

CAT/86/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 297 of 1989
T.A. No.

198

DATE OF DECISION 4.7.89

Shri Charan Pal Singh Kandra **Petitioner**

Shri G.N. Oberoi **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**

Shri M.L. Verma, counsel for the res ~~Advocate for the Respondent(s)~~

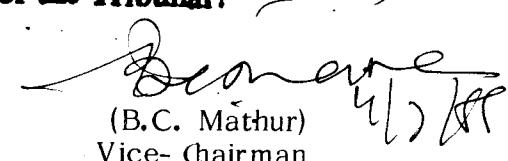
CORAM :

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. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000


(B.C. Mathur)
Vice- Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 297 of 1989

Date of decision: 4.7.89

Shri Charan Pal Singh Kandra

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri G.N. Oberoi, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act filed by Shri Charan Pal Singh Kandra, Store Keeper Grade II, ESD Delhi Cantt, against impugned order No. 30318/Rept/131/EIC(1) dated 13.4.88 passed by CE WC Chandimandir (Annex.A-1) transferring the applicant from Delhi to Nal in violation of the transfer policy.

2. The brief facts of the case, as stated in the application, are that the applicant is a holder of civil post under OC Engineer, Stores Depot, Delhi Cantt (briefly ESD). He held the post of Storeman, Group D, which was not subject to transfer as per posting policy. He was promoted as Store Keeper Grade II, Group C post, vide order dt. 20.5.87 and has not been granted the pay of higher post. This post of Store Keeper is transferable after holding the post for three years. The applicant has not completed even 2 years and as such cannot be transferred ~~for~~ 3 years. According to the posting policy, the following stipulations inter alia are enjoined:-

"Para 3 - (a) Volunteers will be sent to tenure station"

(b) completion of 3 years stay before posting to tenure station.

Para 5 - Maintenance of panels for nomination to tenure stations. A list of volunteers will also be maintained."



S/Shri Prem Kumar, Tej Ram, Harbans Singh and Dilbagh Raj, Store Keepers promoted from Group D have already volunteered for posting to tenure stations but they are not being posted when the policy is to post volunteers first ~~and~~ the applicant has been posted. The applicant made representations on 15.4.88 and 22.11.88 and the same have been finally rejected on 27.1.89. The applicant has cited the cases of K.K. Jindal - ATR 1986 304 - and Kamlesh Trivedi Vs. I.C.A.R. & Another - ATR 1988(2) CAT 116 - where the Tribunal has inter alia held that transfer order must not be in colorable or malafide exercise of power. It should not be arbitrary. It must be in accordance with the rules and instructions, if any, governing the transfer policy.

The grounds urged against the transfer are that impugned order is malafide, discriminatory, arbitrary and against the principles of natural justice, equity and good conscience. It has extraneous aim, as the applicant has not even completed 3 years' stay as Store Keeper in Group C.

3. The applicant prays that the transfer orders be quashed and to direct the respondents to fix pay of the applicant as Group 'C' employee, pay arrears thereon, together with interest at 18% p.a. till payment.

4. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. No cause of action has accrued in favour of the applicant as no injustice has been done to him. The applicant was appointed in the Department in Delhi itself on 31st January 1966 and has never been posted out of Delhi during his entire service of more than 23 years. As per existing policy for posting/transfers of civilian non-industrial employees, the Storeman promoted to Store Keeper Grade II will be liable for posting to tenure station provided he has completed three years stay in his present duty station even in lower category in the non-industrial post. Accordingly, his transfer orders are in conformity with the transfer policy applicable to him. As such, the application devoids ^{of} any merit and is liable to be dismissed.

5. The application is barred under Rule 7 of the C.A.T. (Procedure) Rules for separate fee is to be affixed on each relief and, in default, the application is to be rejected.

6. The respondents have stated that it is settled law that transfer of an employee is not subject to judicial review howsoever high may be the economic loss or personal difficulties. They have cited the cases of P.P. Dhanka Vs. UOI (Abd) 1988 (8) ATC 901, R.K. Gupta Vs. UOI (Principal Bench (Full Bench) 1988 A.T.C. 489, Kamlesh Trivedi Vs. ICAR 1988 (7) ATC (FB) 243, B. Vardha Rao Vs. State of Karnataka 1986 (4) SCC 131, Madan Lal Kapil Vs. UOI- 1989 (1) ATR (Jodh) 10.

