsem Lal (O.A. 1541/89). The learned counsel for the applicants argued at the bar that in view of this, these cannot be taken into account in the case of Tarsem Lal. The impugned order in both the cases being the same, the names of exempted employees in O.A. 1541/89 being included in O.A. 1540/89, and the issues in both the cases being identical as per the pleadings this objection on behalf of the applicants cannot be given undue weightage, in the interest of justice.

10. The learned counsel for the applicants argued that transfer is a condition of service as observed in the case of Gujarat State Electricity Board and Another Vs. Atmaram Sungomal Poshani (Judgement Today 1989 (3) SC 20), and on that basis, he further argued that in the absence of statutory rules, administrative instructions issued in respect of any condition of service assume the force of statutory rules. A few other judgements were also cited in this connection.

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- * (1) State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others (1977 SCC (L&S) 535).
(2) Union of India & Others Vs. K.P. Joseph and Others (1973 (1) SCC 194).
(3) State of Gujarat Vs. Akhilesh C. Bhargav and Others (1987 SCC (L&S) 460).
(4) Charanjit Lal Vs. Union of India and others (A.T.R. 1987 (1) C.A.T. 393).

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11. The case of State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others is not relevant to the case before me. In that case, executive instructions were issued with reference to statutory rules. Similarly, the case of Union of India & Others Vs. K.P. Joseph and Others is not relevant as in that case also, it was held that the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service. In the case of State of Gujarat Vs. Akhilesh C. Bhargav and Others, the point involved was issue of instructions to cover the gap in relation to statutory rules. In the case of Charanjit Lal Vs. Union of India and Others, it was held that the order of transfer must conform to the rules, if any, and an order cannot be arbitrary or discriminatory. Thus, it cannot be said that the administrative instructions issued in the absence of any statutory rules or without reference to any statutory rules are mandatory and are justiciable. The general rule is that administrative orders confer no justiciable right. It was held by the Supreme Court in the case of State of Assam and Another, etc. Vs. Basanta Kumar Das, etc. etc. (1973 (1) SCC 461) that Government memorandum extending the age of retirement of its servants from 55 to 58 years was a mere executive instruction and not a rule made under Article 309 of the Constitution and that it did not confer any legal rights on the persons covered by it and no legal action could be founded on it. There can, however, be exceptions to the general rule and these would be cases where mala-fide or arbitrariness is alleged and established. There are no allegations of malafide in these cases. The allegation of arbitrariness and discrimination is not tenable. The respondents have pleaded that the policy guidelines have been followed and there is no deviation. The deviation to the extent of ~~that~~ six employees in the case of Tarsem Lal (OA 1541/89) and eight employees in the case of Sunder Lal (OA 1540/89), senior

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in the roster of station seniority for purposes of posting to a tenure station has been justified by giving reasons which also flow from the policy guidelines.

12. The learned counsel for the respondents has cited a number of judgements. ^{**} It is not necessary to go into details of all those cases because the law on the question of transfer orders is by now well settled. Transfer is an incidence of service and an employee in a cadre of transferable post has no legal right to continue to remain posted on a particular post or for a particular period of time. The employer is the best judge in the matter of deployment of its human resources. In the case of Union of India Vs. H.N. Kirtania (Judgement Today 1989 (3) SC 131) decided by the Supreme Court on 12.7.89, it was observed as below: -

"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 statutory rules or on grounds of malafides."

In another case of Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani (Judgement Today 1989 (3) SC 20), the Supreme Court observed as below: -

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to another is an incidence of service. No Government servant or an employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to another is

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- (1) B.B. Dey Vs. Union of India & Other (A.T.R. 1986 C.A.T. 414).
 - (2) Shri Kamlesh Trivedi Vs. ICAR & Another (S.L.J. 1989 (1) (CAT) 641).
 - (3) Deep Narayan Yadav and Others Vs. Union of India and others (S.L.J. 1989 (1) (CAT) 330).
 - (4) Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna and others (1981 (3) SLR SC 215).
 - (5) Hira Lal Dhar Dubey Vs. Jokhu Singh and Others (1987 (4) ATC 521).
 - (6) Harish Chandra Srivastava Vs. Union of India and Others (1987 (4) ATC 638).
 - (7) Krishna Dev Dutt Vs. Union of India and Another (1987(2) ATC 574).
 - (8) S.K. Sarkar Vs. Union of India & Others (1987 (2) ATC 576).

generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public administration. Whenever a public servant is transferred, he must comply with the order, but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

13. In the two cases before me, there is no violation of any statutory rules as no such rules admittedly exist. There is no allegation of malafide or any evidence to that effect. The plea of arbitrariness is not established. The applicants had been on their last post for a period of approximately ten years. They have already joined their new places of posting in pursuance of the impugned order. I, therefore, see no merit in these applications which are accordingly rejected. The parties shall bear their own costs. A copy of this order shall be placed in each of the two cases.

(P.C. JAIN)
MEMBER (A)