

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2486/89
T.A. No.

199

DATE OF DECISION 26-10-90

<u>Rajendra Kumar Gandhi</u>	xxxxxxx Petitioner Applicant
<u>Shri G.K. Aggarwal</u>	Advocate for the xxxxxxx Petitioner(s) Applicant
Versus	
<u>Union of India through Secretary, Ministry of Information and Broadcasting</u>	Respondent Respondents
<u>Shri M.L. Verma,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K.CHAKRAVORTY, 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 their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member(A))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is an L.D.C in the Directorate of Field Publicity, Ministry of Information & Broadcasting, has prayed for the following reliefs:-

- (a) to set aside the orders dated 22-2-89, 2-3-89, 16-3-89 and 7-11-89 relating to his transfer;
- (b) to direct the respondents to treat him on duty for all purposes with pay and allowances with arrears with interest, ever since 12-4-88 onwards; and
- (c) to direct the respondents to take him on duty at Muzaffarnagar.

2. The brief facts of the case are as follows.
The applicant was appointed as L.D.C on 1.11.1971 in

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a temporary capacity in the Directorate of Field Publicity and was made quasi-permanent with effect from 1.1.81. The services of the applicant are transferable throughout India in accordance with the departmental guidelines dated 31.7.78. The applicant was transferred from Bareilly to Uttarkashi under order dated 18.12.86. His Original Application against that transfer order was rejected by the Allahabad Bench of the Tribunal on 7-12-87. While working at Uttarkashi, the applicant came to Delhi on 13-4-88 on two days' casual leave on receipt of information about his wife's illness. He fell ill in Delhi and requested for extension of and further leave upto 13.5.88 on medical grounds. On 13.5.88, the authorised medical attendant at Hindu Rao Hospital, Delhi advised that the applicant was fit to join 'light duty' but to avoid high altitude working/living place on account of 'unstable angina'. On 15-5-88, he sent a registered letter to the respondents requesting for his transfer from Uttarkashi, which is at a high altitude, to any plain area place. Respondents 3 & 4, (Information Officer, Press Information Bureau, Kota & Regional Officer (UPNW Region) Directorate of Field Publicity, Ministry of Information and Broadcasting, Regional Office, Dehradun respectively) referred the applicant's case for second medical opinion on 27-6-88 to the Safdarjung Hospital. The applicant immediately contacted the Safdarjung Hospital. However, that Hospital informed the respondents that second opinion is given only by Civil Surgeon, Dr. Ram Manohar Lohia Hospital, New Delhi.

3. The applicant alleges mala fides against Respondents 3 & 4 who deliberately prolonged unnecessarily the matter of referring the applicant to Dr. Ram Manohar Lohia

Hospital, New Delhi. He relies on the protracted correspondence in this regard which are appended as Annexures A-11 to A-48 of the paperbook.

4. On 9.1.89, the applicant personally met respondent No.2(Director, Field Publicity, Ministry of Information & Broadcasting, New Delhi) and handed over a representation dated 9.1.89. Respondent No.2 issued order dated 27.1.89 transferring the applicant from Uttarkashi to Muzaffarnagar temporarily, with immediate effect . No TA, DA and joining time was admissible to him as the transfer has been made at his request. The applicant joined duty at Muzaffarnagar on 28.1.89. Photocopy of his joining report was duly sent to Respondent No.2 and also to respondents 3&4. He performed duties at Muzaffarnagar till 1-2-89 and marked attendance. On 1.2.89, the Field Publicity Officer at Muzaffarnagar told the applicant that despite his transfer and his having already joined duty, he would not be allowed to attend office at Muzaffarnagar as per telephonic instructions received from respondents 3&4. The transfer order dated 27.1.89 was cancelled under letter dated 22.2.89 and he was asked to join duty at Uttarkashi under letter dated 2.3.89. The applicant, who had joined at Muzaffarnagar on temporary transfer at his own expense, was asked to move from Muzaffarnagar to Uttarkashi also at his own expense. As the transfer to Uttarkashi was in public interest advance TA/DA and one month's salary was required to be paid to him as per rules and regulations. His repeated requests for necessary advances to enable him to move to Uttarkashi has not been acceded. to till date. Being a low paid employee,

he did not have money to move to Uttarkashi. He is without salary ever since April-May, 1988.

