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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2078/1989.

DATE OF DECISION: March 12, 1990.

Krishan Kumar Applicant.
Shri D.K. Sinha Advocate for the Applicant.
V/s.
Union of India & Ors. Respondents.
Shri P.P. Khurana Advocate for the Respondents.

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

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 his Lordship wishes to see the fair copy of the judgement? *No*.
4. To be circulated to all Benches of the Tribunal? *No*.

(Clear)
(P.C. JAIN)
MEMBER (A)

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JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was posted on deputation to Advanced Level Telecom Training Centre (for short, ALTTC), Ghaziabad, has challenged Memo dated 23.6.1989 (Annexure I to the application), by which he has been posted to the Satellite Project Earth Station, Sikandrabad, a unit of Satellite Project, New Delhi, and has prayed that the same be quashed and that the respondents be directed to abide by Rule 38 and accordingly post him under D.M.T., Ghaziabad.

2. The relevant facts, in brief, are that the applicant was recruited in 1978 for the post of Junior Engineer under Bombay Telephones District. After completion of the training as Junior Engineer (Telegraphs), he was posted on deputation to ALTTC, Ghaziabad as Junior Engineer with effect from 26.3.1980. In his letter dated 5.8.1980, addressed to the Hon'ble Minister of Communication, New Delhi, he requested for transfer under Rule 38, on compassionate grounds and on out of turn priority basis as a special case, to U.P. Circle. He was asked in February, 1987 whether he was still interested in the above transfer (Annexure III to the application) and he replied in response thereto that he was still interested in his transfer under Rule 38, to U.P. Circle. He also submitted the prescribed declaration, which is dated 18.3.87.

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He says that his request was accepted and he was asked to fill in the declaration form. The respondents, in their reply, have refuted this. On 16.9.1987, he requested for posting under D.M.T., Ghaziabad after his transfer under Rule 38. He also requested the D.M.T., Ghaziabad, on 10.9.1987 to sponsor his name for posting in D.M.T., Ghaziabad. His request for transfer under Rule 38 was accepted vide Memo dated 1.7.1988 (Annexure VI to the application) whereby he was also posted under D.T.(M), Lucknow. Vide Memo dated 6.6.89 (Annexure VIII), he was relieved and struck off from the strength of ALITC w.e.f. the afternoon of 6.6.89 with instructions to report to DET F/C, Dehradun. On 25.6.89, he wrote to the Chief General Manager, ALITC, Ghaziabad that he had been suspended with effect from 17.7.88 and he was still under suspension and that he did not want a change in his headquarters due to domestic problem and a court case. He prayed that he might not be relieved from ALITC, Ghaziabad for going to Dehradun on humanitarian ground. In pursuance of his request, he was allowed vide letter dated 27.6.89 to continue in ALITC Ghaziabad till further orders. He was then transferred under order dated 23.6.1989, which is the impugned order.

3. The case of the applicant, in brief, is that his posting to Satellite Project is not a posting under U.P. Circle, and, as such, this is violative of Rule 38 of the P&T Manual, Volume IV, under which he had sought his transfer to U.P. Circle. He has also alleged malafide. The other grounds taken by him are -

- (1) that the respondent No.3 had not taken a declaration from the applicant as required by the impugned order dated 23.6.1989;
- (2) the emoluments to be drawn by the applicant will be less;
- (3) a number of posts of Junior Engineer are lying vacant at DMT, Ghaziabad and he should have been posted there, as he himself had requested for such a posting and that office had also requested

- for applicant's posting there;
- (4) the impugned posting will affect his career prospects; and
- (5) that his posting is to an ex-cadre post, which is not permitted under Rule 38.

4. The case of the respondents, in brief, is that
- (1) an official who seeks his transfer under the provisions of Rule 38 loses his seniority but there is no financial loss as alleged;
 - (2) the Junior Engineers are borne on a circle cadre and have transfer liability all over the entire circle and there is no provision for transfer to a particular station in that circle;
 - (3) the applicant was transferred under order dated 1.7.88 and that the entire U.P. circle was facing acute shortage of JTOs specially for providing manpower to quality assurance circle, such as, Satellite Project within the territorial limits of U.P. Telecom Circle and that it was on this account that the request from JTOs for transfer to U.P. circle, including that of the applicant, under Rule 38, was allowed;
 - (4) the request of the applicant for posting under DMT, Ghaziabad, was not acceded to;
 - (5) it was to accommodate the applicant's request for being posted near Ghaziabad that orders were issued for his posting in Satellite Project, Sikanderabad, which is in close vicinity of Ghaziabad; and
 - (6) the Satellite Project, where the applicant has been posted vide the impugned order, is situated within the U.P. Telecom Circle and that U.P. Telecom Circle is a feeder unit for Satellite Project, Sikandrabad and it is the liability of the U.P. Telecom Circle to provide staff to the Satellite Project, and a person continues to remain part and parcel of the U.P. Telecom Circle even if he is posted in the Satellite Project.

The respondents have also stated that the applicant stands already struck off from the strength of the ALTTC with effect

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from the afternoon of 1.9.89. The Controlling Officer called the applicant to receive the relieving orders at 3.00 p.m. on that day, but the applicant refused to accept the orders and left the office by keeping half day's casual leave application at his table without getting the same sanctioned. The same was not sanctioned by the Controlling Officer. The orders for being struck off from the rolls of ALTTTC were sent to the applicant by registered post on his last known address, but the same were received back undelivered. They have also annexed copies of postal receipts and the remarks of the postal authorities on the registered letter.