7. The applicant was ordered for posting to Garrison Engineer (AF) Nal on tenure vide orders dated 13.4.88 along with other individuals of the category of SK Grade II. He has been posted to tenure station GE (AF) Nal after completion of a considerable period of 23 years stay in Delhi. The transfer is an incident of service which one cannot avoid and in his case this incident has occurred after a long span of 23 years continuous stay in Delhi. The applicant deserves no relief and the application under reply merits dismissal with cost.

8. The respondents have stated that the applicant was correctly nominated for posting to tenure stations strictly as per seniority, in accordance with the laid down policy on posting/ transfers. S/Shri Prem Kumar, Tej Ram, Harbas Singh and Dilbagh Raj, who had volunteered for posting to tenure stations were not considered as they did not fulfil the requirements. Thus the applicant has no ground for complaining of injustice to him.

9. The salary at revised rates on his promotion to higher grade has not been paid as the salary in his lower grade was not granted at correct rates by his previous formation due to some administrative reasons which are best known to the applicant but the posting on tenure has no relevancy of non-payment of salary in higher grade which will be paid immediately on finalisation of salary in the lower grade.

[Signature]

10. According to the respondents though the individuals in Group 'D' post are generally not transferrable, the stay in Group 'D' post is to be taken into account for arriving at the seniority for posting to a tenure station on his promotion to a Group 'C' category.

11. I have gone through the pleadings and given careful consideration to the arguments by the learned counsel for the applicant as well as the respondents. The learned counsel for the applicant has argued that the transfer is against the policy laid down by the respondents and it has been held by the Supreme Court that a policy must be held against the policy-makers and they are bound to enforce the same. Shri Oberoi said that there are five volunteers who want to go to Nal on transfer and, therefore, at first the volunteers should have been allowed to go. In any case, the respondents have failed to ask for volunteers. He plead that the applicant should not be transferred on compassionate grounds also as his wife is a patient of asthma and he himself is diabetic. The applicant has also an old father and the transfer would cause great hardship on him.

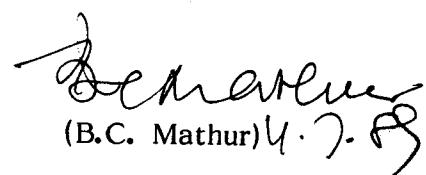
12. The learned counsel for the respondents, Shri M.L. Verma, said that the respondents have followed the transfer policy correctly. The applicant has been longest in service in Delhi and has spent 23 years at Delhi since his appointment in 1963, including his appointment in Group 'D'. The applicant was transferred on 13.4.88 against which he had filed two appeals both of which were rejected and he had no right to remain at Delhi as he is holding a transferable post. According to Shri Verma, some persons had volunteered to go on transfer, but their cases could not be considered as they did not fulfill the requirements. Two of the volunteers had not even completed 3 years stay at Delhi. He cited the judgement of the Ahmedabad Bench of the Tribunal in V.R. Datania Vs. Union of India & Others - A.T.R. 1989 (1) C.A.T. 385 - where the Tribunal has held ^{that} in the case of low paid employees where transfers are part

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of service, transfers should resorted to sparingly, but no immunity against transfers can be claimed and the scope of judicial review in such matters is limited. The same Bench in another case Chimanlal G. Patel vs. U.O.I. & Ors. A.T.R. 1989 (1) C.A.T. 387 - has held that the law on transfer matters regarding the scope for judicial interference is limited and the question can only be challenged on the ground of malafide, arbitrariness or violation of specific Govt. instructions.

13. While it is true that the respondents should have adhered to the policy and called for volunteers, the Supreme Court has also held that the implementation of guidelines should be left to the authorities making the guidelines and courts may not interfere unless there is arbitrariness or malafide in such transfers. The applicant has not alleged any malafide on the part of the respondents. The tenure posting of the applicant has been ordered to relieve the person from the new station who has already completed his tenure and is due for his turn over on repatriation. Since transfer is an incident of service which can always cause some hardship, it would be very difficult for courts to interfere unless it is found that the transfer order is in colourable exercise of power. Asthma or diabetes are not such diseases which can be treated only at Delhi. In the circumstances, there appears to be no reason to interfere with the impugned orders of transfer. The application, as far as the transfer of the applicant is concerned, is, therefore, dismissed.

14. As regards salary at the revised rates on promotion of the applicant to a higher grade is concerned, the respondents are directed to finalise the same within a period of three months from the date of receipt of these orders. Both the salary in the lower grade as well as in the higher grade should be worked out and arrears, if any, should also be paid during the same period. There will be no orders as to cost.


(B.C. Mathur) 4.7.89
Vice-Chairman