5. The plea taken by the respondents is that the applicant's transfer having been cancelled, he was not entitled to any transfer allowance etc. . The applicant contends that^{as} he has already joined duty at Muzaffarnagar and performed^{by} duty and remained on the strength there at least upto 22.2.89, there could not be any question of the cancellation of the order. The applicant is not legally bound to move until the employer pays the necessary advances for movement to any outstation. Respondents are themselves liable for non-compliance by the applicant of the orders of movement to Uttarkashi. He has alleged that the transfer to Muzaffarnagar was cancelled under the advice and influence of Respondents 3&4 who were personally biased against the applicant. Respondents have also not supplied to him a copy of the second medical report. Respondent No.4 has illegally withheld his representation dated 25-10-89 on the plea^{that} it was not routed through proper channel. The applicant contends that the transfer from Muzaffarnagar to Uttarkashi is contrary to guidelines. There should be no transfer liability as a routine on law-paid employees in Group 'C' or Group 'D'. Conditions of work and terms of employment must be just and humane. Since there was/is vacancy in plain areas including Muzaffarnagar, there was no need for transfer. He further alleged that Respondents 3&4 have threatened him with disciplinary action for not moving to Uttarkashi at his own expense, which is illegal, mala fide in law and violative of Articles 14 & 16 of the Constitution.

6. In reply to the application, the respondents have taken a preliminary objection that the application is

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misconceived and is not maintainable under law. The applicant came to Delhi on two days' casual leave and extended the same on the ground of personal illness supported by medical certificate issued by Hindu Rao Hospital. The Medical Superintendent of the Safdarjung Hospital was requested for medical examination of the applicant and ultimately the applicant was medically examined on 19.1.89 and was found fit to go at high altitude areas. On 27.1.89 he was temporarily transferred to Muzaffarnagar and was asked to join at Uttarkashi again and upto now he is on unauthorised absence. The applicant has suppressed the material facts with ulterior motive and the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. Respondents have relied on various judgements in support of their case some of which are as under:-

- (1) G.P.Hodes Vs. U.O.I (1989(3) SLJ 512)
- (2) B.S.Vijay Kumar Vs. Regional Provident Fund Commissioner(1989(3) SLJ 530)
- (3) Gujarat State Electricity Board Vs. Atma Ram (1989(10) ATC (SC) 396).

7. The respondents have contended that there was no deliberate delay on the part of Respondents 3&4 in referring the applicant to Dr. Ram Manohar Lohia Hospital since being located at Dehradun they were not aware of the proper referral hospital. There was no harassment involved in directing the applicant to appear before the Medical Superintendent, Safdarjung Hospital. Order dated 27.1.89 was issued on the personal request of the applicant who had handed over representation directly to respondent No.2 and not through proper channel. Respondents also contended that the filing of the joining report without first relieving himself from Uttarkashi from where he proceeded on casual leave

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was irregular, and therefore, he could not be treated as on duty at Muzaffarnagar. It is alleged that "the transfer orders from Uttarkashi to Muzaffarnagar unit were got issued by the applicant by misrepresenting the actual facts to the Head of the Department" which was cancelled by the same authority on 22.2.89 when the correct position as per medical certificate from Dr. Ram Manohar Lohia Hospital was brought to his notice. The first transfer order was issued by the Head of the Department by taking a sympathetic view towards the applicant and since the same was cancelled when the correct position came to light, there was no question of giving the applicant TA/DA for joining duty back at Uttarkashi. As regards non-payment of salary, it is submitted that when a Government servant continues to be on leave on flimsy grounds and continues to disobey the competent authority, he cannot be paid salary for the period of unauthorised absence from duty. The applicant is still continuing on unauthorised leave and in fact Government is requesting him to join duty at Uttarkashi ever since he proceeded on casual leave. It has been stated that a certified copy of the medical report was sent to the applicant on 7.11.89. In reply to the applicant's contention that he has been threatened with disciplinary action for not moving to Uttarkashi at his own expense, it has been stated that the disciplinary proceedings can be initiated for unauthorised absence. In view of these facts, it has been prayed that the application should be dismissed.

8. We have heard the learned counsel of both the parties and have considered the rival contentions. We have also carefully gone through the records of the case.

9. The main issues for adjudication in this

application are:

- (a) whether the order dated 22.2.89 cancelling the order dated 27.1.89 transferring the applicant to Muzaffarnagar, after it has been complied with, is legally valid; and
- (b) how the period from 13.4.1988 to 27.1.1989 and from 23.2.1989 onwards should be treated.

10. The legal position regarding the transfer of a Government servant has been clearly laid down by the Hon'ble Supreme Court in its decision in Gujarat Electricity Board and another Vs. Atma Ram Saugamal Peshani, 1989(3) JT 20 and Union of India & ors Vs. H.N.Kirtania, 1989(3) SCC 455. It has been held that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant has a legal right for being posted at any particular place. The following observations made by the Supreme Court is pertinent:-

" Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer..... "

It has been further held that 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 illegal on the ground of violation of statutory rules or on grounds of mala fide.

