

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1436/ 1988.

DATE OF DECISION September 20, 1989

Shri Madan Lal Dhamija Applicant (s)

In person Advocate for the Applicant (s)

Union of India & Others Versus Respondent (s)

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

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member (A).

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, an Upper Division Clerk (UDC) in the office of the Chief Engineer, Delhi Zone, Delhi Cantonment under the Western Command (Respondent No.3), was transferred in the interest of State and posted to Chief Engineer, Bhatinda Zone / GE Bhasiana by the order dated 10.3.1988 (Annexure I) of the Chief Engineer, HQ Western Command, Engineers Branch, Chandimandir (Respondent No.2). He submitted a representation dated 25.4.88 (Annexure II) to Respondent No.2, which was rejected by the order dated 11.6.1988 (Annexure R-I) of Respondent 2. The applicant made a further representation dated 13.7.88 (Annexure III) to the Engineer-in-Chief, Army Headquarters (who has not been impleaded in this case), but received no reply and it is stated to be still pending. Hence he filed this application against the Annexure I order dated 10.3.88 relating to his transfer.

2. The main grounds advanced for impugning the transfer order are that it is allegedly against the transfer policy of

the Respondents as outlined in the letter dated 25.10.84 of Respondent 2 (Annexure VI) titled "POLICY REGARDING TRANSFER OF CIVILIAN SUBORDINATES IN MES", hereinafter referred to as the Policy Letter. They are as follows: -

- i) Para 5 of the Policy Letter states that there will be no compulsory turn over from non-tenure stations, except to cater for turn over from tenure stations or to meet the job requirements. Delhi and Bhatinda are admittedly and respectively non-tenure and tenure stations. The Annexure I order is obviously not to cater for turn-over from Bhatinda or other tenure stations.
- ii) Para 8 of the Policy Letter states that, normally, no individual will be posted to tenure station or other normal station on administrative grounds. Though exceptions to this norm have been provided in the same para, the Respondents have not given any reason for his transfer.
- iii) The applicant had, after his appointment as UDC, served at Simla and Bhatinda and was posted to Delhi in 1978. There are other UDCs (including some female UDCs) who have stayed at Delhi much longer than him and yet, not posted to a tenure station. He has filed with his rejoinder a letter from Respondent 2 dated 5.2.88, showing the command seniority list for posting to tenure station (Annexure M2). In that list, his name is at S.No.54. It is alleged that the persons at S.No.40 and 42 have not been transferred. This is in violation of the principle that the person who has stayed the longest at a station should be moved first. Such a principle is mentioned in para 13 of the Policy Letter as also in para 3 of Annexure 'E' to the Policy Letter.
- iv) The applicant's wife is also employed as a teacher in Delhi (Annexure X). Hence, the transfer will separate the spouses. It is against the Government's policy contained in the Department of Personnel's O.M. dated 3.4.86 (Annexure VII).
- v) The applicant has also added that his request for being retained at Delhi on compassionate ground - on the ground of his mother's age and her dependence on him - has also been ignored.

vi) He has also alleged that the cases of transfer of similarly placed UDCs have been dealt with differently.

3. A reply has been filed on behalf of the Respondents asserting that the applicant is not entitled to any relief as claimed by him and that the application deserves to be rejected. It is stated that the applicant has already been in Delhi for more than 10 years and he has been transferred "strictly accordingly to the transfer policy applicable to him", "in the exigencies of service and administrative requirements". As transfer is an incident of service, the applicant can have no cause for action. The applicant has not been singled out for transfer, as, in all, 49 persons have been transferred. The applicant cannot complain against the non-transfer of the senior female U.D.C., because the Policy Letter has since been modified by another order dated 11.5.87 (Annexure R-3) which exempts them from tenure posting. In reply to the non-adherence to the policy of keeping husband and wife at the same station, the Respondents state, ^{that} efforts are made to stick to this policy. "But since the individual is seniormost stayee in the station as per E-in-C's Br policy, the contention of the individual that he has been arbitrarily and maliciously posted is uncalled for and unwarranted." In conclusion, it is again reiterated that "the transfer of the applicant is strictly in accordance with the policy applicable to him and in the public interest and is neither arbitrary nor illegal. The applicant has already stayed in Delhi for more than 10 years and he has no cause of genuineness (sic - grievance?)".

4. I have heard the applicant who argued his own case and Mrs. Raj Kumari Chopra, the learned counsel for the Respondents. I have also perused the record.

5. The applicant has not alleged any malafide. His complaint is, at best, that the transfer is arbitrary as it does not follow the policy. Respondents have, in their reply, given convincing reasons why the cases of M.L. Ghakar and L.N. Grover

have been dealt with differently. I am of the view that the applicant cannot derive any support from those cases. Before proceeding further, it is necessary to examine the arguments of the learned counsel for the Respondents based on judicial pronouncements.

