

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

1) Regn. No. OA-609/89.

Decided on 19.5.1989.

R.K. Sharma

..... Applicant.

Vs.

Union of India & Others

.... Respondents.

11) Regn. No. OA-610/89.

A.K. Dutta

..... Applicant.

Vs.

Union of India & Others

..... Respondents.

For the Applicant

... Shri K.L. Shandula, Advocate.

For the Respondents

... Shri M.L. Varma, Advocate.

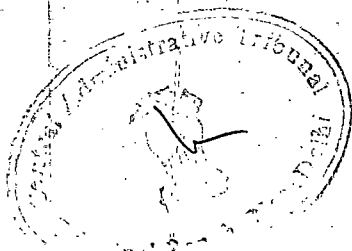
CORAM: HON'BLE MR. V.S. BHAR, ADMINISTRATIVE MEMBER.

JUDGEMENT:

The above applications have been filed under Section 19 of the Administrative Tribunals Act, 1985. Since common points of facts and law are involved in the two cases under discussion, this common judgement is being delivered.

2. Shri R.K. Sharma who is at present working as U.D.C. in the Planning Circle, Central Water Commission, Faridabad has been transferred to Lower Krishna Division, Central Water Commission, Hyderabad under the impugned orders dated 15.3.1989 at Annexure-I. Under the impugned orders, Shri A.K. Dutta, the second applicant who is working as U.D.C. in the same Organisation at Faridabad is transferred to Western Rivers Circle, Central Water Commission, Nagpur. The learned counsel for the applicants contended that the

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applicants have been transferred in violation of the transfer policy of the department as well as against the principles of equity and natural justice. In support of the case, the applicants' counsel cited para 3 and 4 of the transfer policy of the department vide Annexure-II which reads as follows:-

3. Group C&D personnel should not normally be transferred from one station to another except to meet the following inevitable contingencies:
- a) When transfers become essential for purposes of adjusting surplus staff or making up deficiencies of staff.
 - b) On the request of employees on compassionate grounds or on mutual transfer request basis.
 - c) At the time of promotion, when the promotee cannot be adjusted locally for various administrative and other valid reasons.
 - d) For exigencies of service or administrative requirements.
4. When transfers from one station to another are inescapable for any of the aforesaid reasons, persons to be transferred should be in the following order:
- a) Those who volunteer for transfer.
 - b) Persons with longest continuous stay at the place of their current posting should generally be transferred to fill a vacancy elsewhere. For this purpose persons available for that post from the list of the promotees should also be considered, on the same basis.

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c) The period spent on deputation at that place should also be considered for purposes of counting the longest stay.

d) The period spent on deputation outside the country will be treated as the period spent at Delhi for counting the period of stay at Delhi.

e) For counting the stay at Delhi/Faridabad the period will be counted after the return to Delhi/Faridabad from the date of the last posting outside Delhi/Faridabad.

f) Posting to Faridabad before 1972 when HRA/CCA and other facilities were not available will not be counted as service at Delhi for the purpose of transfer/posting.

3. The applicants' counsel averred that there are a number of U.D.Cs working at Delhi/Faridabad who have longer stay at these stations namely S/Shri J.D. Khajuria and Tek Chand; but they have been spared and the applicants have been transferred. Similarly lady employees having longer stay at Delhi/Faridabad have not been transferred out. It was also argued that Mr. R.K. Sharma should not be transferred out in view of the fact that his wife is employed as a Teacher in Govt. Girls Senior Secondary School, Badarpur, New Delhi as per the Govt. guidelines on the subject and para 12 of the transfer policy letter which reads as follows:-

"Request of CWC employees for posting to a station where the employee's spouse in Govt. service is posted, would be considered sympathetically and efforts will be made to the extent possible to accommodate the official

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at or near the place of posting of the spouse subject to the administrative conveniences.

Such transfers may be treated as transfers on request on compassionate grounds."

4. The applicants' counsel contended that inspite of transferring the applicants to Hyderabad/Nagpur, the respondents should have transferred volunteers from the Organisation to these two stations. It was also contended that the transfer orders were intended to accommodate S/ Shri Lal Singh and V.S. Vazirani, U.D.Cs at Faridabad after their return from deputation. The applicants' counsel cited in support of his arguments the judgement of Principal Bench of this Tribunal in the case of Charanjit Lal Vs. Union of India & Others ATIT 1987(1), page 251 wherein it was held that, "when the transfer smacks of punitive nature or there is a prima-facie case of abuse of discretion or exercise of administrative power in arbitrary, discriminatory or mala-fide manner or there are collateral reasons, then the court can go into the foundations of the transfer orders and set it aside. In the instant case the transfer of the petitioner is against the policy enunciated by the CWC."