5. I have perused the documents on record and have also heard the learned counsel for the parties.

6. It is not in dispute that the applicant himself applied for his transfer to U.P. Telecom Circle under Rule 38 of the P&T Manual Volume IV. It is also not in dispute that he had filled in and furnished the prescribed declaration form, as required for that purpose. His contention, therefore that before being relieved from ALTTTC, he should have again been asked to furnish the prescribed declaration is not legally sustainable. Rule 38 *ibid* does not prescribe furnishing of declaration form every time a request for transfer under this Rule is processed. It is true that in the impugned order dated 23.6.1989, which is from the office of Chief General Manager, Telecom, U.P. Circle, Lucknow, it is mentioned that a declaration agreeing to the conditions mentioned therein should be obtained from the officials before they are finally struck off from their present units, ^{but} it has to be read in the context that the applicant's request for transfer under Rule 38 of the P&T Manual Volume IV and the declaration which he had made in this connection was submitted by him to the Bombay Telephones and not to the U.P. Telephones.

7. The applicant has alleged malafide and in support of his contention, he has referred to a confidential letter
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dated 22.8.1989 (Annexure X to the application) addressed to the applicant from A.E. (MS), ALTTC, Ghaziabad, in which it is mentioned that the applicant was arrested by police on 17.7.88 and was detained for more than 48 hours, but this fact was not brought to the notice of the superior authorities as required under CCS (CCA) Rules and that this had resulted in suppression of the material facts. The applicant was, therefore, asked to explain as to why disciplinary proceedings should not be taken against him. He sent a reply on 25.8.89, in which he stated that before he was taken away from his residence by police, he wrote a letter giving precise facts and left it with his wife to be posted to Director (CD), ALTTC, Ghaziabad and that his wife posted the same on 18.7.88 under Certificate of Posting. He has also alleged that when he joined his duties on 8.8.88, he personally met the concerned officer and explained the incident in detail. The office again wrote to him on 28.8.89. He was advised to submit documentary evidence in support of his statement regarding sending intimation under Certificate of Posting and also to submit a copy of the letter alleged to have been sent. In his reply dated 31.8.89, he sent a photo copy of receipt of UPC but stated that copy of letter sent was not readily traceable with him and that it would be submitted as and when it becomes available. He also invited attention to his letter received by office on 23.5.89 and also enclosed a copy of the same.

8. The above correspondence does not establish any malafide in regard to his transfer. In fact, at his own request, his transfer to DET F/C, Dehradun ordered during the suspension period was deferred by respondent No.3. The authorities were fully competent to ask him to explain about the non-disclosure of his detention in police custody and non-receipt of information by them in this respect. No other details in support of his contention of malafide have

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either been given or substantiated. No person has been made a party by name. The allegation of malafide is, therefore, not tenable.

9. The other main contention of the applicant is that the posting to the Satellite Project is not a posting under the U.P. Telecom Circle, for which he had applied under Rule 38. This contention has been strongly refuted by the respondents. They have particularly drawn attention to ground 5 taken by the applicant in his own application. This is reproduced below: -

"5. Because people are sent on deputation to General Manager, Satellite because that is the only source or mode of recruitment as the said General Manager, Satellite Projects has no power to make independent or direct recruitment to his organisation and so asks staff on loan from other cadres thus this is an organisation totally managed by the deputationists. "

10. The respondents have also stated in their reply that the Satellite Project is within the territorial limits of U.P. Telecom Circle and that U.P. Telecom Circle is a feeder unit for Satellite Project, Sikandrabad and that it is the liability of the U.P. Telecom Circle to provide staff to the Satellite Project. In view of all these averments, the contention of the applicant that his posting to Satellite Project vide the impugned order violates the provisions of Rule 38 of the P&T Manual, Volume IV is not substantiated.

11. The learned counsel for the applicant also urged at the bar that since the applicant was serving in a Training Institution, he should be given the facility of three options relating to his next posting and the department concerned should arrange for the posting according to the option exercised by him as far as possible. It was argued that the applicant has not been given the facility of exercising this option. It is seen in this case that the applicant, on his transfer to U.P. Telecom Circle, has requested only for posting under D.M.T., Ghaziabad; he has not given any other option. The respondents have stated in their reply

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that his above request was considered but could not be acceded to. He was also accommodated when his transfer to Dehradun was modified at his own request and he was allowed to continue at Ghaziabad. Vide the impugned order, he has been posted to a place which is very close to Ghaziabad.

12. The learned counsel for the applicant cited a few cases on the subject of objective of a statute and the harmonious construction thereof. It is not in dispute that Rule 38 of the P&T Manual, Volume IV, has the force of law. The provisions of this Rule are also very clear and do not call for any interpretation. Therefore, an emphasis on the objective of the statute and the interpretation thereof is really not relevant in this case. Rule 38 in chapter II of Volume IV of the P&T Manual relates to transfer of individuals on their own requests and for their own convenience. A declaration to the effect that he accepts the seniority on transfer in accordance with this rule, and that he will not have any claim to go back to the old unit, is obtained before an official is transferred under this rule. Admittedly, the applicant applied for such a transfer and gave the prescribed declaration. His request was accepted and he was transferred from Bombay Telephones to U.P. Telecom Circle. He does not acquire either under Rule 38 or any other rule or order, any right to posting to a particular place within the Circle. J.E.s cadre is a Circle cadre and their applications for transfer under Rule 38 are considered only for transfer to a Circle and not for any particular station. This was also brought to the notice of the applicant, vide Annexure IV to the application.

13. In view of the above discussion, the application is devoid of merit and is accordingly dismissed. Parties to bear their own costs.

Clean: 12/3/1990
(P.C. JAIN)
MEMBER(A)