

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 801/ 1989.
~~EA=No~~

DATE OF DECISION October 6, 1989.

Shri OM PAL SINGH Applicant (s)

Shri Dinesh Agnani Advocate for the Applicant (s)

Union of India & Another ^{Versus} Respondent (s)

Mrs. Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. C. Jain, Member (A).

~~The Hon'ble Mr.~~

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. To be circulated to all Benches of the Tribunal ? *no.*

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant who is employed as a Watchman in the Department of Atomic Energy, has prayed that the Office Memorandum dated 4.4.1989 (Annexure VII to the application) in respect of his transfer from DAE Guest House at New Delhi to DEM, Bombay, be struck down and the respondents be restrained from transferring him from Delhi.

2. The facts of the case, in brief, are as under: -

The applicant was initially appointed as Watchman in Narora Atomic Power Project, Narora, U.P. Consequent on the induction of Central Industrial Security Force in Narora Atomic Power Project, the security staff, including the applicant, became surplus. They were, however, given an option to join the Central Industrial Security Force. According to the applicant, he gave his option, but since he was found medically unfit for CISF, he was not taken in the said Force.

The affected employees moved the High Court and later the Supreme Court. The Supreme Court by consent of the parties directed, inter-alia, that all the appellants shall be accommodated in other units apart from Narora Atomic Power Project, located in different parts of the country and that all postings shall be at the discretion of the employer and none of the appellants will be entitled to raise any objection as to the place of posting. In pursuance of the directive of the Supreme Court, the applicant along with other watchmen was transferred to Kaiga Atomic Power Project at Kaiga in Karnataka State. The applicant reported at Kaiga on 9.5.88. He was further transferred to the Directorate of Estate Management, Bombay where he reported for duty on 29.12.88. According to the respondents, he was transferred to Bombay along with other 16 Watchmen who were transferred from Narora Atomic Power Project, Narora, to Kaiga and that it was not the applicant alone who was transferred to Bombay. These transfers had to be effected because of certain local issues relating to their postings at Kaiga. Later on 6.1.1989, the applicant along with three other Watchmen was transferred to Delhi to guard a newly acquired Guest House for the Department of Atomic Energy at Niti Baug, New Delhi. The applicant and the said three Watchmen were relieved from Bombay on 6.1.1989 and they all joined at New Delhi on 9.1.89. According to the respondents, the transfer of the applicant to New Delhi was only on temporary basis and that he had to be transferred back to Bombay along with the other three Watchmen as their services were surplus after the Guest House at New Delhi came into commission. Accordingly, the four Watchmen, including the applicant, were transferred to DEM, Bombay vide Office Memorandum dated 4th April, 1989 (Annexure VII to the Application). It is this order which the applicant has challenged.

(Signature)

3. I have gone through the pleadings of the parties and heard their learned counsel.

4. The case of the applicant is that the action of the respondents in transferring him on four occasions within a span of one year is malafide, arbitrary, vexatious and illegal. In his application, he has stated that his transfer order dated 6.1.1989 (Annexure IV to the application) for his transfer from the Directorate of Estate Management, Bombay to the DAE Guest House, New Delhi, nowhere mentioned that his transfer was temporary. It was only after his joining duty at New Delhi, another Office Memorandum dated 12.1.1989 (Annexure V to the application), in partial modification of the O.M. dated 6.1.1989 was issued, as per which his transfer was to be treated as on temporary basis. In his rejoinder, the applicant has also mentioned the case of one Shri Hukum Singh who was transferred from AMD Headquarters, Hyderabad to the Directorate of Estate Management, Department of Atomic Energy, vide Office Order No. AMD/NG-15, dated 2.2.1989 (Annexure II to the rejoinder), and later appointed as a Helper 'A' in Narora Atomic Power Project, vide letter dated 24.5.89 (Annexure IV to the rejoinder).

5. The case of the respondents is that it is in compliance with the orders of the Hon'ble Supreme Court that the applicant has to be adjusted in any other unit apart from Narora Atomic Power Project and that the orders of the Hon'ble Supreme Court are very clear inasmuch as the applicant is not entitled to raise any objection as to the place of posting. Learned counsel for the respondents pleaded that it was not necessary to mention in the Office Memorandum dated 6.1.1989 that the transfer of the applicant from the Directorate of Estate Management, Bombay to the DAE Guest House, New Delhi was temporary. The position was made clear in Office Memorandum dated 12.1.1989 that he was to be treated as on tour with entitlement for Daily Allowance at full rate

(Signature)

as admissible under the rules. The applicant has not been singled out for such a transfer. The respondents have denied that there was any malafide intention in transferring the applicant back to Bombay. According to them, his transfer from Narora to Kaiga was in due compliance of the Supreme Court directive and his subsequent transfer from Kaiga to Bombay was due to local issues. His transfer from Bombay to Delhi was on temporary basis. They have affirmed that his transfers had to be made out of necessity due to exigencies of service and there has been no intention to harass him.

6. The learned counsel for the applicant cited 1981 (1) SLR (p.461 - 462) in support of this case. The citation quoted by the learned counsel pertains to S.S. Kalsi, Superintending Engineer Vs. M.L. Sehgal, Superintending Engineer and others. That case has no relevance to the issue before me, as in that case the issue was of reservation of posts for Scheduled Caste candidates.

7. In JENAMANI PRAFULLA KUMAR RAY Vs. STATE OF CRISSA AND OTHERS (1981 (1) SLJ 506), the Crissa High Court, Cuttack held that normally orders of transfer are outside the purview of examination by a court of law. The court can interfere only if the transfer is malafide or is in violation of any legal provision. It is for the petitioner to make definite allegations of mala fide, give full details and prove the same.

8. In the instant case, I do not find violation of any legal provision. The allegation of mala-fide intention has not been proved nor any person has been impleaded for the purpose. The facts of the case of Shri Hukum Singh, referred to by the applicant in his rejoinder, appear to be different from the case of the applicant. It was on his selection for the post of Helper 'A' in the Nuclear Power Corporation of India Limited that Shri Hukum Singh was relieved of his duties on 24.5.89.

9. In view of the above discussion, I do not find any merit in this application. The interim order passed on 13.4.89 by which the respondents were restrained from giving effect

to the impugned Office Memorandum dated 4th April, 1989
transferring the applicant from New Delhi to Bombay is
hereby vacated. The application is accordingly rejected
with no order as to costs.

16-4-89
(P.C. JAIN)
MEMBER (A)