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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.
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Date of Decision: 15.2.1989.

Regn. NO. O.A. 1756/88.

Shri Phool Chand Applicant.

Vs.

Union of India & Ors. ... Respondents.

For the applicant: Shri M.R. Bhardwaj, Advocate.

For the respondents: Shri M.L. Verma, Advocate.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Phool Chand, Senior Computer, Central Water Commission, New Delhi, against the impugned orders dated 1st July, 1988 issued by the Under Secretary (T.S.), C.W.C., transferring the applicant as Senior Computer, Middle Ganga Circle, Varanasi (Annexure A-1).

2. The brief facts of the case are that the applicant was appointed as a Peon in the then Ministry of Irrigation and Power on 7.3.1961. He passed Matriculation examination during his service as peon and after acquiring necessary qualification, competed in an open competitive examination for the direct recruitment to the post of Junior Computer. He was appointed Junior Computer, as a direct recruit, on 12.1.1973. The post of Junior Computer, which is a group 'C' non-gazetted post, is filled 100 per cent by direct recruitment and there is no provision for promotion to that post. The applicant was promoted on ad-hoc basis as a Senior Computer on 26.3.1982.

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According to the transfer policy (Annexure A-6), employees of groups 'C' and 'D' are not ordinarily to be transferred from one station to another except to meet inevitable contingencies like transfer on promotion or on administrative reasons. When such a transfer becomes inescapable, persons with longest continuous stay at the place of their current posting, should generally be transferred to fill a vacancy elsewhere. As the applicant joined the post of Junior Computer in 1973, his date of continuous stay at Delhi for purposes of promotion policy should be counted from that date and not from 1961, when he was initially appointed as a peon. Persons who have been holding the post of Senior Computer and have the longest stay at Delhi in that post have to be transferred first to stations outside Delhi. While issuing the transfer orders on 29.6.1987 (Annexure A-8), it is clearly said that "taking into consideration the exigencies of work at Circle offices, transfer/postings in the grade of Senior Computers and Junior Computers having longest stay at Delhi.....are hereby ordered..." But the impugned orders at Annexure A-1 do not spell out whether the applicant has the longest stay at Delhi in the post of Junior/Senior Computer. The case of the applicant is that the respondents have wrongfully taken into consideration the period of service rendered by him in the post of Peon from 7.8.1961 in computing the continuous stay at Delhi and, therefore, his transfer is violative of the transfer policy. The learned counsel for the applicant cited the case of Smt. A.K. Khanna Vs. Union of India & Ors. - OA No. 1334/87 decided by the Principal Bench, New Delhi on 2.11.1987. In that case, the learned counsel for the respondents had accepted that the applicant Shri. Phool Chand was posted at Delhi since 7.8.1961 and had, in fact, longer stay at

Delhi than Smt. A.K. Khanna, applicant in that case. He, however, contended that Shri Phool Chand has been working as Senior Computer on adhoc basis since 26.3.1982 only. The court had held that if a person has been working as a Senior Computer for more than five years on an ad hoc basis that is no reason that he is immune from transfer. As such the transfer of the applicant Smt. Khanna was in violation of the transfer policy. The application of Smt. Khanna was allowed.

3. The respondents in their reply have stated that the applicant has been holding a transferable post and that transfer is an incident of service and is liable to be transferred anywhere in India to a similar post in the same cadre. The transfer of the applicant ordered on 1.7.1988 is in public interest and should not be questioned by the court. Shri M.L. Verma, Advocate for the respondents stated that no mala fide has been alleged against the respondents in this transfer and the Tribunal in the case of Nirmalendu Bardhan Vs. G.M., N.E. Frontier Railway and others - 1986(2) SLJ (CAT) 108, has held that courts should not interfere in transfers where there is no malafide. A similar view has been taken in the decision of the Calcutta Bench of the Tribunal in B.E. Dey Vs. Union of India - 1986(2) SLR 289. He said that this judgment also lays down that departmental orders are advisory and not mandatory. That guidelines are not mandatory is also held by the Supreme Court in the case of B. Vardha Rao Vs. State of Karnataka & Ors. - AIR 1986 SC 1955. This view has also been taken in the case of Imam Ali Vs. Union of India & Ors. - ATR 1988(1) CAT 614.

Shri Verma cited the case of Krishna Dev Dutt Vs. Union of India - (1987) 2 ATC 574 wherein the Calcutta Bench of the Tribunal has held that departmental guidelines cannot be made basis for seeking immunity from transfer. He also relied on the judgment of the Patna Bench of the Tribunal in the case of Rajeswar Prasad Singh Vs. UOI - (1987) 2 ATC 368 wherein it has been held that transfer on administrative grounds is not subject to judicial review.


4. A statement was filed by Shri Verma showing the details of Senior Computers working at Delhi in the C.W.C., wherein the name of the applicant, Shri Phool Chand, appears at serial NO. 3 indicating the date of his working at Delhi from 7.8.1961 and that of Smt. A.K. Khanna from 10.8.1961. Of the two persons above the applicant, one Shri Banwari Lal is due to retire on 31.7.1991 and the other Shri Charan Das expired on 18.9.1988. Both Shri Phool Chand as well as Smt. A.K. Khanna have been transferred vide office order dated 1st July, 1988 (Annexure A-1).

5. The respondents in their reply have also mentioned about a divorce case of the applicant and his resignation in 1988 but these allegations were denied by the applicant. Shri Verma expressed regret in the court saying that these facts related to another case and were mentioned in the reply of the respondents through a clerical mistake. While I accept this position, the Under Secretary in the C.W.C., Shri D. Krishna, who has signed the reply on behalf of the respondents, has been extremely careless and should have read the contents of the reply before signing the same.

Anyway, since the learned counsel for the respondents, Shri M.L. Verma has clarified the position, this part of the reply and the rejoinder are not taken into consideration.

6. The point raised by the applicant is only that according to the transfer policy, persons with the longest stay at Delhi should have been transferred first and in computing the longest stay, the period of his posting as Peon cannot be taken into consideration. The learned counsel for the applicant said that the period of his stay at Delhi should, therefore, be counted from 1973 only and not from 1961.

I have considered the matter and feel that since the transfer order has been made in public interest and no mala fide has been alleged against the respondents, the Tribunal should not interfere in such a transfer. Whether the applicant has been at Delhi since 1961 or 1973 is not the main point as the guidelines are not mandatory and it is for the authorities concerned to examine these guidelines when they make transfers and the court need not interfere. In the circumstances, the application is rejected. There will be no order as to costs.


(B.C. Mathur)
Vice-Chairman.
15.2.1989.

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