

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 2030 1988
T.A. No.

DATE OF DECISION 29.11.1988

Shri Narendra Pal Singh ~~Petitioner~~ Applicant.

Shri G.K. Aggarwal Advocate for the ~~Petitioner~~ Applicant(s)

Versus

Union of India & Others Respondent s.

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN

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 ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *—*

B.C. Mathur
29.11.88
(B.C. Mathur)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

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Regn. No. OA 2030 of 1988

Date of decision: 29.11.1988.

Shri Narendra Pal Singh

Applicant

Vs.

Union of India and Others

Respondents

PRESENT

Shri G.K. Aggarwal

Counsel for the applicant.

Shri M.L. Verma

Counsel for the respondents.

CORAM

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

This is a case under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Narendra Pal Singh, Senior Technical Assistant, Directorate of Quality Assurance (Naval), New Delhi, against his transfer from Delhi to Bombay contrary to medical advice.

2. The brief facts of the case, as stated in the application, are that the applicant joined as Junior Technical Assistant in 1972 and was promoted as Senior Technical Assistant, Group 'B' non-gazetted, on 8.6.76. He got married in 1976 and got a divorce through court in 1985. Since 1981, the applicant had been under great tension due to marital discord, finally resulting in divorce in 1985 and has been undergoing treatment since 1986 for paranoid schizophrenia and has been under the care of his mother and brothers and their family. The applicant has been representing against his transfer on medical grounds since 23.3.1987, but he was orally advised to resign or ask for invalid pension by seeking premature retirement on medical grounds. His case was referred to the Medical Board at Ram Manohar Lohia Hospital. The Board opined that the applicant was a case of Schizophrenia which was in remission stage then and he was found fit to do simple jobs like recording of orders in the file. It was also recommended that the applicant should be allowed to continue in service in Delhi on compassionate

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grounds to take advantage of the treatment in their hospital. The applicant's request for invalid pension on medical grounds was not recommended and he was asked to move to Bombay by 31.10.88. Soon after the medical report dated 30.8.88, the respondents wrote to the Medical Superintendent of the R.M. Lohia Hospital to confirm whether facilities for treatment exist in hospitals located in Bombay. The hospital confirmed the availability of treatment for schizophrenia at Bombay and gave the opinion "but Mr. Narendra Pal Singh who has suffered from Schizophrenia is at a risk to break down mentally in a new place and new environment". The impugned order of transfer dated 11.3.87 confirmed on 6.10.87 has not been cancelled even after the medical opinion. The applicant has stated that the nature of duties at Delhi and Bombay would be the same. The work would be of routine nature which any other person in equivalent or next lower rank can do. The post held by the applicant is a subordinate post and in view of the medical opinion that he might break down mentally, he should not be sent out of Delhi. It has also been pointed out that there are vacancies at Delhi and some persons belonging to Bombay region would like to move from Delhi to Bombay and as such the applicant can continue to serve at Delhi.

3. The respondents in their reply have stated that no cause of action has accrued in favour of the applicant against the respondents. The divorce case was finalised in 1985, but he is basing his problems to that and he never mentioned illness as a ground in any of his representations mentioned in the application. He tendered his resignation on 4.1.1988. As such, his transfer order was kept in abeyance and his resignation was accepted with effect from 20.1.1989. The respondents have denied that the applicant was advised at any stage, orally or otherwise, to resign or ask for invalid pension by seeking premature retirement on medical grounds. In his representation, the applicant had asked for deferment of his transfer on the grounds that he had to attend to court in connection with the divorce case. He submitted three applications on this ground and he was granted deferment of his transfer

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till 31.7.87, 31.10.87 and 31.1.88 respectively. While submitting his application, the applicant had mentioned that his divorce case was pending in court while in the Affidavit he has stated that his divorce case was finalised in 1985. On 4.1.1988, the applicant tendered his resignation from service on the grounds "due to some unavoidable circumstances and some domestic problems, I find it difficult to continue my service any longer" by giving six months notice. During the course of processing his request, the applicant approached the Director General Inspection on 23.3.1988 saying that he would like to withdraw his resignation. On 4.5.1988, the applicant requested that as he was suffering from mental disease/ depression, he was unable to work and may be granted invalid pension as admissible. As such, his case was referred to R.M. Lohia Hospital, New Delhi, for examining the applicant by the Medical Board to assess his fitness or otherwise to continue in service. The Board said that he was fit to do simple jobs, but they did give the opinion that the applicant may be allowed to continue in Delhi on compassionate grounds, also to have the advantage of treatment in the hospital. The respondents have pointed out that the applicant had never availed medical treatment at R.M. Lohia Hospital which he approached only in connection with the Medical Board for invalid pension. It has been further stated that the post of Senior Technical Assistant which is Group 'B' non-gazetted carries all-India service liability and according to Government policy, all technical/scientific staff (including STAs) who have completed five years in a particular station should be posted out. The applicant has been continuously working in Delhi since 1972 (16 years) and, therefore, deserves to be transferred.

