

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. Nos. 919, 992, 997 / and 1020 19989
TexNo.

DATE OF DECISION 7-8-1991.

V.N.Mehta and others.

Petitioner

Shri N.H.Hingorani

Advocate for the Petitioner(s)

Union of India ^{Versus} and others.

Respondent

Shri P.H.Ramchandani

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair,

.. Vice-Chairman (J)

The Hon'ble Mr. S.Gurusankaran,

.. Member (A)

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 ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

by
MEMBER (A) V.C.

V

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH:DELHI

O.A.NOS. 919, 992, 997 & 1020 OF 1989

DATE OF DECISION: 7-8-1991.

Shri V.N.Mehta.	.. Applicant in OA 919/1989
Shri Satish Chander	.. Applicant in O.A.992/ 89
Shri H.S.Bhatia.	.. Applicant in O.A.997/ 89
Shri B.P.Maithani.	.. Applicant in O.A.1020/89

v.

Union of India and others... Common Respondents.

CORAM:

Hon'ble Mr. G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S. Gurusankaran .. Member(A)

Shri N.H.Hingorani, Counsel for Applicants in
O.A.Nos.919, 992 and 997/89.
Applicant in OA No.1020 of 1989 is in person.

Shri P.H.Ramchandani, Counsel for the respondents.

S.GURUSANKARAN, MEMBER (A) :

JUDGMENT

All these four applications have been heard together and are being disposed of by a common order, since the basic issue raised in them is the same. The applicants in O.A.Nos. 919, 992, 997 and 1020 of 1989, shall hereinafter be referred to as applicants Nos. 1, 2, 3 and 4 respectively.

2. Has the Central Government the powers under the Rules to unilaterally transfer a permanent employee from its cadre to the cadre of a Union Territory of Delhi ('UTD' for short) and terminate his lien in the former post simultaneously providing lien in the latter, is the question posed in these applications.

3. The applicants are permanent employees in different grades borne on the cadre of the settlement wing of the Rehabilitation Division, Department of Internal Security, Ministry of Home Affairs. The Central Government had taken a decision to gradually wind up the settlement wing set up

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some 40 years ago for the purpose of rehabilitation of displaced persons from West Pakistan and management of evacuee properties under The Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as DP Act). Accordingly, by and by, the residuary assets have been passed on to concerned State Governments for management and disposal under administrative and financial arrangements. The present Government decision, conveyed under the Presidential Order dated 20-4-1989, is also a sequel to the same for passing on to the Delhi Administration the Evacuee property work in Delhi. Under this order, along with the arrangements being made with the UTD for the management and disposal of residuary work in accordance with the DP Act, 46 posts from the settlement wing were also transferred to the UTD vide para 5 extracted below:

" 5. Consequent upon the transfer of work to Delhi Administration, 46 posts along with incumbents as indicated in Annex '1', will be transferred to Delhi Administrator w.e.f. 1st May, 1989. The budget provision made for those posts in the demand of this Division will be surrendered and accordingly the provision will be increased in the demand of Delhi Administration. The transferred incumbents will be kept en-bloc as a separate unit and their inter-se governed by the existing recruitment rules of these posts in the Settlement Wing.

7 posts out of these 46 posts are lying vacant and in case Delhi Administration, for administrative reasons and expediency, wants to create some other posts at Secretariat level then they may do so by abolishing these posts and creating new posts with equivalent expenditure. For this, they may move a separate proposal through Delhi Desk of Ministry of Home Affairs."

Subsequently vide order No. 12019(32)/Admn/SW/87 dated 25-4-1989 (page 28 of the paper book in O.A.919/87) 37 persons, which included the 4 applicants, were transferred to UTD. Aggrieved by the same, the applicants made a representation dated 28-4-1989 against the transfer order and as they felt that it would not be possible to get a considered reply from the respondents, they have filed these applications in May, 1989. Interim relief was granted initially ex parte stating that the seniority and the

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conditions of service of the applicants may not be changed to their disadvantage, which was subsequently modified after hearing both sides directing that the applicants should be treated as on transfer or deputation and that the existing terms and conditions of service will not be adversely affected during the deputation. Accordingly, the officers who have been deputed should also be considered for promotion to the next higher grade in the parent department, if they are in the zone of consideration for such promotion.

4. The applicants have contended that the respondents do not have the powers to transfer their services from the Central Government to the UT without giving them any option. They have also alleged that the applicants have been chosen arbitrarily for the transfer without selecting the juniormost or the seniormost officials. They have pointed out that by the transfer some senior persons will be denied promotion against vacancies that would arise in the settlement wing, which may go to junior persons, thus violating their fundamental rights under Articles 14 and 16 of the Constitution. The applicants have stated that they could have been sent on deputation, keeping their seniority in the settlement wing for the purposes of the promotion. Another aspect brought out by them is that with the abolition of the nine vacant posts that are transferred to the UT, their promotional chances would be affected. They have highlighted that when such work was earlier transferred to other States, the staff dealing with the work were not transferred to the States along with the work. They have maintained that the staff rendered surplus should have been identified and the juniormost should have been sent to the surplus cell for placement in other Ministries as per the instructions about surplus staff.

