

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 205 of 198 9
T.A. No.

DATE OF DECISION 29.8.1989

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O.P. Sawhney _____ Applicant (s)

Shri D.K. Rastogi _____ Advocate for the Applicant (s)

Versus

Union of India & Others _____ Respondent (s)

Shri M.L. Verma _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri O.P. Sawhney working as Scientific Assistant in the India Meterological Department, against his posting from Palam Airport in an operational post to a non-operational post at Safdarjung Airport.

2. According to the applicant, he has been working as Meterological Officer, Palam, on an operational post which has certain advantages over non-operational posts like official residence in duty place, overtime allowance, job satisfaction etc., but Respondent No. 3, Shri S.K. Ghosh, Director, Regional Meterological Centre, New Delhi, who has a grudge against the applicant has manipulated his transfer to a non-operational post. According to the transfer policy laid down by Respondent No.2, Director General of Meterology, on 24.2.88, as a result of the orders of this Tribunal it was decided that rotation of staff from non-operational to operational unit and vice versa at Delhi should take place after 3 years on the basis of stay, irrespective of the fact that the staff involved have duty quarters or not and that for this purpose the M.O. Delhi Airport and M.O./M.O. S.C.

would be considered as one operational unit and other units having duties comparable to general duties may be considered as non-operational, but in violation of these guidelines, Respondent No.3 has transferred him taking advantage of the guidelines meant for staff posted in the Regional Offices ~~posted~~ outside Delhi as laid down in policy letter dated 24.5.88 which adds that while making rotational transfers, exigencies of service and experience and fitness of the staff should also be taken into consideration. In the application, the applicant has averred that he has been raising voice whenever he feels that irregularity or injustice has been to him or to his colleagues and has been regularly writing against such irregularities particularly in the allotment of duty post quarters and has also brought ^{these} to the notice of all the higher authorities, including one letter addressed to the Prime Minister. Because of this, Respondent No.3 is personally annoyed with him and tries to harass and victimise him on every occasion. Respondent no.3 started proceedings against him, but with a view to avoid institution of enquiry to investigate charges levelled against him has inflicted the punishment of withholding an increment without cumulative effect vide orders dated 2.12.88 (Annexure A-7 to the application). In this application, he had also sought relief against the above punishment, but has withdrawn the same to avoid multiplicity of reliefs and has confined his application only against his transfer from an operational to a non-operational post. He has stated that Respondent No. 3 and some others are always showing favours to officers who toe their line and harass others like the applicant. Respondent No. 3 has not disclosed any reason for transferring the applicant and two other Scientific Assistants mentioned in the impugned order dated 13/16.1.1989 (Annex. A-8 to the application). Another application has been filed by the applicant under Section 30 of the A.T. Act read with Section 340 of the Cr.P.C. against the respondents for filing a false statement before the Tribunal saying that the guidelines applicable to the Delhi Officers are dated 27.5.88 and not dated 24.2.1988 as proposed by Respondent No. 3 in his office letter dated 19.2.88 and said that the respondents

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have committed perjury and the applicant should be permitted to prosecute Respondent No.3 for such a false declaration under Section 193 of the I.P.C.

3. The respondent in their reply have stated that transfers and postings are the functions of administration and normally the courts may not interfere in them. They have also cited the case of Man Moahn Singh Vs. UOI 1988(6) ATC, 218 where it has been held that the Tribunal would not like to interfere even if there is deviation from the policy. It has been stated that the nature of duties of both operational and non-operational section of IMD is of technical nature and that the applicant had Govt. accommodation at Lodhi Road allotted to him when he was posted in operational unit at Palam Airport. He was in operational unit from 24.8.81 to 7.4.82 at Palam Airport, then in non-operational unit at AAU Safdarjung from 8.4.82

/to 30.11.83 /and again on operational duty from 1.12.83 to 10.2.85 at FMO Safdar-

jung and from 11.2.85 to 29.1.89 at Palam Airport.

Observing his work and conduct, he was not found fit to work at such an important place like Palam Airport or any operational unit for the safety of the aircraft operation/costly instruments. The respondents have enclosed copies of the complaints against the applicant. Annexure-1 to the counter is a copy of the report against misbehaviour of the applicant who seems to have misbehaved with a number of senior officers. Annexure 2 to the counter by the respondents indicates that the applicant caused disruption in the smooth functioning of the operationally important unit and Annexure 4 to the counter gives some more details in connection with the work of Shri Sawhney. As such, in exigencies of service, it was considered desirable to shift the applicant from an operational post to a non-operational post at Safdarjung Airport. This does not amount to any transfer as the applicant remains in Delhi, but is only working in another unit.

