

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

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Regn. No. OA 1427 of 1988

Date of decision: 6.12.1988.

Shri M.M. Bajaj

Applicant

Vs.

1. Union of India

Respondents

Through Secretary, Water Resources.

2. Central Water Commission,

Through its Chairman,

Sewa Bhawan, R.K. Puram, New Delhi.

3. Director (Administration),

Room No. 308, Sewa Bhawan,

R.K. Puram, New Delhi.

PRESENT

Shri B.K. Pal

Counsel for the applicant.

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 against the impugned orders No. 11/9/87/E.X. dated the 5th July, 1988 passed by Respondent No. 3 transferring the applicant from Delhi to Bhubaneswar.

2. The brief facts of the case, as reported in the application, are that the applicant had joined the Respondent No.1 in 1961 as Draftsman Grade II and was promoted to Grade I in 1970. The applicant is governed by Central Government rules and regulations including the transfer policy exclusively formulated for Central Water Commission employees. A copy of the transfer policy has been annexed with the application as Annexure P-2 which envisages that Group 'C' and 'D' personnel should not normally be transferred from one station to another except to meet the inevitable contingencies when transfers become essential for adjusting surplus staff or making up deficiencies of staff, or at the request of employees on compassionate grounds or on mutual transfer basis, or on promo-

tion or for exigencies of service of administrative requirements. It has been stated that the impugned transfer order is not in conformity with clauses 11 and 12 of the transfer policy which say that rotational and other transfers, as far as possible, will be ordered once a year in the months of March/April and that requests of CWC employees for posting to a station where the employee's spouse in Government service is posted would be considered sympathetically and efforts would be made to accommodate the official <sup>or</sup> at near the place of posting of the spouse subject to administrative convenience. His posting at Bhubaneswar which is <sup>at</sup> a far away place will create a lot of problems for him. He has two school going children whose studies will be disrupted as the academic session starts in April. The applicant has old parents aged between 75 and 80 years with poor health and the applicant is the only male member to look after them. It has also been brought out by the applicant that the respondents have been modifying and amending the transfer policy and transfers to accommodate and favour some employees and has indicated some amendments to the transfer policy itself in connection with the transfer <sup>orders</sup> of some Draughtsmen which were cancelled. The respondents have also not taken option and preference of the applicant before transferring him from Delhi to Bhubaneswar, as mentioned in the transfer policy. The applicant has also brought out that he is being sent out to Bhubaneswar in place of Shri D.N. Raut, Draughtsman Grade I, <sup>who</sup> is being brought to Delhi and Shri Raut has also represented against his transfer to New Delhi. The transfer will affect both the employees adversely. No element of public interest is involved in the impugned transfer order and as such the order should be quashed.

3. The learned counsel for the applicant cited the case of Shri K.K. Jindal Vs. General Manager, Northern Railway & Others - A.T.R. 1986(1) C.A.T. 304 of the Principal Bench of this Tribunal - wherein it has been held that if any deviation is to be made from the declared policy, a strong case should be made

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out by the respondents as they cannot be allowed to take arbitrary action against the transfer policy. The respondents have rejected the representation of the applicant ignoring his plea of children's education, his wife working at Delhi, his aged parents living with him, his preference not being asked for and no circular issued by the respondents in January and February each year, as prescribed by the respondents themselves.

4. The respondents in their reply have denied that any <sup>cause of</sup> action has accrued in favour of the applicant who holds a transferable post and has been transferred due to exigencies of service and administrative requirements. The applicant is one of the three persons who has longest continuous stay in Delhi and has been transferred from Delhi to Bhubaneswar where there is a vacancy. It is further stated that the guidelines cannot be made the basis for immunity from transfer as held in Krishna Dev Dutt Vs. Union of India - 1987 (2) ATC 574. The respondents have also cited the cases of D.H. Dave Vs. Union of India - 1986 ATC 579 and Gokul Ghandra Nag Vs. State of Orissa 1(1987) ATLT 307 - 1980 S.C. 1255. In these cases it has been held that where both husband and wife are employed in the same city and if one of them is transferred for exigencies of service, it is not illegal. It has also been held by the Supreme Court in Shanti Kumari Vs. Regional Director Health Services 1981 S.C. 1577 & in Rahinder Nath Gupta Vs. Union of India 1987 (3) SLJ 447 - that in matter of transfer for the sake of exigencies of administration, courts are not to interfere. The applicant carries a liability for transfer to any part of the country where the offices of the Central Water Commission are located.