5. In the reply, the respondents have stated that the

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staff, who have been transferred, were those who were actually dealing with the Delhi Evacuee property work and hence it is in public interest so as to ensure least inconvenience to the public, and to the Delhi Administration, in administrative interest. They have stressed the fact that even after the transfer, the applicants would continue to work in Delhi with all the benefits enjoyed by them, since unlike the States, Delhi is an UT, which adopts the same pay scales and other conditions of service like the Central Government. The abolition of the vacant posts was necessitated to create additional posts at secretariat level of the UTD due to the ban on creation of additional posts for effecting economy. Since there were some legal difficulties in encaderring them in the UTD subordinate service, it has been decided to treat them as a separate unit with their existing inter-se seniority so that their promotional chances are not affected. Further adequate number of posts in different grades have been transferred. The applicants would be continued to be governed by the Recruitment Rules of these posts as presently existing in the settlement wing and the vacancies that arise in that unit will only go to the transferred persons and not to senior officials of the UTD cadre.

6. During the arguments, Shri N.M.Hingorani, the counsel for the applicants 1 to 3 referred to the decisions in GENERAL OFFICER COMMANDING-IN-CHIEF AND ANOTHER v. Dr.SUBASH CHANDRA YADAV AND ANOTHER (AIR 1988 SC 876) and JAWAHARLAL NEHRU UNIVERSITY v. Dr.K.S.JAIVATKAR AND OTHERS (AIR 1989 SC 1577) and submitted that the respondents do not have the powers to transfer the applicants from Central Government to UTD. Applicant No.4 appearing in person referred to the decision in SAKTIBORATA CHAKRAVORTY AND OTHERS v. PRINCIPAL-CUM-ASSISTANT DIRECTOR OF INDUSTRIES, DANDAKARANYA DEVELOPMENT AUTHORITY AND OTHERS decided by

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the Cuttack Bench of this Tribunal on 17-2-1987 in T.A. No.1/87 and pointed out that the employees of Central Government cannot be transferred to the State Government service without the concurrence of the concerned employees. Mr. Hingorani then referred to Article 258 of the Constitution and pointed out that it enables the Central Government only to transfer the functions to the State Governments or its officers and not to transfer the Central Government employees to the State Government. He stressed that the non-gazetted employees of the Delhi Administration are governed by the Delhi Administration Sub-ordinate Service Rules, 1967 and the Central Government employees cannot be transferred to the UT as the Rules stand at present. He also referred to the minutes of the meeting held on 18-8-1988 (page 15 of the paper book), wherein respondent No.3 has pointed out that they have given an affidavit in the Court to the effect that they would not entertain encadrement of non-gazetted staff in the services of Delhi Administration. Shri P.H. Ramchandani, counsel for the respondents referred to the decision in Dr.G.K. VISHWAKARMA v. UNION OF INDIA [1990 (2) SLJ (CAT) 157] wherein the Principal Bench, New Delhi has held that a Central Government servant can be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be renumerated from general revenue, from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the Government as provided for under F.Rs 11 and 15(a) and as indicated in the Ministry of Home Affairs Memorandum No.75/55 -Estt.(A) dated 24-3-1955. Shri Ramchandani explained that the UT is different from States and its finances are administered by the Government of India.

7. We have carefully considered the rival contentions

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of the parties regarding the powers of the Central Government to transfer its employees to UTs under F.Rs 11 and 15(a).

We are of the opinion that the ratio in Dr.G.K.Vishwakarma's case would be more appropriately applicable to this case.

The decisions in General Officer Commanding-in-chief and Jawaharlal Nehru University's (supra) are distinguishable inasmuch as in the former the transfer involved was from one autonomous cantonment Board to another autonomous Cantonment Board and that too before the Cantonment Act was suitably amended to empower the Central Government to frame Rules regarding conditions of service. Likewise, in the latter case, the transfer involved was from one University to another without the consent of the employee. Chakravorty's case (supra) is also distinguishable as it concerned with transfer from Central to State Government. In all those cases there has been no question of applicability of F.Rs 11 and 15(a) which apply to the present case since the transfer is from Central Government service to UT whose employees are also paid from the consolidated fund of India as distinct from the State Government who are paid from the consolidated fund of the concerned State. In the decision rendered by the Principal Bench of this Tribunal in Dr. G.K.Vishwakarma's case (supra) the applicability of F.Rs 11 and 15(a) read along with the guidelines in O.M.dated 24-3-1955 (supra) have been elaborately discussed. We are in agreement with the same. We would like to further observe that such a transfer from Central Government service to UT cannot be termed as "Foreign Service" as per definition given under F.R.9(7) and covered under F.Rs.110 and 111. Hence, the prior consent of the employees is not required as per provisions of FR-11. We note that while it is true that Article 258 of the Constitution provides for the transfer of work, the transfer of the employees will be covered by the relevant provisions of FRs and SRs. The vires of the relevant FRs and SRs themselves have not been questioned. Therefore, in our opinion, the transfer order in this case cannot be faulted on the ground that the Rules do not permit the same.