4. As far as the application under Section 30 of the A.T. Act read with Section 340 of the Cr. P.C. is concerned, it has been stated by the respondents that the orders dated 24.2.88 were in the nature of a draft but the real transfer policy has been issued only

on 27.5.88. The learned counsel for the respondents pointed out that in the review application filed by the applicant in another case, the learned counsel, Shri D.K. Rastogi, had accepted that the guidelines were issued by the D.G. on 27.5.88 and in the judgment delivered on 31.3.89, it was held that the relevant guidelines applicable were those issued on 27.5.88 and not those issued earlier. It was reiterated that the applicant has been shifted from one unit to another and it is for the administration to decide as to how to utilise the staff in the best manner and the transfer is strictly according to the guidelines. The learned counsel for the applicant vehemently opposed the contention of the learned counsel for the respondents and said that the guidelines were as a result of the judgment of this Tribunal in T-437 of 1986 and when the review was filed, they were not aware of the guidelines dated 24.2.88. He further said that the respondents are misleading the court as they have not actually followed any guidelines and people continue to be in the same post for over 15 years contrary to the guidelines.

5. I have gone through the pleadings and the arguments by the learned counsel on both the sides. It is noted that the applicant has spent nearly 15 years out of 24 years of service in operational units. It is also noted that the representation to the Prime Minister in 1984 was primarily about allotment of a quarter. The applicant has been allotted a house by the Directorate of Estates which he is still occupying although he has not got this because of working on an operational unit. The main case of the applicant is that Respondent No. 3 is personally prejudiced against him. In fact, in his application he has mentioned that about 20 to 25 top brass, including Directors, are against him and are bent upon harming him. He said that if he had been trying to sabotage the costly instruments, it is a serious charge and a much severer punishment than withholding of one increment should have been awarded, but this was not done so because respondents have no case. He said that if the log book

of the Palam Airport is called, it would be seen that all the allegations against the applicant are false. He asserted that different officers have been asked to write against him to malign him at the instance of Respondent No. 3.

6. The punishment of one increment is on account of misbehaviour of the applicant with senior officers, but this is not now the issue in this case. There is really no case made out for perjury which is normally understood as giving false evidence in a court. Even if it is accepted that a statement or a reply filed in the court is incorrect, it has to be established that there has been a deliberate attempt to present false facts. This matter has already been discussed in para 4 of this judgment. Even if it is accepted that guidelines dated 24.2.88 are the real guidelines for staff posted in Delhi and the guidelines dated 27.5.88 are meant for staff posted in the Regional Offices outside Delhi, it cannot be said that transfers cannot be done in exigencies of service or when work so requires. To that extent, the guidelines dated 27.5.88 are more comprehensive. Normally, guidelines are not issued by way of D.O. letters, but these should be issued either as an Office Memorandum or in the form of instructions.

7. The Supreme Court in Gujarat Electricity Board and another Vs. Atma Ram Sungomal Poshani - Judgments Today 1989 (3) SC 20 - has clearly held that transfer is an incident of service and the transferee can, at best, make a representation against the transfer order for consideration by the appropriate authority. The Supreme Court have also held in the case of Union of India & Others Vs. H.N. Kirtania - Judgments Today 1989 (3) S.C. 131 that Central Government employees working on transferable posts are liable to be transferred from one place to another in the country and the transfer should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal. In the present case, the applicant has been shifted from Palam Airport to Safdarjung Airport and he does not have to change his quarter already allotted to him. He may have a grievance that operational posts have certain advantages over non-operational



posts and, therefore, his transfer to a non-operational post is vindictive and out of malice by Respondent No. 3. Here also, it is seen that the applicant has worked on an operational post for a major part of his service. His complaint against non-observance of the policy may be examined by the Director General, India Meteorological Department, who may provide him such relief as deemed fit by him, but there is no case for the court to interfere in transfer orders when there are complaints against the applicant. There must be some strong reasons why a very large number of senior officers, including 20 to 25 top brass of the Department, are against the applicant as stated by him. No malice has been alleged against the Director General who is the Head of the Department and it is for him to examine the allegations made by the applicant. In the circumstances, the application is rejected. There will be no orders as to cost.

(B.C. Mathur)

Vice-Chairman