11. While the applicant was on leave in New Delhi, he received the order dated 27.1.1989 issued by the Headquarters' Office of the Directorate of Field Publicity, Ministry of I&B, New Delhi transferring him temporarily to Field Publicity Unit, Muzaffarnagar. The transfer was made with immediate effect and no TA/DA and joining time was admissible as the transfer had been ordered at his own request. The applicant complied with this order immediately and reported for duty at Muzaffarnagar on 28.1.1989. He sent a copy of his Joining Report to the Directorate of Publicity, New Delhi; Regional Officer, Dehradun and Field Publicity Officer, Uttarkashi for information. The applicant performed duties upto 1.2.1989 thereafter he was not allowed to enter office till 22.2.1989 when the transfer order was cancelled. We are not impressed by the contention of the respondents that the transfer order from Uttarkashi to Muzaffarnagar unit was get issued by the applicant by misrepresenting the actual facts to the Head of the Department, and since, on being apprised of the correct position, the same authority issued the order dated 22.2.1989, the cancellation was in order. The applicant had a personal meeting with the Head of the Department on 9.1.89. The question of any mis-representation by the applicant, especially regarding the Medical Fitness Certificate from the Dr. Ram Manohar Lohia Hospital, could not have arisen on 9.1.89 as the final medical examination by R.M.L. Hospital was made on 19.1.89 and the transfer order was issued on 27.1.89 while the medical report was received only on 31.1.89. The contention that the applicant should have first

Q got himself relieved from the office at Uttarkashi

before joining at Muzaffarnagar is also devoid of merit. We held that the applicant had correctly complied with the order of transfer dated 27.1.89 and it was wrong on the part of the respondents not to allow him to perform his duties at Muzaffarnagar. We also held that once implemented the transfer order dated 27.1.89 could not be cancelled in the manner it was done. It was open to the respondents to issue a fresh order transferring the applicant from Muzaffarnagar to Uttarkashi or anywhere else. Irrespective of the validity of the order of cancellation, it was incorrect on the part of the respondents not to allow any TA/DA advance, and advance of pay etc. to the applicant and, yet insist on his proceeding to Uttarkashi as it is in violation of the relevant Government rules and regulations.

12. After coming to Delhi on two days' Casual Leave on 13.4.1988, the applicant fell sick and applied for Medical Leave and extension thereafter from time to time. On being advised by the Medical Attendant at the Hindu Rao Hospital that he is fit to join light duty but was to avoid working at a high altitude, he submitted representations for transfer from Uttarkashi to any plain area place. Instead of taking a decision on his representation, the respondents asked the applicant to have the second medical opinion. Since this matter was being dealt with by the respondents' office at Dehra Dun, who were apparently not familiar with the correct procedure, it took inordinately long time for the second medical opinion to be obtained from the appropriate authorities. From the submissions made by the applicant and the

records of the case, it is clear that the applicant cannot be faulted for the delay which had taken place. He had been assiduously following the instructions received from his office and the Safdarjung/R.M.L. Hospital from time to time. R.M.L. Hospital examined him many times and finally

on 19.1.89. Their final medical opinion declaring the applicant as fit for working in high altitude was issued only on 30.1.1989. This was after the applicant had already joined at Muzaffarnagar.

13. In the facts and circumstances of the case, we direct and order that:-

- (i) the order dated 22.2.1989 cancelling the transfer order dated 27.1.1989 is set aside and quashed;
- (ii) the applicant must be deemed to have performed duty from 28.1.1989 to 22.2.1989 and continued to remain posted at Muzaffarnagar thereafter;
- (iii) the respondents shall dispose of the representation of the applicant keeping in view the present exigencies of service;
- (iv) if the applicant is to be moved out of Muzaffarnagar, the respondents shall issue appropriate transfer orders and grant the applicant joining time, TA/DA, pay advance and all other facilities to which a Government servant is entitled on transfer;
- (v) the period from 13.4.88 to 13.5.88 may be regularised as leave on medical grounds; and

(vi) the period from 14.5.88 to 27.1.89 and from 23.1.89 till the applicant is allowed to join duty at Muzaffarnagar or at the place of posting to which he may be transferred shall be treated as approved service for all purposes other than pay and allowances for which the period shall be regulated by grant of leave of any kind that may be due to the applicant including Earned Leave, Half Pay Leave, Leave not due, Extraordinary leave etc.

14. The application is disposed of with the above directions which shall be complied with within a period of two months from the date of its receipt.

There shall be no order as to costs.

D.K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER 26/8/89

P.K. Kartha
26/10/90
(P.K.KARTHA)
VICE CHAIRMAN