5. The learned counsel for the respondents contended that the transfer orders of the applicants were bonafide in the exigencies of service/administrative requirements as per para 3(d) of the transfer policy of the department referred to above. It was further stated that Mr. R.K. Sharma had served in Delhi/Faridabad as U.D.C. for about 16 years continuously, whereas Mr. Lal Singh had stayed in Delhi only for

4 years. Similarly Mr. A.K. Dutta, the second applicant, had served in Delhi/Faridabad for more than 19 years continuously. The respondents' counsel also contended that there were no requests from volunteers for transfer to Hyderabad/Nagpur in the entire organisation of Central Water Commission and hence employees with longest stay at the present duty station were selected for transfer. The respondents' counsel also referred to para 1 of the transfer policy letter according to which, "All appointments to civil posts/services in the Central Water Commission carry a liability for transfer or posting to any part of the country and outside and this condition is invariably indicated in the offers of appointments made to the new entrants to Govt. Service." As regards the lady employees in the Organisation, the respondents' counsel submitted that separate action is being taken by the respondents regarding transfer of those of the employees who had longest stay at the place of current posting. It was denied that S/Shri J.D. Khajuria and Tek Chand had longer stay than the applicants at Delhi/Faridabad. The respondents counsel cited a number of judgements in support of his arguments.

According to A.T.C. 1986(1), page 528, H.N. Shakhawat Vs. Collector, Central Excise & Customs decided by the Ahmedabad Bench of the Tribunal, "Normally, it is well settled that the courts should be reluctant to intervene in the matters of transfer in the interest of smooth administration, unless a strong case is made out for setting aside such orders on the ground of proven arbitrariness or mala fide. The decision of the Patna

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Bench of the Tribunal was also cited in the case of Rajeshwar Prasad Singh Vs. Union of India and Others 1987(2) A.T.C. 368 according to which transfers made on normal administrative grounds will not be subject to judicial review. It was also held by the same Bench of the Tribunal in the case of D.H. Dave Vs. Union of India and Others 1986(1) A.T.C. 579, "While Govt. policy is to keep husband and wife together when they are Govt. employees, it cannot be pleaded that it must always be so disregarding administrative exigencies." The judgement of the Full Bench of the Tribunal in case Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another 1988(7) A.T.C. 253 was also referred to which says, "The transfer is an incident of service and not a condition of service. No Govt. servant is entitled to be retained at a particular place. The Govt. has the power and authority to transfer in the exigencies of the administration." The respondents' counsel, therefore, contended that the transfers of the applicants, being made on bona fide administrative grounds are perfectly in order.

7. I have heard the learned counsel for both the parties and examined the papers very carefully. The undisputed facts of the case are that the applicants had the longest stay in the present station of posting, namely Delhi/Faridabad for about 16 to 19 years. There are no volunteers in the department for Hyderabad and Nagpur, where vacancies have occurred necessitating posting of the

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officials from outside. The transfer orders issued are, therefore, in accordance with para 3(d) and 4(b) of the transfer policy letter of the department referred to earlier. In the present case, no mala fides have been established against the respondents and the transfers have been made in bonafide public interest. As decided by the Supreme Court in the case of B. Varadha Rao Vs. State of Karnataka and Others, 1986(1) A.T.C. 558:-

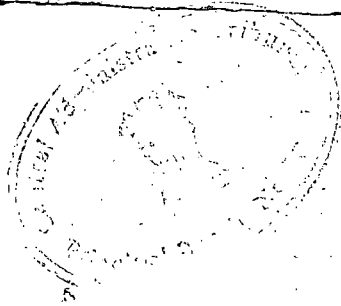
"Transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service. No government servant can claim to remain in a particular place or in a particular post unless, his appointment itself is to a specified, non transferable post. Therefore, a transfer order per se made in the exigencies of service does not result in alteration of any of the conditions of service express or implied, to the disadvantage of the concerned government servant.

However, a transfer order which is mala fide and made in public interest but made for collateral purposes, with oblique motives and in colourable exercise of power is vitiated by abuse of power and is open to challenge before court, being wholly illegal and void."

8. Relying on the above judgement of the Supreme Court, Full Bench of this Tribunal has decided in the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another, 1988(7) A.T.C. 153, that, "The Government has the power and authority to transfer in the exigencies of the administration." Further, it may not be always possible to keep the husband and wife, when both are Govt. employees, at the same station, as decided in the case of D.H. Dave V. U.O.I. referred to above.

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9. In view of the above, I consider that the applications
are devoid of any merit and the same are dismissed with no
order as to costs.



JOHN ROY (U.S. M.R.)
ADMINISTRATIVE MEMBER.
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
CLERK OF COURT
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA