

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 652 of 1989
T.A. No.

DATE OF DECISION 22.8.1989.

S.L. Yadav _____ Applicant (s)

Shri G.D. Bhandari _____ Advocate for the Applicant (s)
Versus
Union of India _____ Respondent (s)

Shri P.P. Khurana, _____ 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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri S.L. Yadav, U.D.C., in the office of the G.E. (P), Meerut Cantt, against his transfer from Meerut to Jabalpur vide order dated 16.9.1989 passed by the Commander Works Engineer, Meerut Cantt.

2. Brief facts of the case, as stated by the applicant, are that the applicant is a civilian working in the capacity of Upper Division Clerk (U.D.C.) under the control of G.E. (P), Meerut Cantt, and has been ordered to be transferred from his present station of posting i.e. Meerut to Jabalpur vide order dated 16.9.89 (Annex. A-3 to the application) and the name of the applicant is at item No.1 of the order. The respondents vide their circular letter dated 30th December, 1983 (Annex. A-2 to the application) issued detailed guidelines regulating posting/transfer of personnel in various establishments under their control. The transfer of the applicant to Jabalpur is malafide and without any authority and the same has been issued in an arbitrary manner. The respondents have discriminated the applicant in the matter of issue of orders of transfer from Meerut to Jabalpur. The applicant

made representations on 29.9.88 and 27.11.88 for cancellation of the orders, but no reply has been received ~~any reply~~. The grounds urged by the applicant against the transfer are that the guidelines issued by the respondents have not been followed while issuing orders of transfer of the applicant. Even if the applicant's transfer from Meerut is necessitated due to being 'surplus', the longest stayee in the station will be posted out. The respondents deliberately discriminated the applicant in the matter of transfer from Meerut to Jabalpur, while in similar cases, staff were adjusted within the Command. The applicant's two children are school going and the transfer from Meerut to Jabalpur will adversely affect their school career.

3. The learned counsel for the applicant cited the case of Shri K.K. Jindal Vs. General Manager, Northern Railway, A.T.R. 1986(1) 304 - decided by the Principal Bench where it has been stated that the State is not bound to enunciate a policy in the matter of transfers in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would need very strong justification for any deviation from the policy. In other words, an order of transfer must conform to rules, if framed, and policy, if any, enunciated by Government. In this case, a clear policy of transfers has been laid down by the Engineer-in-Chief on 30.12.83 (Annexure A-2 to the application) which makes it obligatory that when transfers are inevitable, volunteers should be given preference and the longest stayee must be transferred first. In determining the longest stayee in a station all MES units located in that station including ^asatellite stations will be taken into consideration. Seniority in that station could be decided by the Chief Engineer, Command. The policy also lays down that transfers will not be made during the middle of the academic year which will disrupt the education of the children and that persons reaching the age of 55 years or over should not be transferred except at their request. It has also been laid down that class III personnel should not transferred except on adjustment of surplus staff or on promotion or in exigencies of service and no compulsory turn over from non-



tenurestations would be made except to meet job requirements.

4. The applicant has also given some examples to show that favour has been shown to some other persons and discrimination has been made against him. Two persons, Shri V.B. Sharma and Shri R.K. Verma were promoted as UDCs and posted at Dehradun, but ^{ba} merely after five months they were brought back to Meerut. Another person, Shri N.K. Bansal, was ordered to be promoted as UDC, but he was adjusted at Meerut. Two other persons who were to be promoted as UDCs were retained at Meerut. Again, Shri S.P. Verma and Shri M.K. Agarwal were adjusted at Meerut against military quota just to favour them. As the order of transfer of the applicant is against the specific guidelines issued by the Engineer-in-Chief and as the transfer is discriminatory and shows not only the bias against the applicant but favouritism in favour of others, it must be quashed.

4. The learned counsel for the respondents stated that in the present case the transfer has been done strictly according to the guidelines. The applicant is the seniormost person at Meerut in the ^{there} sense that he has the longest stay. He has been working in Meerut since 2.6.1980 and he alongwith Shri J.P. Singhal and Shri C. Mahendra Singh who had the longest stay have been transferred out of Meerut. While considering the seniority of UDCs, the Chief Engineer has considered not only those persons who were posted at Meerut but also in adjacent areas like Muradnagar and Ghaziabad. As far as the question of transfer of persons reaching the age of 55 years or more, it was stated that the applicant is only about 53 years of age and is not near 55 years although such transfers are not made where a person has completed the age of 55 years. As far as the other persons are concerned, their cases have been examined very carefully by the competent ^{authority} and no discrimination has been done against the applicant by transferring him from Meerut to Jabalpur. Mere inconvenience cannot get precedence over public interest. Normally, Group 'C' staff is not transferred except in public interest which has been applied in the present transfer.

5. As far as the case of Shri V.B. Sharma and Shri R.K. Verma who were promoted as UDC and posted to Dehradun is concerned,

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they were posted to Dehradun during December 1984 and they represented that they had reported at Meerut only in May 1984 on repatriation from a hard station and on this ground their cases were considered by the Chief Engineer, Central Command, and they were adjusted as UDCs at Meerut against the vacancies of Office Superintendents and later adjusted against the military quota on their giving an undertaking that if they cannot be adjusted against the UDCs vacancies for three years, they shall have to go out of the station. Shri N.K. Bansal had also been repatriated from a hard station and had not completed three years at Meerut and was adjusted against the vacancy of Office Superintendent at Meerut available at that time. Persons adjusted against military quota were subsequently adjusted against civilian quota and persons who had the longest stay at Meerut alone were transferred.

6. As far as orders of transfers during mid-session are concerned, this had also been taken care of and the transfer was deferred till after March 1989 to avoid inconvenience to the applicant. The learned counsel for the respondents, Shri P.P. Khurana, emphasised that no malafide has been attributed to any of the respondents or senior officers in the Department. Some employees were adjusted against military quota or otherwise because they came from hard stations, but there has been no motive behind such postings.

7. At the time of arguments by the learned counsel for the applicant, he produced a copy of a letter indicating that the applicant has been elected as an office bearer of a recognised Union. The applicant has been elected as Joint Secretary of the U.P. M.E.S. Workers Union, Meerut, on 13.6.1989. A letter to this effect was issued by the Trade Union, U.P., Kanpur, and a copy sent to the respondents. The term of the applicant would expire on 12.6.90 and he is entitled to legal protection available to office bearers of recognised trade unions and associations.

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8. The learned counsel for the respondents said that the transfer orders were passed much before the election of the applicant on 13.6.89. He was transferred in 1988 and, therefore, this plea is irrelevant in the present application.

9. I have gone through the pleadings and the arguments by the learned counsel for the applicant and the respondents. The respondents have transferred the applicant in the interest of the State and apparently according to the guidelines issued by them. The applicant has not been able to produce any evidence that his stay has not been the longest in Meerut including the adjacent stations and I would accept the contention of the respondents that it is so. Transfer is an incident of service and it has been held that normally the authorities should be left to utilise their officers in the best possible way and the courts may allow some elbow room to the authorities in these matters. In Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani - Judgements Today 1989 (3) S.C. 20 - the Hon'ble Supreme Court has held that transfers being an incident of service, an employee has no choice in the matter and that a Government servant has no legal right for being posted at any particular place. He can only make a representation to the competent authority in case of genuine difficulty. In this case a representation has been made to the competent authorities who have not thought it fit to accede to the request of the applicant. In the circumstances, I have no other option but to reject the application as there is no serious violation of any guidelines in this transfer.

10. However, as the applicant is still posted in Meerut and he appears to have been elected as an office bearer of a recognised Trade Union, the respondents may re-examine the case in the light of the instructions regarding protection from transfer of important office bearers of recognised trade unions and associations. It is for the respondents to examine the details and pass appropriate orders. The applicant may make a suitable application to the competent authority seeking his retention at Meerut on grounds of being an office

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bearer of a Trade Union. I do not want to go into this question at this stage without any proper representation having been made by the applicant to the competent authority on this behalf. He must exhaust his remedy with the respondents at this stage. With these observations, the application is disposed of accordingly. There will be no order as to costs.

B. C. Mathur
22.8.88
(B.C. Mathur)
Vice-Chairman