

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1435 of 1988
T.A. No.

DATE OF DECISION 24.11.1989

Harnam Singh
Applicant (s)

Shri M.L. Kasturi Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

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

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice- Chair man.

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 ? x
4. To be circulated to all Benches of the Tribunal ? ✓

JUDGEMENT

Shri Harnam Singh, UDC in the office of the Garrison Engineer (North), Air Force Palam, Delhi Cantt, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against the impugned orders of transfer No. 39/88 dated 10.3.88 issued by the Chief Engineer, Western Command, Chandi Mandir (Respondent No. 2) transferring the applicant from Delhi Zone to Bhatinda Zone. The applicant had filed a representation to Respondent No. 2 on the ground that many UDCs having longer stay in Delhi had to move first in accordance with the transfer policy of the respondents for the tenure station and also on the ground that many UDCs have never gone to the tenure stations since their posting/ appointment in Delhi, but this representation has been rejected.

2. According to the applicant, he was appointed as L.D.C. at Roorkee (U.P.) on 13.8.1962 and since then has been transferred to Calcutta, Shimla, Bhatinda and lastly to Delhi in 1978. He is placed at Sl. No. 22 in the seniority list of the UDCs in the matter of stay in Delhi. He received the transfer orders dated 10.3.88 from the office of the Headquarters Western Command Engineers' Branch, Chandi Mandir, trans-

14

ferring him to Bhatinda Zone (Annexure 1 to the application). According to the transfer policy (Annexure IV to the application), provision 13 of the transfer policy reads as under:

"Move of longest stayees/promotees when posting becomes necessary the longest stayees in the station will be moved. When moves on promotion are involved, the promotees will be moved if no volunteers are available and not the longest stayees. In determining the longest stayee in a station, all MES formations located in the station and the adjacent localities will be taken into consideration. Grouping of various adjacent stations will be as per appendix B".

3. The learned counsel for the applicant argued that the applicant had been picked up by the respondents arbitrarily leaving his seniors at Delhi. There are a number of persons at peace stations who have been staying earlier than 1978 and have not been transferred to tenure stations and no reasons have been given why the applicant should be shifted to Bhatinda. He said that the policy was also applicable to female employees. He cited the case of Madan Lal Dhamija Vs. Union of India & Others - OA 1436 of 1988, decided by this Tribunal on 20.9.89 - where the transfer has been stayed. The respondents have not taken into consideration the personal difficulties of the applicant, namely, the education of his children and the marriage of his daughters. The respondents did not take into consideration that his mother expired on 9.5.88 and being the eldest son in the family has a lot of responsibilities towards his sisters and other family members.

4. The respondents in their reply have stated that the applicant has been transferred in the interest of State and transfer being an incident of service, no cause has accrued to the applicant and as such, the application should be dismissed. It has been pointed out that the applicant had earlier asked for deferment of his transfer till 31.12.88 vide his representation dated 23.4.88 on the ground of the serious illness of his mother which is no longer valid. In that representation he never mentioned that UDCs having longest stay in Delhi should be moved first. Nor did he raise the question of policy matter in his representation. It has been stated that various courts have held that transfer is not

mm

a punishment and the contention that the applicant's representation has been rejected without any speaking order is not relevant.

5. Referring to the transfer of Shri Madan Lal Gakhar, referred to in the application, it has been stated by the respondents that he was transferred from Delhi to Bikaner, but purely on compassionate grounds he was allowed to stay in Delhi for another four to six months. In the case of Shri Gakhar his father had all of a sudden died and his mother had become bed-ridden with some serious disease. Moreover, the wife of Shri Gakhar was already employed and working in Delhi itself and there was nobody to look after the ailing and bed ridden mother. The authorities took a sympathetic view of the situation and allowed him to stay in Delhi for some more months, but within 6 months, he was transferred to Bhatinda Zone. Regarding female employees, the policy lays down that they may be exempted from tenure posting except in case of promotion. If there is no vacancy at the present station, the female should be posted to a station where the vacancy exists. These guidelines are based on practical difficulties in posting female employees at tenure stations. In another case of Shri L.N. Grover, referred to in the application, the respondents have stated that Shri Grover was working as LDC in Delhi and was transferred to Bhatinda on promotion, but he declined his promotion for one year due to family circumstances and as such the two cases cannot be compared. The applicant has stayed in Delhi for over 10 years and has been transfer^{ed}/under the policy applicable to him and in the administrative requirements and exigencies of service

6. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, cited the following cases:

1. The Union of India & Ors. Vs. Shri H.N. Kirtania - Judgments Today 1989 (3) S.C. 131.
2. Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani - Judgments Today 1989 (3) S.C. 20.
3. N.K. Maheshwari Vs. Union of India - 1989(2) Judgments Today - S.C. 338.

In the first two judgments the Hon'ble Supreme Court has recently held that Central Government employees on transferable posts are liable to be transferred from one place to another in the country and transfer should not be interfered with unless there are strong and pressing grounds

rendering the transfer order illegal. An employee on a transferable post cannot resist his transfer by the competent authority unless it is violative of any statutory rules or on the grounds of malafide. He can only make a representation but cannot refuse to go to the place where he is transferred. It has also been clarified by the Supreme Court in the case of N.K. Maheswari Vs. Union of India that guidelines are not mandatory and do not provide any basis to an officer to avoid his transfer. In any case, the present transfer is according to the guidelines. Even if the transfer was against the guidelines, the Calcutta Bench of the Tribunal in ATR 1986 (1) 414 has decided that guidelines are only advisory in nature and not mandatory and even if a transfer is against the guidelines, the Tribunal should be reluctant to interfere in such transfers.

7. The learned counsel for the applicant said that this Tribunal has already stayed the transfer orders of Shri Madan Lal Dhamija, UDC in the office of the Chief Engineer, Delhi Cantt, to Bhatinda, but somehow this case was left out at that time.

8. I have gone through the judgement of this Tribunal in OA 1436/88 - Madan Lal Dhamija Vs. Union of India. In that case the Tribunal came to the conclusion that the impugned order of transfer is in violation of the transfer policy of the respondents and directed Respondent No. 1 to reconsider the transfer of the applicant in the light of the various grounds adduced by the applicant before the Tribunal and till such a decision was taken, the transfer order of the applicant had been stayed. In view of this decision in the case of Shri Madan Lal Dhamija I should have followed the same or referred the matter to the Full Bench, but in view of the clear orders of the Hon'ble Supreme Court in the case of Shri N.K. Maheshwari that guidelines cannot be the basis for agitating a transfer and the orders of the Supreme Court in the case of Shri H.N. Kirtania that a transfer order in public interest cannot be interfered with by the courts unless it violates any statutory rules or is malafide, I have

hm
/to follow these orders. No mandatory rules have been violated nor any malafide has been alleged or established against anyone. It is open to the respondents to reconsider the representation of the applicant, but it is not possible to provide any

17

relief to the applicant against the impugned orders. With these observations, the application is dismissed. There will be no orders as to cost.

B. C. Mathur
26.11.88
(B.C. Mathur)
Vice-Chairman