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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 160
T.A. No.

198 8.

DATE OF DECISION March 15, 1988.

Shri B.S.Thapa, Petitioner

Applicant in person ~~Advocate for the Petitioner(s)~~

Versus

Union of India & Ors, Respondent_s.


Maj.YRP Rao, DD (OSGS&C Coord) ~~Advocate~~ for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? No


(Kaushal Kumar)
Member
15.3.1988.


(K.Madhava Reddy)
Chairman
15.3.1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. OA 160/1988.

March 15, 1988.

Shri B.S. Thapa ... Applicant.

Vs.

Union of India & Ors ... Respondents.

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ... Applicant in person.

For the respondents ... Maj. YRP Rao, D D(OSGS&C Coord).

(Judgment of the Bench delivered by
Hon'ble Mr. Justice K. Madhava Reddy,
Chairman).

This is an application under Section 19 of the Administrative Tribunals Act, 1985, calling in question the order dated 16.8.1987 (Annexure 'C') transferring the applicant from CP Cell, Army Headquarters, New Delhi to Ordnance Depot, Shakurbasti, Delhi. Pursuant to this order, the applicant was relieved on 8.9.1987 (Annexure 'H') and was directed to report for duty to the Commandant, OD Shakurbasti, Delhi. The order relieving him was also sent to the applicant by Registered Post at 118, Mohamad Pur, Govt. Quarters, New Delhi-110022. But the same was returned undelivered with the postal endorsement "the applicant is said to be ill and admitted to the hospital, address of which is not known". Neither the applicant joined the Ordnance Depot, Shakurbasti, Delhi nor did he report to the Commandant, OD Shakurbasti

[Signature]

Although he says that he has not received the said order, it is clear from the several averments made by him in this application that he is well aware of the impugned order. The order is attacked on the ground that it is mala fide and contrary to the transfer policy.

It may be stated at the outset that the applicant has not been transferred out of Delhi. He has been admittedly holding the present post for the last 15 years. Even according to the transfer policy upon which he places reliance, persons who have completed 6 years of stay could be transferred. But his contention is that amongst those who have completed six years at a particular place, the longest stayee in non-tenure station such as Delhi should be posted out. That is true. But the transfer policy also envisages transfers on administrative grounds and this power overrides the policy relied upon by the applicant.

Para 6 of AOC Record Office Instructions

Serial No.C/4 dated 25.5.1979 (Annexure 'Q') states:

"Notwithstanding the instructions issued hereunder, OFFICER-IN-CHARGE, AOC(R) can order postings of the civilian personnel in question at any time in the interest of State or to meet unforeseen commitments without assigning any reasons. Generally such contingencies will be restricted to the minimum, but where it is inescapable, the postings will be ordered by OFFICER-IN-CHARGE AOC Records and no representations against such postings will be entertained".

Sanjay

In the counter filed by the respondents, it is stated that for administrative reasons, the impugned transfer was ordered. Para 66 (f) of the above mentioned Instructions specifically states:

"In case of personnel posted out on administrative/disciplinary grounds the move will be completed within a period of 15 days from the date of receipt of posting orders. Representations against such postings will not be entertained at any level."

Para 54 of the said Instructions further empowers the AOC Record to order postings. It is in the following words:

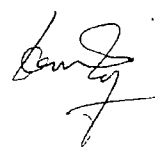
"No individual will be posted on administrative or disciplinary grounds without prior approval of Army Headquarters. The cases will be referred to Army HQ along with detailed investigation report with the recommendations of the MG AOC/Bs AOC HQ Command to AOC Records who will forward the case to Army HQ along with their comments for examination. Each case is to be considered on its merits. GODs/CAD PULGAON/CAFVD KIRKEE which do not come under MGAOC/Bs AOC HQ Command, will forward such cases to AOC Records under signature of Comdt/Offg. Comdt. for further necessary action and onward transmission to Army HQ".

The present order has been issued with the prior approval of AOC Record, Secunderabad who is the competent Authority in this behalf. The order of transfer does not contravene any transfer policy and is made by the Competent Authority.

The other allegation of the applicant is that

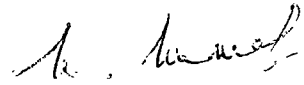


the order of transfer is mala fide. According to the applicant, he was Branch Secretary, All India AOC Clerks Association, Army HQ Branch (CP Cell) and he had made representations on behalf of the employees. One of the points raised in his representation was that a person holding a particular post for more than 5 years should be transferred and the other point was with respect to the ACRs of some lady employees. So far as the first point is concerned, the applicant himself having represented that a person ⁱⁿ should not be posted at a particular place or /any particular post for more than 5 years, cannot feel aggrieved if he is transferred after 15 years from the post which he was holding. Obviously a representation made in this behalf, if acted upon, in his own case by the respondents cannot be a ground for alleging mala fides against the respondents. In any case, the mala fide is alleged against Col. S. Bhattacharjee and Major S. Ganguly. They have not been made parties to this application. That apart the impugned order dated 16.8.1987 has been made by Major Rajpal Singh and not by Col. S. Bhattacharjee and Major S. Ganguly. When Col. S. Bhattacharjee and Major S. Ganguly have not made the impugned order of transfer, any allegation bias or mala fides against them cannot affect the validity of the impugned order. No mala fides as such are alleged against Major Rajpal Singh; nor is any material placed in support of the allegations of mala fides. This application



therefore, fails and is accordingly dismissed.

The applicant has been served with copies of the two orders which he says he did not receive. Now he may join in accordance with the said orders at the place to which he is posted.



(Kaushal Kumar)
Member
15.3.1988.



(K. Madhava Reddy)
Chairman
15.3.1988.