4. The learned counsel for the applicant says that the case of the applicant should be considered only on humanitarian grounds. He referred to the Supreme Court case - Jaipal & Others Vs. State of Haryana and Others (1988) 3 Supreme Court Cases 354. This case actually deals with the question of equal pay for equal work. He has stressed the point in the judgment that though Article 39 of the Constitution is included in the chapter on

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Directive Principles of State Policy which are not enforced by courts, the court has held that it is fundamental in nature and, therefore, enforceable by courts. He says that this principle has been accepted by the Supreme Court in **Charles K. Skaria Vs. C. Mathew** - AIR 1980 S.C. 1230 - where the court held that although in law the petitioner fails, in justice he succeeds. It was held that equity shall overpower technicality where human justice is at stake. He said that in the present case, if the applicant is transferred to Bombay, it will be a hardship to him, but it will cause no hardship to Government. If the applicant can be utilised at Delhi without work suffering, then he should be accepted. ^{at Delhi} It is a rotational transfer and work can be done by anyone. He said that one Mr. Patarkar, a colleague of the applicant, is willing to go to Bombay and if this is allowed, there will be no loss to the Government whereas two satisfied persons would be able to discharge their work better. Even if it means exception to the rotational policy of transfer, the deviation will be in public interest and in the face of the medical opinion that a change in environment could cause a break down of the applicant, the transfer order should not be implemented. The learned counsel for the applicant also stressed the point that a distinction must be made between gazetted and non-gazetted employees. Normally, transfers of non-gazetted employees are not made, specially from one State to another. In sister organisations like Defence R&D, there is no procedure of transfer of non-gazetted staff. The applicant is only asking for 3½ years further stay in Delhi and after that either he will go to Bombay or would seek premature retirement and take pension. By that time, he would have completed 20 years of service and would be eligible for seeking premature retirement.

5. The learned counsel for the respondents, Shri M.L.

Verma, said that no legal point was involved. The applicant had resigned and several times he had asked for adjournment of his transfer which was granted. The applicant was not able to discharge his duties which included inspection work, reading and interpretation of drawings, inviting quotations, scrutinising the same, follow-up action of decisions of Technical Committee (Marine Stores), carry out tasks of analysis and assessment of items in laboratory and workshops, etc. These duties have been mentioned in the U.P.S.C. Advertisement No. 25 dated 18.6.1988. He said that the workload at Bombay was much lighter and medical facilities at Bombay were equally good. He said that the applicant has been in Delhi since 1972 and has been avoiding transfers on some pretext or the other. He wants to complete 20 years of service at Delhi and then seek premature retirement so that he can take benefit of 25 years of service. There has been no malafide on the part of the administration and his request for postponing transfers several times has been considered only on humanitarian grounds, but as he is not able to do heavy work, on humanitarian grounds he is being sent out to Bombay so that he may not have to do heavy work at Delhi. He said that it should be left to the administration to decide where to utilise the services of the applicant in the best interests of the organisation as well as the employee and since there is no malafide alleged of any type, the court should not interfere.

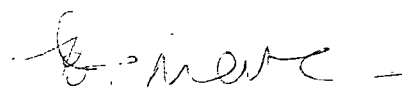
6. The learned counsel for the applicant said that there was no difference in work at Bombay or Delhi as mentioned in sub-para (12) of para 6 of the application which has been admitted in the counter. He also agrees that there is no malafide on the part of the respondents, but the court should cancel the transfer order on humanitarian grounds as accepted by the Supreme in the two cases referred to earlier. I find ^{that these} cases relate to equal pay for equal work and admission in the Medical College and are not directly related to the issue in the present case except that

if natural justice demands a certain action, even though not provided in law, it should be enforced.

7. The counsel for the applicant said that the applicant would give a written undertaking that he will either proceed on transfer after 3-1/2 ^{years} /₃ when he completes 20 years or seek premature retirement and that in case he makes any further application for continuing in Delhi, the same should be rejected summarily, but in view of the peculiar circumstances of his family when he is under stress and is being looked after by his old mother and families of his brothers, he is not in a position to go to Bombay and if he is forced to go to Bombay now, he would perhaps be left with no other option but to resign and his misery would increase manifold.

8. I have considered the arguments advanced by the learned counsels for the applicant and the respondents carefully and feel that while relief can be provided to an applicant only on the basis of law and in a case of transfer where no malafide or illegality ^{ordinarily} has been indicated, the court may not interfere with the transfer order. However, in this case, the issue involved is not mere transfer of a non-gazetted employee or the nature of work that he is required to do at Bombay or Delhi, but a little more fundamental. Article 21 of the Constitution states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." As Justice Bhagwati has stated in **Bandhua Mukti Morcha Vs. Union of India (10984) SCC 161, 183, 184** that "Right to live with human dignity enshrined in Article 21 derives its life-breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 ad 42 and at the least, therefore, it must include protection of the health and strength of workers.....". If the transfer order can affect the health of the applicant seriously and if it is not otherwise unavoidable, perhaps relief can be provided in such cases. It is established that the nature of work at Delhi or Bombay is not very much different. It ^{is} also made out that persons are available

at Delhi to go to Bombay and the applicant is wanting to remain in Delhi because of his mental depression. There is a clear medical opinion that change in the place of work or environment may result in his mental break down. Since this medical opinion has not been challenged by the respondents and if the transfer order is enforced, it can affect the life and dignity of the applicant. He has a right to live properly and not like a human vegetable. No great harm will be caused to the respondents if the applicant continues to remain at Delhi. On the other hand, if he is forced to go to Bombay, he may either resign which would mean that he would have no means to subsist as he would not draw adequate pension or in case he goes, he may be living alone in a new place - may be without a house for sometime - and may suffer further mental depression as given in the report of the Medical Board. While I hold that the court should not interfere in matters relating to the Directive Principles of State Policy, the present case can be covered under Article 21 of the Constitution and in view of the special circumstances of the case based on the opinion of the Medical Board, I feel that the respondents should not insist on transferring him to Bombay. The applicant wants to stay in Delhi only till he completes 20 years of service. At that time he would be in a position to seek premature retirement and get some additional pension as he will be given the benefit of additional five years of service and this would enable him to live with some human dignity. The respondents are, therefore, directed that in view of the opinion of the Medical Board, they should cancel the transfer order and keep the applicant in Delhi. In the circumstances, the application is allowed as a very special case and this will not form any precedent. There will be no order as to costs.


 (B.C. Mathur)
 Vice-Chairman