

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1310 of 1988

Date of decision: 14.8.1989

Shri Chander Prakash Shukla

Applicant

vs.

Union of India & Others

Respondents

PRESENT

Shri R.L. Sethi, counsel, for the applicant.

2. Shri M.L. Verma, counsel, for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri C.P. Shukla against impugned order NO. B/29278/DGO(Stores-1) dated 11.5.1988 issued by the Directorate General of Quality Assurance, Supply Department (DGQA), Ministry of Defence New Delhi, posting the applicant from New Delhi to Kanpur and the order in Appeal No. QAE/5066/Conf. dated 28.6.88 (Annexures A and B resp. to the application).

2. The brief facts of the case, stated in the application, are that the applicant is a civilian employee with the Ministry of Defence in the Directorate General of Quality Assurance, New Delhi, as a technical person and is attached with Regional Office, New Delhi, of the Controller of General Stores, Kanpur, working as Asstt. Foreman. That vide orders dated 11.5.88, the applicant has been ordered to be transferred from Quality Assurance Establishment (General Stores), New Delhi, to Controller, Quality Assurance (General Stores), Kanpur. The transfer is being made to help Shri Lakshmi Chand working at Kanpur. The applicant filed an appeal against this transfer on 25.5.88 which has been rejected by the competent authority on 28.6.1988. The applicant is senior to Shri Lakshmi Chand. This is his third transfer

in 15 years of service. The first transfer was made in 1978 from Kanpur to Madras, the second in 1983 from Madras to Delhi and now from Delhi to Kanpur. The applicant has stated that he is a patient of paralaytic attack of the left side of the face and body since 1983 and since then is undergoing treatment at R.M. Lohia Hospital, and doctors of the Hospital have advised him to be under ~~their~~ treatment and has not recovered from the ailment. That S/Shri Amarjit Singh and N.S.P.S. Yadav, Asstt. Foremen, in the applicant's office and who have completed more than 7 years have not been transferred while the applicant has been transferred to Kanpur. That the transfer of the applicant is contrary to the HQ's circular No. A/86503/VII/OGI/(Admn-7-B) dated 25.4.85 which reads as follows:

"It has been decided that, as a policy the request of the individuals who have been transferred under the turn over policy will not be considered for posting back to the old or any other station until they complete 5 years at the new station."

The applicant has alleged that S/Shri R.A. Awasthi, R.N. Shukla etc. who have put in more than 20 years at Kanpur, and S/Shri S.P. Verma, B.K. Rohtagi, Ram Saroop, Anil Kumar Bisaria who have put in more than 10 years stay at Kanpur are still at the same place of posting at Kanpur. That Shri Lakshmi Chand who is being transferred in replacement of the applicant and having four years stay at Kanpur cannot be transferred as according to the transfer policy no transfer can be effected earlier to five years posting at a place. The applicant has stated that the present transfer is mala-fide as it has been made to accommodate Shri Lakshmi Chand. Shri Lakshmi Chand is junior to the applicant and has not completed five years at Kanpur before being transferred to Delhi. The applicant has prayed for quashing/setting aside of the impugned orders No. B/89278/DGQA(Stores-1) dated 11.5.88, QAE/5174/Estt. dated 19.5.88 and No. QAE/5066/Conf. dated 28.6.88 and for directing the respondents to keep the posting of the applicant at Delhi.

3. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. The order of transfer is an administrative order for the exigencies of service under rotational transfer policy and the Tribunal would not like to interfere in view of 1986(2) SLJ PB 278, 1986(1) ATR 259,304, 1987(1) ATR (S.C.) 396 and 353, 1986 ATC 528 (SC) 558 and 1986 (2) ATR 304. No cause of action has accrued in favour of the applicant and as the application devoids any merit, is liable to be dismissed. The application is barred under Section 20 of the A.T. Act as the applicant has not exhausted all the departmental remedies and as such the application is premature and is liable to be dismissed. The respondents have stated that the applicant has been struck off from the strength of the office and the other incumbent Shri Lakshmi Chand A/F of CQA (GS) Kanpur has been posted to QAE (GS), Delhi, w.e.f. 30.7.1988 and as such the application is liable to be dismissed.

4. The applicant was posted at QAE(GS) New Delhi as C/Man-1 since 3.1.83 and subsequently given in situ promotion to the rank of Asstt. Foreman w.e.f. 15.12.86 and stands transferred to CQA(GS), Kanpur, as per HQ DQA(S)'s letter dated 11.5.88 (Annexure A to the application). Two months time was allowed to each individual who was posted to outstations for preparation of move. Accordingly, Shri C.P. Shukla was to be struck off strength and Movement Order was issued to him. Since the applicant was not coming to office w.e.f. 18.7.88, the Movement Order was sent to him by Reg.A.D. and he has been SOS w.e.f. 28.7.88 vide QAE (GS) Movement Order No. QAE/5174/Estt. dated 28.7.88. Against the vacancy caused by the transfer of the applicant, Shri Lakshmi Chand A/F of CQA (GS) Kanpur has been posted in his place at New Delhi on compassionate grounds w.e.f. 30.7.88. The applicant's