5. The learned counsel for the respondents said that the applicant was trying to abuse the process of court. In his representation, he had sought cancellation of the transfer on grounds of separation from wife, the education of his school going children and the old parents and the other grounds are after thought, only after rejection of the representation. The applicant has been relieved on 29.7.1988 and he has to get his salary etc. from the.

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Bhubaneswar office where he has been posted. The applicant has the longest stay in Delhi and since the vacancy is only at Bhubaneswar and not in Delhi, the application should be rejected summarily. The applicant has also not referred to any malafide against any person. The mere fact that certain transfer orders were cancelled does not indicate any malafide. Shri Verma said that it has been well established that guidelines are not mandatory and the letter issued by the administration was even lesser than the guidelines. It has also been held by the Tribunal that it will not interfere with any transfer order in the absence of malafide - 1986 SLJ 511 - C.N. Prakashan Vs. U.O.I. & Others - decided by the Madras Bench of the C.A.T.


6. The learned counsel for the applicant cited a number of cases where persons were transferred and then their transfer orders were cancelled. He cited the case of Shri N.C. Sood transferred alongwith the applicant to Jaipur. Similarly, Shri Masih is still working at Delhi, but the applicant has been singled out. He has also stated that his posting at Delhi will not adversely affect Shri K. Singh as he is working in a different section.

7. Of course, there can be many reasons why orders issued in one case are cancelled, but it is not necessary that merely because in some cases transfer orders have been cancelled, they must be cancelled in every case. As has been held earlier, guidelines are not mandatory but advisory in nature. They should, however, be followed, otherwise there would be no purpose in issuing the guidelines. It is primarily for the Departments to ensure that guidelines are followed and the courts may interfere if there appears to be a malafide or arbitrariness in dealing with a particular case. In the case of B. Vardha Rao Vs. State of Karnataka and Others - ATR 1987(1) SC 396 - the Supreme Court have held that "a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incidence of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post" which is not so in this case.

The Tribunal has also held that normally transfer orders should not be interfered with. The Jodhpur Bench of the Tribunal in **Amar Nath Vais Vs. Union of India & Others - ATR 1987 (1) C.A.T. 353** - has held that "transfer policy guidelines are not mandatory and the question as to whether or not the transfer of a certain public servant is to be made in the exigencies of service or in the interest of service/public interest is to be decided by the competent authorities as per its subjective satisfaction. Mere factum of certain officers being retained would not make it a case of either arbitrariness or hostile discrimination so as to attract the frown of Articles 14 and 16(1) of the Constitution."

In the case of **Gokul Chandra Nag Vs. State of Orissa & Others - 1987 (1) A.T.L.T. 307** - the State Administrative Tribunal of Orissa held that "Government, as employer, has unfettered right to transfer Government servants and any instructions issued by Government for regulating the transfer of Government servants are only advisory and not directory or mandatory."

8. Certainly where malafide is established, the transfer order could be quashed, but in this case no malafide has been established. There is no doubt that the transfer order of the applicant from Delhi to Bhubaneswar will cause a lot of hardship to him, but when a person joins Government service and is liable to be posted anywhere, such hardship will always be there and the hardship alone cannot attract intervention by the court. As the applicant has remained in Delhi for a long time, I see no reason to interfere and the transfer order of the applicant is, therefore, rejected. There will be no order as to costs.

  
(B.C. Mathur) 6.12.88  
Vice-Chairman