

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2002 of 1989 ~~1990~~
~~F.A. No.~~
M.P. No. 1099 of 1990

DATE OF DECISION _____

Ram Diya	Petitioner
Mr. S.K.Sawhney	Advocate for the Petitioner(s)
Versus	
The Union of India and Another	Respondent ^s
Mr. D.N.Moolri	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.M.Mathur, Member (Administrative)

The Hon'ble Mr. S.R.Sagar, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

(Judgment of the Bench delivered by the Hon'ble Mr. S.R.Sagar, Member(J))

Short question involved in this O.A. under section 19 of the Administrative Tribunals Act, 1985 is as to whether the impugned transfer order dated 7.8.1989 (Annexure-A-1) is mala fide; illegal; punitive, and was issued under colourable exercise of power?

2. Briefly stated the facts of the case are that the applicant who was employed as Cabinman under Traffic Inspector (Non-interlocking) Sabzi Mandi Delhi was transferred along with 2 others *vide* the Annexure-A-1. The applicant has alleged that this transfer order is based on the adverse report against the applicant submitted on 20.7.89 (Annexure-A-3). He has contended that before acting upon the said report, the applicant was not afforded any opportunity. The applicant has also alleged that in accordance with the impugned transfer order, he was transferred as he had become surplus and therefore in such position Rules contained Northern

Railway printed Sl.No. 4491 should be adhered to. The impugned transfer order is thus illegal; punitive; mala fide and was issued under colourable exercise of power, hence liable to be quashed.

3. The application has been resisted by the respondents.

Admitting the factual position it has been contended that there have been regular reports of negligence, inefficiency ^{etc} against the applicant and therefore administration is competent to adjust its men where they could be fitted best by means of transfer. It has also been contended that there has been a reduction ~~in~~ posts of Cabinman and there has been a shrinkage of cadre and thus the transfer is on administrative ground on the basis of needs and efficiency of staff. The transfer order is neither illegal nor punitive or mala fide and was not issued under colourable exercise of power. The applicant has been transferred on his substantive post with ~~all~~ the benefits attached to it. The application is liable to be dismissed.

4. We have heard arguments of the learned counsel for the parties and have gone through the records.

5. A perusal of the impugned transfer order (Annexure-A-1) will show that one of the employees who was transferred was Shri Shrawan Kumar. Admittedly, Shri Shrawan Kumar had earlier filed O.A. No.1923 of 1989 assailing the impugned transfer order in this Bench of the Central Administrative Tribunal. The said case was decided on 26.7.1990. Admittedly the said O.A. was dismissed and the stay order granted in the said case was also vacated.

6. The learned counsel for the applicant has cited S.L.J.1990(1) C.A.T., 481 - Gaidya Nath Singh Versus the Union of India and others; and S.L.J. 1989 (3) (SC) 44 - the Union of India & others Versus Shri H.W.Kirtania. The learned counsel for the applicant has submitted that the case of the applicant materially differs from the aforesaid case of Shri Sarwan Kumar, as will appear from Annexure-A-3, ^{it} was specific act of negligence ^{in Shrawan Kumar's case} whereas the charge against the applicant

was of general nature.

7. With respect to the application of the decision in the case of Baidya Nath Singh Versus the Union of India (Supra) to the present case it has already been decided earlier in the aforesaid case of Shri Sarwan Kumar that it is distinguishable from the present case.

8. In Shri H.N.Kirtania's case (Supra) the Supreme Court observed that a Central Government employee who holds a transferable post and was liable to be transferred from one place to the other, he has no legal right to insist for his posting at a particular place of choice. Transfer of a public servant on administrative ground 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 ground of mala fide. (Emphasis supplied).

9. Thus, according to the well established principle of law transfer order should be interfered with only if it is illegal on the ground of violation of statutory rules or on ground of mala fide.

10. With respect to the illegality of the transfer order on the ground of violation of statutory rules the learned counsel for the applicant has drawn our attention to the rule regarding transfers or retrenchment in case of curtailment of cadre printed on page 155 of the Book entitled as "A Guide to Railwaymen" (Revised Edition 1989). In accordance with the Rule whenever staff are required to be rendered surplus, the order of seniority should be the criterion for deciding the employees who are to be rendered surplus, the junior employees being rendered surplus earlier than the seniors irrespective of the manner in which they entered the grade.

This point has already been considered in the aforesaid case of Shri Sarwan Kumar. The Bench of this Tribunal while deciding the said case of Shri Shrawan Kumar, inter alia, observed as below:-

"There is no surplus rendering of the employees in this case which would necessitate transfers outside the unit or retrenchment. The applicant has been transferred in his own seniority unit."

11. The above makes it clear that the applicant was rendered surplus for want of post at a particular place which does not mean that he became surplus so as to be transferred to some other unit or category or suffered retrenchment. The rule cited by the learned counsel for the applicant is not therefore applicable. We have, therefore, no reason to differ from the legal position as has been discussed in the said case of Shri Sarwan Kumar.
12. As regards the question of mala fide, the applicant has not shown us any act of mala fide on the part of the transferring authority. The remarks made in Annexure-A-3 against the applicant do not appear to have been sufficient for the department to take any action against the applicant. The impugned order cannot, therefore, be said to be punitive and it cannot be said that it was issued in colourable exercise of power.
13. In view of the above we do not find it a fit case for interference. The OA as well as M.P. are hereby dismissed with no order as to costs.

(M. M. MATHUR) 16/11/90
Member (Administrative)

(S. R. SAGAR) 16.11.90
Member (Judicial)