

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 1646
T.A. No.

198 9

DATE OF DECISION 3.11.1989Shri N.K. Seth PetitionerShri G.D. Bhandari Advocate for the Petitioner(s)

Versus

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

CORAM :

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

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. Whether it needs to be circulated to other Benches of the Tribunal?
- / NO


(D.K. CHAKRAVORTY)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

OA 1646 of 1989

Decided on 3.11.1989.

N.K.Seth

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Applicant

Versus

Union of India and others

Respondents

For the applicant

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Mr.G.D.Bhandari, Advocate

For the Respondents

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Ms. Raj Kumari Chopra, Advocate

Mr.D.K.CHAKRAVORTY:

The applicant herein challenges the order No. MES/80/89 dated 17th April 1989 passed by the 2nd respondent posting him from Meerut to Dehu Road in an arbitrary and discriminatory manner in grave violation of the enunciated policy issued by the Army Headquarters.

2. The facts in brief are as follows:-

The applicant is holding a civilian post of Assistant Garrison Engineer under the Garrison Engineer, MES, Meerut since May 1986, after completing Hard Tenure Posting in Assam for three years. He has about 30 years of unblemished service record. The applicant submitted an appeal on 10.5.1989 requesting for change of the station to a place adjoining Meerut so that the education of his

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two grown up daughters studying at Meerut University and the medical treatment of his wife, who is suffering from Hypertension with Angina, are not disturbed. Having reliably learnt that his appeal has been rejected, although not communicated to him, he preferred another appeal on 12.7.89 in which he reiterated the same grounds and also requested for personal interview with the Chief Engineer, Central Command. The 4th respondent, under his order dated 24.7.89, transferred him permanently to Dehu Road in the interest of State and directed that he will be relieved on 25th July, 89 (AN) and will report to Dehu Road after availing of the usual joining time. An amended order was issued on 25.7.1989 regarding his relief in which the words "25th July 1989 (AN)" were substituted by "Till finalisation of Court of Inquiry complaint against Maj. O.P.Chabra".

3. Heard the learned counsel for the applicant and the learned counsel for the respondents. The learned Counsel for the applicant submitted that the transfer order is violative of the guidelines of "Career Planning and Posting Policy - MES Civilian Officers" issued by the Army Headquarters in December 1987. He drew attention to the following provisions of the guidelines:-

" 23. Compassionate Postings: the following guidelines will be followed:-

- (a) Compassionate posting upto 20 years service will be an exception.
- (b) If, however, it becomes unavoidable, only one posting upto 20 years service will be accepted. The tenure for such a posting will be two years extendable by one year.

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- (c) Those officers who have not sought compassionate posting as per Para 23(b) above, may seek two compassionate postings of two years duration each or one posting of four years duration anytime after 20 years service. This will be subject to Para 24(d) below.
- (d) Compassionate postings will not be on executive appointments.

24. xxxxxx xxxxxx xxxx

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27. Last Leg Postings: It will be the endeavour of this Headquarters to post each officer to a station of his choice near his selected place of residence during the last three years of service. On attaining the age of 54 years, every officer will forward through proper channel following details if he has not availed compassionate posting earlier to home station.

- (a) Selected place of residence.
(b) Choice stations for last posting.

28, 29 xxxxxxxxxx xxxxxxxxxx

30. In case of officers promoted from Group 'C' to Group 'B' the following guidelines will be followed:-

- (a) Officers who are 50 years and below on promotion may be posted out of Command.
(b) Officers above 50 years will preferably be posted within the same Command.
(c) Officers due to retire within 2-3 years may be adjusted in the same station depending upon availability of clear vacancy. Such postings will only be on staff.

31 to 37 xxxxx xxxxxx

38. The system has to be made functional by officers and it is expected that not only the executives but also the officer community as a whole would ensure faithful implementation of the policies as enunciated in the policy letter."

4. The learned counsel submitted that the applicant, who is completing 53 years of age, should be posted within the same Command, the benefit of compassionate posting available under Para 23 of the Guidelines which have been extended to

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some other officers, may be given to him and as he is due to retire in less than 5 years time, the provision of giving a choice of the station near to his selected place of residence could be applied in his favour. The learned Counsel further argued that the applicant has not even completed 3 years of service at Meerut and as per the policy of the Central Government the transfer should normally not be made during the mid-academic Session. The learned Counsel for the applicant cited several instances where persons similarly situated were accommodated in nearby stations keeping in view their personal requirements and difficulties, whereas the applicant ^{was} subjected to hostile discrimination. The impugned orders are arbitrary in view of the fact that there are three posts lying vacant in Meerut ^{same} in the Wing to which the applicant belongs. In support of his contention that the transfer of the applicant is not in public interest and/or unreasonable, discriminatory and arbitrary, he cited judgments in "E.P. Royappa Rao Vs. State of Tamil Nadu (AIR 1974 SC 555)", "K.K. Jindal Vs. Union of India (ATR 1986 CAT 304)", and "B. Vardha Rao Vs. State of Karnataka (AIR 1986 SC 1955)".

5. The learned Counsel for the respondents opposes the application on the ground that the transfer is a normal incidence of Government service which should not be interfered with. The guidelines on which the learned Counsel for the applicant wishes to rely upon does not give the applicant any legal right to challenge the transfer made in public

interest. ~~She~~ further averred that efforts are made to accommodate an officer to a station of his choice during the last three years of service but, for the applicant, this will not be last posting as he has still five years^{of} service left. The application may, therefore, be rejected.

6. I have given due thought on the averments of both sides and examined carefully the relevant records and other materials placed before me. In "Union of India and others Vs. Shri H.N.Kirtania" (Judgments Today 1989(3) SC 131), the Supreme Court has held as follows:-

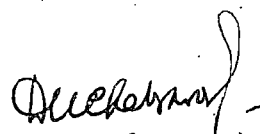
"We do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. 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 ground of malafides. There was no good ground for interfering with the respondent's transfer."

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7. The applicant has not established any special circumstances or considerations in support of his prayer for setting aside the transfer order and directing the respondents to post him to any nearby adjoining station to Meerut. He has also not alleged any malafides. I do not see any merit in the application.

8. Following the decision quota supra, the application is liable to be dismissed and it is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.


(D.K. CHAKRAVORTY)
Member (Admn.)

Dated: 3rd November., 1989.

vsn