

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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O.A. NO.630/1989

DATE OF DECISION : 3.4.92

Dr. M.P.Srivastava ...Applicant

Vs.

Union of India & Ors. ...Respondents

CORAM

Hon'ble Shri J.P.Sharma, Member (J)

For the Applicant ...Shri E.K. Joseph

For the Respondents ...Mrs.Raj Kumari Chopra

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant, Professor of Medicine, Guru Tegh Bahadur Hospital-cum-Medical College, Shahdara, Delhi is aggrieved by the order dt.20.3.1988 and 3.12.1988 passed by the Ministry of Health and Family Welfare by which the representation of the applicant for grant of TA/DA for being transferred to the post of Professor of Medicine at Delhi from Pondicherry was rejected. The applicant in this OA has prayed that the impugned order be quashed and the respondents be directed to pay the TA/DA for the transfer from Pondicherry to Delhi as per rules.

2. The case of the applicant is that on promotion, the applicant was transferred to JIPMER Pondicherry as Professor of Medicine. The applicant opposed this transfer to Pondicherry by filing this OA 668/86 and wanted the posting at Delhi. The application filed by the applicant in the CAT/PB was dismissed and Dr.M.P.Srivastava joined Pondicherry on 6.5.1987. The applicant made representation for transfer back to Delhi, but the same was rejected. However, the applicant was transferred back to Delhi vide order dt.20.5.1988 (Annexure A1) to Guru Tegh Bahadur Hospital-cum-Medical College, Shahdara, Delhi. It was specially written in the order that he was not entitled to any TA/DA for joining the post. The applicant, however, made representations after joining on 29.9.1988 (Annexure 2A) to draw TA/DA but the same was rejected by the impugned order dt.3.12.1988 (Annexure A3) on the ground that the transfer was made at his own request. The case of the applicant is that since he has to keep his family in Delhi and visit off and on and the transfer was made for public convenience and interest and was not made on compassionate ground on request of the applicant. He should be granted the usual TA/DA admissible under the Transfer Rules under Central Government Employees.

3. The respondents contested the application and it is stated that even after joining at Pondicherry, the applicant made representation and also exercised political pressure for his transfer back to Delhi, but since there was no vacancy at Delhi, the request of the applicant was not accepted. It is stated that in his letter dt.8.7.1987 only within one month of his joining the Pondicherry, the applicant made such requests but at that time it was not possible to accept his request as in Pondicherry one post was vacant and the other post would also have fallen vacant on the transfer of Dr.Srivastava. It is further stated that a number of VIPs have also taken interest in the transfer of the applicant back to Delhi. The transfer of Dr.M.P.Srivastava was not in public interest as he was not entitled to any TA/DA.

4. I have heard the learned counsel on 13.2.1992 and the case was reserved for judgement, but subsequently MP has been moved by the learned counsel of the applicant bringing certain more facts. The learned counsel has filed the photo-copy of the Judgement dt.18.2.1992 in CA 624/91 of the Bangalore Bench in K.R.Prahllada vs. Union of India & Ors. The learned counsel want to rely on the aforesaid judgement, but the fact of this was different as it relates to

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cancellation of transfer order already made, the learned counsel only wants to draw the analogy with the fact that even when the transfer is effected on the particular request of the employee, then still the transfer order issued for the public interest and that cannot be said to be in private interest. However, there is no mention in the case, that in case when the transfer is sought on the ~~violation~~^{volition} of an employee, then he is entitled to get TA/DA as per rules on joining the new post on the transfer^{ed} station of a choice.

5. In the present case, the transfer order dt.20.5.1988 (Annexure A1) is clear on the point that as the transfer was on his own request so the applicant shall not be entitled to any TA/DA for joining the post. The same reply was given to the applicant of his own representation by the letter dt.3.12.1988 (Annexure A3). The learned counsel for the applicant could not show any Rules when the transfer has been effected on his own request, he is entitled to get the TA/DA. The respondents in their counter have stated that the applicant was transferred to Pondicherry on promotion in JIPMER and he desired to get his transfer order cancelled by moving the Tribunal by filing OA 668/86 and the same was rejected. However, the applicant even thereafter made representation to the Ministry of Health and

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Family Welfare and also made representation through a number of VIPs and his case for transfer was considered as soon as vacancies arose in Delhi. Thus it is correct that the ~~transfer~~ ^{Vacancy} has occurred at Delhi, but in the rejoinder in reply to paras 4, 5 and 8, the applicant stated that his request for transfer to Delhi was based on the requirement and fairness and justice. This is clear that the applicant had made request on his own for his transfer to Delhi only after one year and he has not completed normal tenure which Government servant is expected to clear for transfer to the other station. The applicant cannot have both the cake as well as eat it.

6. In view of the above discussion, the application is ~~decided on merit~~ ^{devoid of} merit and, therefore, dismissed leaving the parties to bear their own costs.

Domine.
(J.P. SHARMA) 3.4.92
MEMBER (J)