6. She contended that unless malafide is established, the transfer ordered by the Respondents cannot be interfered with by the Tribunal. It was claimed that judicial decisions have established that transfer being an incident of service none can claim a right to remain posted at a place without being transferred from there. Transfers are required in public interest and have to be complied with even if they are inconvenient to the employees. Even the norms evolved by Government are more in the nature of guidelines, and mere departure from them cannot be the basis for assailing the transfer orders. These judgements can now be considered.

7. The judgement of the Calcutta Bench of this Tribunal in KRISHNA DEV DUTT v. UNION OF INDIA (1987 (2) ATC 574) was a case where the applicant was transferred from Calcutta to Bangalore, allegedly without giving due consideration to the transfer policy formulated by the Director General, Geological Survey of India. The applicant had relied upon the judgement of the Supreme Court in B. Vardha Rao v. State of Karnataka (1986 (4) SCC 131). The Tribunal felt that this judgement, in fact, strengthened the hands of the transferring authority. After quoting extracts from para 4 of that judgement, the Tribunal continued as follows: -

"Norms enunciated by the Government, Their Lordships observed are more in the nature of guidelines than vesting of any immunity from transfer in the government servants. The applicant, therefore, cannot claim immunity from transfer on the basis of guidelines issued by the Director General, Geological Survey of India."

It did not refer to those portions of the Supreme Court's judgement which could be considered to justify the applicant's contentions.

8. The judgement of the Supreme Court in Vardha Rao's case has been considered more exhaustively in a later judgement of a larger Bench of the Tribunal in Kamlesh Trivedi Vs. ICAR (1988 (7) - ATC 253). The applicant in that case, a Beldar was transferred from the office of the I.C.A.R., Pusa, New Delhi to the Regional Station of the Institute in Bihar. The question there was whether the transfer was punitive, as it was preceded by an enquiry. The larger Bench considered, *inter-alia*, the general nature of an order transferring a Government servant, the extent to which it is subject to judicial review and the nature of transfer policies. In so far as the transfer policy is concerned, the matter was fully considered in paras 17, 18 and 19 of the Tribunal's judgement in that case which are reproduced below: -

"17. The Government or the competent authorities have sought to regulate most transfers by instructions or what has come to be known as transfer policies. Most transfer orders are challenged before the Tribunal as being made in violation of these Instructions and as arbitrary. It is, therefore, necessary to ascertain as to what is the nature of these instructions or transfer policies."

"18. Referring to the nature and effect or norms or policy of transfer enunciated by the Government, the Supreme Court approved the observations of the Karnataka High Court in Vardha Rao v. State of Karnataka that (SCC p. 134: SCC (L&S) p. 753 : ATC p. 561, para 4) "the norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guide-lines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the government servants". Even while so approving, the Supreme Court observed: (SCC p. 135 : SCC (L&S) pp. 754-55: ATC pp. 562-63, para 6).

One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows

that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.

*19. It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny. The fact that the transfer is ordered in derogation of the transfer policy would impose an obligation on the Tribunal to find out if it was necessitated in the exigencies of administration. If it is found that it is against the general policy of transfer, it may lend some *prima facie* basis to the allegation that it is an arbitrary order. But merely because the order is not in conformity with the transfer policy, it cannot be quashed for the competent authority is generally vested with the discretion to order transfer in the exigencies of service and in public interest. Hence the obligation to show that it is made mala fide or in colourable exercise of power still lies upon the applicant. While the burden of proof lies on the

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applicant, the onus may shift from time to time and ultimately it is for the Tribunal to determine whether the allegation of the applicant that the order of transfer is arbitrary, mala fide or made in colourable exercise of power is established and, therefore, deserves to be quashed. If that is established, the order can certainly be quashed. That does not mean that before making an order of transfer, an enquiry should be conducted in accordance with the principles of natural justice into the allegations, if any, made against the officer sought to be transferred."

9. Two other rulings of the Supreme Court relied on by the learned counsel for the respondent are not germane to this case ^{as & the} ~~here~~ the question, is whether the transfer is in consonance with the transfer policy and if not, to what extent can the Tribunal interfere in the matter. They are Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani (I (1989) ATLT (SC) 758) and U.C.I. & Others Vs. H.N. Kirtania - Judgement Today 1989 (3) SC 131.

