

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No.
T.A. No.

2199

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DATE OF DECISION January 18, 1990

Shri Ved Parkash Sharma Applicant (s)

Shri B.S. Mainee Advocate for the Applicant (s)

Versus

Union of India & Ors Respondent (s)

O.P. Kshatriya Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. JAIN, MEMBER (A)

~~The Hon'ble Mr.~~

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 their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged his alleged transfer to Murad Nagar vide order dated 26.10.89 (Annexure A-1 to the application). The facts relevant to this case and as per the material on record are, in brief, as under:

The applicant was appointed as a Booking Clerk under the Northern Railway on 30.4.80. He was later on promoted as Senior Booking Clerk. He was charge-sheeted vide Memorandum Charge-sheet dated 17.3.88 and was awarded punishment of reduction in rank from Senior Booking Clerk to Booking Clerk for a period of one year without cumulative effect. Vide order dated 19.9.88. His appeal against the punishment order was rejected vide order dated 15.11.88. He was also transferred to a post of Booking Clerk on administrative ground to Nizammudin vide order dated 13.10.89.

(over)

Vide order dated 13.1.1989 he was ordered to be transferred on administrative ground to Meerut City. He joined at Nazammudin in pursuance of order dated 13.10.1988, but he did not report for duty at Meerut City, and continues to work at Nizammudin. Regarding his transfer to Meerut City, he filed an application in the Central Administrative Tribunal (D.A. 536/89). This was later on withdrawn as his transfer to Meerut City was cancelled. His transfer to Meerut City is stated to have been ordered under a mistaken identity as there was another booking clerk of the same name. On expiry of the period of one year for which he was reduced to the post of Booking Clerk, he was ordered to be reinstated on the post of Senior Booking Clerk and posted to Murad Nagar vide order dated 26.10.1989. In this case the applicant has challenged his transfer to Murad Nagar and he has prayed that this transfer order be set-aside.

3. Case of the applicant is that his transfer to Murad Nagar amounts to double jeopardy; that he has been transferred thrice within a period of about one year; and that his transfer during the mid-education session will also disturb the education of the children.

4. The case of the respondents is that this is not a case of transfer but only a case of posting. According to them, when the applicant was reduced to the post of Booking Clerk, he had to be shifted from Delhi Station as no post of Booking Clerk was available. His transfer order from Nizammudin to Meerut City was due to a mistake of identity and on discovery of the same it was cancelled. On his re-instatement as Senior Booking Clerk, the applicant has to be shifted as there is no post of Senior Booking Clerk vacant at Nizammudin. They have rebutted the contention of the applicant that his posting to Murad Nagar is punitive.

5. I have perused the documents on record and have also heard the learned counsel for both the parties. It is not necessary in this case to refer to the pleadings of the applicant in regard to the

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penalty imposed upon him because this has been challenged by him separately in O.A 498/89 which is pending adjudication. Similarly, it is not necessary to go into the detail of his matter of transfer to Meerut which never materialised and it was ultimately cancelled. The plea of the applicant that his transfer from Nizammudin to Murad Nagar is punitive and amounts to double jeopardy is not legally sustainable. Transfer is an incidence of service and is not a punishment. It is also not enumerated as one of the punishments which can be imposed on a Government servant. Therefore, the question of transfer order being punitive and it amounting to double jeopardy does not arise. (Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another - Full Bench Judgements -(CAT)-80).

6. Learned counsel for the applicant emphasised at the bar that this is a case of repeated transfers which are held to be not desirable, and cited the judgement in the case of S.K.Sharma Vs. Director General, Employees State Insurance Corporation, New Delhi & Others (ATR-1989-(1)-CAT-333). In this case, in the absence of any satisfactory explanation, transfer of the ^{applicant} after a short interval of about two months, was not upheld. The facts in the case before me are significantly different. As such, this argument does not carry much weight. As stated above, he was first transferred to Nizammudin as there was no vacant post of Booking Clerk at Delhi on the applicant's reduction from the post of Senior Booking Clerk to Booking Clerk. When he has been re-instated to his original post of Senior Booking Clerk, he has to be provided that post which is stated not to be available at Nizammudin. Learned counsel for the respondents produced a letter signed by the Division Personnel Officer, Office of the Division Railway Manager, Northern Railway, New Delhi, which shows that as on 5.1.90 there were only 12 posts of Senior Booking Clerks ^{vacant} in Delhi Division. This statement shows that no such vacant post is available either at Delhi station or at Nizammudin.

7. Learned counsel for the applicant also stated at the bar that a post of Senior Booking Clerk is likely to fall vacant shortly at Nizammudin and that the applicant should be accommodated in that

post. ^{See}

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post. This request does not flow from the application under consideration and, in my view, also falls outside the scope of judicial review in the matter of transfer. It is an established proposition of law that ^{a c.} Government servant appointed to a category of ^{c.} transferable posts has no legal right to be posted at a particular place of his choice and the employer is the best judge to deploy its manpower in its best judgement.

8. In view of the above discussion, the application is de-void of merit and it is accordingly dismissed. Interim order passed on 31.10.89 for maintaining the status-quo and continued thereafter is also vacated. Parties to bear their own costs.

(Secy 14/1/90
(P.C. JAIN)
MEMBER (A)