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8. Coming to the guidelines laid down in O.M. dated 24-3-1955 (supra), we note that the basic principle to be borne in mind is that the State will get better service from a willing servant than from one who is compelled to carry out the duties of a post against his wishes. We are constrained to note that in these days of modern management techniques and the general policy of the Government not to retrench the surplus staff as provided for in the Rules, but to accommodate them in suitable posts as far as possible with certain conditions the simple procedure of discussing the issue with the concerned staff explain the compulsions behind the decision and also as to how the service interests of the employees have been protected to the maximum extent possible, has not been followed or atleast it has not been said so in the reply of the respondents or during the arguments.

9. True that the staff would have become aware of the impending transfer through the minutes of the various meetings; but they would not have been aware of the guidelines that would be followed in identifying the staff to be transferred. As pointed out by the applicants, the normal principle followed is to choose the juniormost staff in each grade. This has not been followed in this case. To overcome all complications of encadrement of the transferred staff in the UI subordinate service, the applicants have pointed out that the existing procedure for placement surplus could have been followed and the Delhi administration to deploy its own cadre staff to manage the work. But, Shri Ramchandani explained that the work is of quasi-judicial nature and in the interests of the public and General Administration, the staff, who were actually handling the work, have been transferred. This point has also been seriously contested by the applicants. It was pointed out by Shri Hingorani and admitted by the respondents that this vital aspect of public interest has been given a go by all along, when similar work was transferred to

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the various States and no staff were transferred to them. No satisfactory explanation has been put forward by the respondents except to state that the States did not want any staff to be transferred, while the Delhi Administration wanted the transfer of staff dealing with the work for smooth change over and in public interest.

10. Similarly the guidelines indicate that it is necessary to make sure, not only that there is no loss of pay, but also that the employee's reasonable expectations in the original service are preserved or equal prospects are provided in the service or department to which the employee is transferred (emphasis supplied). At the same time, the interests of members of the service or department to which the transfers are made should be considered. Thus, while the Government has the necessary powers for making such transfers, they themselves have laid down the guidelines to make judicious decisions. The number of staff involved is not large. Applicant No.1 is in the second highest gazetted grade, while applicant No.2 is in the lowest gazetted grade and applicants Nos. 3 and 4 are in the highest non-gazetted grade. Out of 37 staff transferred, only these four within the top six positions have approached this Tribunal. From this one can safely surmise that what is bothering them is only their own individual promotional prospects, since the respondents have stated that all other conditions of service like pay, allowances, privileges etc. would be the same. By keeping the transferred staff as a separate unit under the administrative control of the Delhi Administration and retaining the Recruitment Rules of the settlement division for their further/promotion, we find that substantial justice has been done to the transferred staff. Even though it has not been explained in chart form, respondents have stated generally in para 7 of their counter affidavit that the officials transferred to Delhi administratio

would be at a great advantage vis-a-vis those still left in the parent department. We observe from the details given about the number and grades of staff transferred and the total sanctioned strength (total 115) of settlement wing before their transfer, the staff in different grades have been provided in an adequate proportion in the transferred posts. Hence, all that probably needs to be done is to examine the few individual cases, ^{of those} who may be seriously affected, because they are very senior while juniors may have been left in the settlement wing and make marginal adjustments in cadre strength or reallocation of posts in suitable grades without much financial implications. It is entirely within the competence of the respondents to examine these issues and take suitable action as they deem fit, since we have held that the transfer of the applicants are not against the provisions in the Fundamental Rules. We commend to the respondents to consider these issues and take suitable decision expeditiously. At the same time, we must observe that no employee can demand as a matter of right any promotional avenues.

11. In view of the above, the reliefs asked for by the applicants cannot be granted. The modified interim orders issued on 24-5-1989 are vacated with the direction that during the ^{period} /the interim orders were in force, the concerned employees will be treated as on deputation with all consequential benefits.

12. The applications ^{are} ~~is~~ dismissed.

Member
18/8/1991
MEMBER (A)

Chairman
7.8.1991
VICE-CHAIRMAN.