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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 825 of 1989
~~V.K. No.~~

DATE OF DECISION 14.9.1989

Shri Kehar Singh Applicant (s)

Shri O.P. Sood Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

Shri N.S. Mehta Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.N. JAYASIMHA, 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

The applicant, who is Civilian Asstt. Security Officer (Gazetted) in 505 Army Base Workshop, Delhi Cantt, has filed this application challenging the order issued by Respondent No. 2 in letter No. 87803/54-C/PC-IV/EME- CIV-1 dated 16.3.89.

2. The applicant states that after selection by the UPSC he was appointed on 12.2.1982 as C.A.S.O. in the EME Department and posted in 505 Army Base Workshop with a view to making place for an officer of the CASO Cadre of Ordnance Department, he was posted to DEAL, Dehra Dun, under Army HQ's letter No. B/19228/Org-4(Civ) (a) dated 18.7.1988. As the authorities in DEAL did not accept the order and the EME authorities wanted to get the post vacated by the applicant, he filed OA 1989/88. Thereafter the Army HQs cancelled the order and issued a fresh order No. 19228/Org-4(Civ)(a) dated 7.10.1988 directing the applicant to move to Engineers Sub Depot, Dehu Road, a separate Department under M.E.S. He, therefore, filed a C.M.P. No. 2223/88. O.A. 1989/88 was allowed by the judgment dated 23.12.88 and the posting orders were quashed.

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3. However, the respondents did not honour the judgment and allowed Shri B.L. Sharma, CASO, brought from Vehicle Sub-Depot (Ordnance Deptt.) Meerut in the 505 Army Base Workshop. Respondent No. 3 made derogatory remarks against judiciary and the applicant when he visited 505 Workshop on 18.2.1989 and the applicant made a representation against this remark in his letter dated 23.2.1989. Thereafter he was called by Respondent No. 4 on 17.3.1989 and informed of his posting to 508, Army Base Workshop, Allahabad, vide letter No. 87803/54-B/PC-I/EME-CIV-1 dated 16th March, 1989. The applicant requested Respondent No. 4 to let him know the reasons for issue of this order, when a post is available in 505 Workshop stating that an officer from Ordnance Deptt. could not stay in 505 Workshop. Respondent 4 did not give any reply.

4. The applicant contends that there is no reason to disturb the applicant from his post in 505 Workshop, that many officers in 505 Workshop are serving for more than 10 years, the respondents cannot retain an officer from Ordnance Deptt. in 505 Workshop, there are no rules/procedure prescribing tenure or otherwise for posting officers except on promotion and more than 10 officers are working in 505 Workshop for more than 10 years are not disturbed. He also contends that Respondent No. 3 had personal and private interest in bringing an officer belonging to Ordnance Deptt. and because this Tribunal passed orders allowing OA 1989/88, the present transfer order has been issued out of vindictiveness. He also states that he has social obligations towards his aged parents and this transfer has caused humiliation and distress to the applicant.

5. The respondents have filed a counter. I have heard Shri C.P. Sood, learned counsel for the applicant and Shri N.S. Mehta, learned Standing Counsel for the respondents.

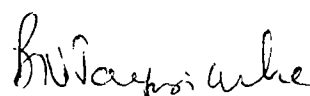
6. The first point urged by Shri Sood is that the impugned order has been issued in violation of the judgment in OA 1989/88. The main ground taken in OA 1989/88 is that

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the authorities who passed the transfer order were not competent to do so. It was held that unless a consolidated cadre of CASO's is formed and a common seniority list is formulated, the transfer of the incumbent from one ^{branch} Branch to another is bound to affect his career and, therefore, transfer from one Branch to another without protecting the seniority of the officer concerned in his original unit cannot be sustained. The order did not preclude the respondents to issue any order of transfer of the applicant within the same department. The order challenged is a transfer order from one Unit under the EME to another Unit in the EME. The seniority of the applicant is not affected. The Civilian Army Service Officers have an all India liability of service. In the circumstances, I find no merit in this contention.

7. The second argument which was advanced at length is that the order is made of vengeance and vindictiveness on the part of Respondent No.3. It also argued that the order is made to accommodate one Shri B.L. Sharma and it is not in public interest. Shri Sood maintains that having got an adverse order in OA 1989/88, the respondents are bent on shifting the applicant from Delhi and the applicant has been singled out, even though there are many in 505 Workshop who have been working for long periods. He also refers to a letter dated 23.2.1989 written by him to Maj. Gen. S. Dutta, in which he had referred to the humiliation he suffered by remarks made by Gen. Dutta during his visit to the Base Workshop and maintains that the order of transfer is a consequence to this. Shri Mehta on the other hand points out that the order transferring Shri Sharma to the Base Workshop has nothing to do with the order now under challenge. The Tribunal order was complied with and that order was not a bar to the competent authority to pass an order transferring the applicant within the same department. The order was issued by the Directorate General of EME and it is from one Workshop to another Workshop under the same Directorate. He also points out that the applicant was

only trying to make out a case of malafide by writing the letter dated 23.2.89, as evidenced by the fact that he had marked a copy of it to his advocate. The applicant had all along been in Delhi and the transfer was made in the normal course. I have given my consideration to these contentions. From the facts it is seen that the transfer order issued on 18th July 1988 was not challenged on grounds of malafide. Original Application No. 1989/88, as already noticed, was allowed on the ground that the applicant could not have been transferred to another department. Allegations of malafide are easily made and the conduct of the applicant in sending a copy of his letter dated 23.2.1989 to his advocate would lead one to believe that this was only made to prepare a ground for substituting a plea of malafide. Even if the contention of the applicant that persons who have been working in Delhi for longer periods have not been transferred out is correct, that by itself would not render the order of transfer bad. Transfer is an incidence of service and no employee can claim as a matter of right to remain at any particular place. In the facts and circumstances of the facts, there can be no conclusion that the order of transfer was made for collateral purposes or that it is made out of vindictiveness. In this view of the matter, the application fails and is dismissed accordingly. No orders as to costs.


(B.N. JAYASIMHA)
VICE-CHAIRMAN