representation dated 25.5.88 for his retention at Delhi was considered by the competent authority and rejected considering <sup>the</sup> merit of the case. The respondents have denied that the applicant is senior to Shri Lakshmi Chand. The applicant is junior to Shri Lakshmi Chand whose name figures at Sl. No. 26 of the Seniority List while that of the applicant figures at Sl. No. 43 of the S. List, though this aspect is not relevant with the rotational transfers which have been made as per instructions contained in Min. of Def. letter No. 6(2)/D(Inspection)/88 dated 7.3.88. The respondents have denied the statement of the applicant that this is his third posting in 15 years. The applicant was recruited initially in the rank of Junior Scientific Asstt. Grade II, but the applicant himself applied for the post of C/Man-II, in a higher scale, for which he was selected and posted to SOAE(GS) Madras w.e.f. 29.11.78. In 1982 the applicant had applied for posting to New Delhi on compassionate grounds. His request was considered sympathetically and he was posted to New Delhi w.e.f. 3.1.83. Thus his first posting to Madras was a recruitment posting, the second to New Delhi was on compassionate grounds and the present posting order dated 11.5.88 is the first transfer order in terms of rotational transfer policy. The applicant has been posted to CQA (GS) Kanpur as no vacancy of Asstt. Foreman was available at Delhi.

5. The respondents have denied that S/Shri Amarjit Singh and SPS Yadav have not been transferred out of Delhi. Shri Amarjit Singh joined duty at QAE (GS) New Delhi on 13.3.81 and was transferred to T&C Wing, Ludhiana w.e.f. 31.8.81 and to QAE (GS) New Delhi w.e.f. 1.7.87. He has been transferred to Ludhiana w.e.f. 7.1.88 on compassionate grounds. Similarly, Shri SPS Yadav joined T&C Wing Agra w.e.f. 12.8.81, was posted back to QAE (GS) New Delhi on 23.5.85 and was transferred to T&C Wing Agra w.e.f. 4.1.88 on compassionate grounds. Transfer of persons with

less than five years stay at a particular station have been made on compassionate grounds, considering the merit of the case. The applicant himself was transferred from Madras to New Delhi after 4 years on compassionate grounds. S/Shri R.A. Awasthi, A/F, and R.N. Shukla, A/F, were considered for transfer and they were given protection as per Govt. of India, Min. of Defence O.M.No. 13(4)/60/5/01/D (Appts) dated 13.11.60 as they are office bearers of recognised Union/Association. The concerned establishments have already been advised to inform the concerned Association to elect another office bearer in their place as they may not get protection next year. S/Shri SP Verma, B.K. Rohtagi, Ram Saroop and Anil Kumar Bisaria could not be posted for want of vacancies of A/F outside Kanpur. Shri Lakshmi Chand has been posted out after a period of  $4\frac{1}{2}$  years on compassionate grounds.

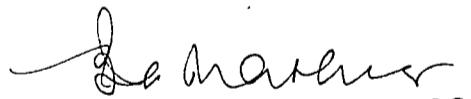
6. The respondents have stated that in view of the foregoing, the applicant does not deserve any relief and the transfer order dated 11.5.88 should be upheld and enforced.

7. I have gone through the pleadings and carefully considered the arguments on both sides. The Supreme Court in Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani - JUDGEMENTS TODAY 1989 (3) S.C. 20 - have clearly laid down that transfer is an incident of service and that an employee has no choice in the matter. No Government servant has a legal right for being posted at any particular place and representations have to be made to the competent authority in case of genuine difficulty. The court has held that if transfer is not stayed, public servant must carry out the transfer orders. In this case the genuine difficulty appears to be that the applicant had a paralytic attack of the left side of the face and body and has been undergoing treatment at R.M. Lohia Hospital since 1983. The doctors have advised him to be under their treatment but he has not yet recovered from the ailment. This matter has already been examined by the competent authority

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and rejected. As such, the court can hardly interfere unless a malafide has been established. No malafide has been alleged against any particular person. The respondents have denied that Shri Lakshmi Chand is junior to the applicant, but even if he is junior, the point is not very relevant because it has to be left to the respondents to utilise the services of their officers in the best interest of work. It has been stated that Shri Lakshmi Chand has been brought to Delhi on compassionate grounds and he has already joined duties at New Delhi last year. It is not a fact that the applicant has been transferred three times in the last 15 years. As explained by the respondents, this is his first transfer in the real sense and since this is in exigency of work and in terms of rotational transfer policy, the court may not interfere in such a transfer. The applicant has not been able to establish that this transfer is in any way malafide or arbitrary or in colourable exercise of power or punitive in nature. In the circumstances, the application is rejected. Since the applicant has been a patient of paralysis, the respondents may allow him such leave as is due to him. With these orders, the application is disposed of. There will be no orders as to cost.

  
(B.C. Mathur) 14.6.88

Vice-Chairman