

Central Administrative Tribunal  
Principal Bench, New Delhi

OA-1467/88

Date: 29-9-1989

Shri Prem Chand

.... Applicant

Versus

Central Water Commi-  
ssion & Another .... Respondents

For the Applicant .... Shri M.L. Kasturia, Advocate

For the Respondents .... Shri M.L. Verma, Advocate

(Judgement of the Bench delivered by Hon'ble  
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as Draftsman Grade I in the Central Water Commission, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned orders of transfer dated 28.4.1988 and 23.6.1988, be quashed. By the order dated 28.4.1988, he was transferred to Jammu with immediate effect (Annexure A-1). This posting was deferred and by the order dated 23.6.1988, he was transferred again to Jammu.

2. The application was filed in the Tribunal on 28.7.1988. On 12.8.1988, an interim order was passed to the effect that the status quo is to be maintained till further orders. By virtue of the interim order, he has not joined duty at Jammu.

3. The impugned orders of transfer have been resisted on the following grounds:-

- (i) The applicant is a heart patient;
- (ii) his presence at Delhi is necessary in connection with the marriage of his daughter;

(iii) the transfer is not in accordance with the transfer policy contained in the Office Memorandum dated 27.5.1987 issued by the respondents. It is also contrary to the Office Memorandum dated 3.4.1986 relating to posting of husband and wife at the same station, issued by the Department of Personnel & Training; and

(iv) the respondents have cancelled transfer orders of other employees who were placed under similar circumstances and this is arbitrary and discriminatory.

4. The respondents have sought to justify the impugned orders on the following grounds:-

(i) It is a rotational transfer;

(ii) the guidelines issued by the Department cannot be made the basis for seeking immunity from transfer; and

(iii) the officers whose transfer orders were cancelled, were not similarly situated, as alleged.

5. The guidelines relating to transfer for the employees of the Central Water Commission indicate that Group 'C' personnel should not normally be transferred from one station to another except to meet certain inevitable contingencies mentioned therein. One such contingency is the exigency of service of administrative requirements. In the case of Group 'C' staff, employees due for retirement on superannuation within a period of five years before their superannuation, shall not ordinarily be transferred. In the case of the applicant,

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he had more than five years' service at the time the impugned orders of transfer were issued. The impugned orders were also passed in public interest.

6. The policy of posting of husband and wife at the same station contained in the Office Memorandum dated 3.4.1986 issued by the Department of Personnel & Training, applies to cases where the husband and wife are in Government service or in the service of public sector undertakings. This does not apply to the instant case where the wife of the applicant is working as a Head Mistress in a school run by the Andhra Education Society.

7. The respondents have mentioned in their counter-affidavit, <sup>the o</sup> circumstances in which the transfer orders of some of the employees were cancelled after taking into account the facts and circumstances of each case. They have pointed out that the applicant was not similarly situated like those whose transfer orders were cancelled.

8. The Supreme Court has held in a catena of cases that an employee holding a transferable post, is liable to be transferred from one place to another and that he has no legal right to insist for his posting at any place of his choice. Transfer made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering transfer order illegal on the ground of violation of statutory rules or on ground of mala fides (vide Union of India & Others Vs. H.N. Kirtania, J.T. 1989 (3) SC 131). If there is any difficulty in

proceeding on transfer, it is open to the employee to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the employee concerned must comply with the order of transfer (vide Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani, 1989 (1) ATLT (SC) 758).

9. In the instant case, on the receipt of the impugned order of transfer dated 28.4.1988, the applicant made a representation to the competent authority on 4.5.1988 and 13.5.1988. This was duly considered by the said authority before passing the impugned order dated 6.6.1988. The request of the applicant for cancellation of the order of transfer is devoid of any merit. Each case of transfer depends on its own facts and circumstances and there is no force in the contention of the applicant that the respondents did not give the same treatment to him as was given to some others. There is also no substance in his contention that the impugned orders were not made in accordance with the policy of transfer. He has not alleged any mala fides on the part of the competent authority. It is clear from his letter addressed to the Chairman, Central Water Commission dated 20.7.1988 that his request is not to cancel his posting orders to Jammu, but to keep the same in abeyance and that he shall be willing to go to Jammu during March/April, 1989 (vide Annexure XV, page 47 of the paper-book). That deadline is already over.

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10. In the conspectus of facts and circumstances of the case, the impugned orders dated 28.4.1988 and 23.6.1988 cannot be faulted on any ground. The application is, therefore, dismissed.

11. The interim order passed on 12.8.1988 and continued thereafter, will stand vacated with effect from 1.11.1989.

11. The parties will bear their own costs.

*Qarim*  
29/9/89  
(P.K. Kartha)  
Vice-Chairman(Judl.)