10. As can be seen from the Respondents' reply, briefly recapitulated in para 3 supra, they affirm that there has been no deviation from the transfer policy. The Policy Letter (Annexure VI) contains two distinct elements (i) transfer in the normal course on the basis of the length of stay at the station, referred to in para 2(iii) supra, and (ii) transfer not necessarily on the ground of length of stay. The later kind of transfer is provided for in para 5 of the Policy Letter i.e., to meet the job requirements - as an exception to the statement therein that there will be no compulsory turnover. Similarly, para 8 ibid also lists out the exceptions to the normal rule that no individual will normally be posted to tenure station or other normal station on administrative ground.

11. The Respondents insist that the impugned transfer is in accordance with the Policy Letter. The reply affidavit does not clarify on which of the two specific grounds outlined

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in the preceding para the transfer was made. The applicant himself has not alleged any malafide in this regard. According to him, the transfer is made only on the basis of length of stay at Delhi and on that basis he is not the seniormost person liable to be transferred. No reason has been given why he was, nevertheless, transferred and therefore according to him, the transfer order is arbitrary. The reply affidavit of the Respondents begins with a preliminary objection that the applicant has been in Delhi for more than 10 years and has been transferred strictly according to the transfer policy applicable to him. This would suggest that seniority on the basis of length of stay was the operative criterion.

12. However, they also add in the same breath, that "the transfer of the applicant has been made in accordance with the transfer policy applicable to him, in the exigencies of service and administrative requirements as it has been held by various courts that "Transfer" is an incident of service." Malafide has been ruled out. It is not the case of the Respondents that the applicant was transferred because there were complaints against him. Regarding other exigencies of service or administrative requirements, it is also not their case that he was one of the chosen few who, by his special qualifications or experience or attainments, was specially suited for the posting at Bhatinda. In fact, such an argument cannot also be ^{advanced} ~~made~~, considering the fact that he was only an ordinary Upper Division Clerk. For, it is precisely for this reason, that the Supreme Court had observed in Vardha Rao's case - vide the extract of their judgement in para 8 supra - that while continued posting at one station against superior or more responsible posts may not be conducive to good administration, "the position of Class III and Class IV employees stand on a different footing." In these circumstances, it is perplexing on what administrative grounds or exigencies of public service

or public interest the applicant could have been transferred.

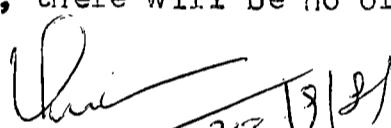
13. As ~~far as~~ ^{regards} the plea of the applicant that, on compassionate grounds, he ought to have been retained at Delhi, as his mother was too old and dependent on him, this was a matter to be considered by the Respondents only. This Bench cannot substitute its judgement in this regard in place of the decision taken by the Respondents. The applicant's plea that his transfer be cancelled on the ground that this is not in conformity with the policy of the Government of India of keeping the husband and wife together - vide the policy letter at Annexure VII - stands on a different footing. It appears from para 6 (h) of the reply affidavit, that this was not agreed to as the applicant is the seniormost stayee in the station. This statement does not appear to be correct. According to Respondent 2's own letter dated 5.2.88 (Annexure M-2), showing the Command seniority list for posting to tenure station, the applicant's name is at S.No.54 whereas Shri Ved Prakash and Shri Ram Nath Arora are at S. Nos. 40 and 42 and yet not transferred.

14. In the circumstances of the case, as particularly brought out in the ~~three~~ ^{el four} preceding paragraphs, I am of the view that the impugned order of transfer is in derogation of the transfer policy of the respondents. The Respondents have neither shown any special reason for this departure nor described the circumstances which necessitated the transfer. In this view of the matter, in the ordinary course, the impugned order would have been quashed. That step is not being taken, firstly because the applicant's representation (Annexure III) dated 13th July, 1988 to the Engineer-in-Chief, Army Headquarters DHQ (who has not been impleaded) has still not been disposed of and secondly, because the Respondents' reply affidavit is ambiguous in the sense that it does not clarify whether the applicant was transferred on the ground-and in the bonafide belief-that

on the basis of length of stay at the same station, he was the seniormost person due for transfer or that he was transferred for other reasons.

15. In these circumstances, the Respondent (1) is directed to consider the representation at Annexure III, as if it has been made to him and reconsider the transfer ordered by the impugned order dated 10.3.88 (Annexure I), in the light of the various grounds adduced by the applicant in his application before this Tribunal, after taking note of the observations made in this judgement and communicate his decision to the applicant under proper acknowledgement. Until such communication, the impugned Annexure I order, in so far as it directs the transfer of the applicant to Bhatinda, shall remain stayed.

16. The application is disposed of with the above directions. In the circumstances, there will be no order as to costs.


(N.V. KRISHNAN)
MEMBER (A)
20.9.1989.