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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. O.A. 32/1988 198
~~Case No.~~ O.A. 150/1988

DATE OF DECISION 23.12.1988.

(1) Pardeep Kumar Dua
(2) Ramesh Chander Yadav

~~Petitioner~~ Applicants.

Shri G. N. Oberoi

Applicants.
Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mrs. Raj Kumar Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. KAUSHAL KUMAR, MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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
(KAUSHAL KUMAR)
MEMBER.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(1) Regn. No. O.A. 32/1988. DATE OF DECISION: 23.12.88.

Pardeep Kumar Dua Applicant.

V/s.

Union of India Respondents.

(2) Regn. No. O.A. 150/1988.

Ramesh Chander Yadav Applicant.

V/s.

Union of India & Others ... Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

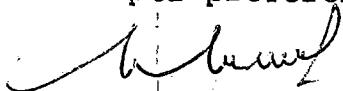
For the Applicants Shri G.N. Oberoi, Counsel.

For the Respondents Mrs. Raj Kumari Chopra,
Counsel.

JUDGEMENT

These two applications (O.A. 32/1988 and O.A. 150/1988) have been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 and since the facts giving rise to the said applications are similar and the impugned order dated 31.10.1987 (Annexure A-1 in both the applications) is also the same, it is convenient to dispose of both the applications by this common judgment.

2. The applicant in O.A. 32/1988 was transferred from Delhi Cantt. and he joined the office of HQ CWE (P) Sri Ganganagar under the Chief Engineer, Bhatinda Zone on 27th August, 1984. Sri Ganganagar is a tenure station and as per policy guidelines, the applicant gave his option of three choice stations in order of preference for posting after completion of his tenure of three years as Delhi, Sirsa and Hissar (Exhibit 'B' filed with the counter-affidavit). Vide order dated 31.10.1987 (Annexure A-1 to the application), the applicant was transferred to Sirsa, which was the second station as per preference given by him.



3. Similarly, in the case of the applicant in O.A. 150/1988, he had joined H.Q. C.W.E. (P) Sri Ganganagar under the Chief Engineer, Bhatinda Zone on 28th August, 1984, which is a tenure station and he had also given his option in order of preference for posting at Delhi, Sirsa and Hissar on completion of his tenure for three years (Exhibit 'B' of the counter-affidavit in O.A. 150/1988). This applicant was transferred to Hissar, which is the third station in the order of preference given by him, vide order dated 31.10.1987.

4. The case of both the applicants is that as per the policy guidelines issued by the Department, the longest stayee had to move out first on completion of tenure in accordance with the preference given by him. It has been pointed out that one Shri Mahesh Chander who had joined Sri Ganganagar on 4th September, 1984 had been transferred to Delhi vide order dated 30th July, 1987 even though he had not completed his full tenure of three years in preference to the applicants. The case of one Shri Chander Shekhar Rawat was also referred to, who had been transferred from Sirsa to Delhi.

5. The above transfers have been challenged as being in contravention of the policy guidelines relating to transfers issued by the Department and as being discriminatory.

6. The policy guidelines regarding transfers of civilian subordinates in MES are contained in the letter dated 25th October, 1984 issued by the office of Headquarters Western Command, Engineers Branch, filed as Annexure A-3 to the counter affidavit in case No. OA 32/1988, and this has been amended from time to time. Para 13 of the said guidelines reads as follows: -

"Move of longest stayees/promotees"

13. When posting becomes necessary the longest stayee in the station will be moved.

M. B. Patel

When moves on promotion are involved, the promotees will be moved if no volunteers are available and not the longest stayee. In determining the longest stayee in a station, all MES formations located in the station and the adjacent localities will be taken into consideration. Grouping of various adjacent stations will be as per Appendix B."

Appendix 'B' to the said communication dated 25th October, 1984 indicates the Grouping of stations in Western Command for posting purposes and the grouping against Bhatinda Zone from where the two applicants were transferred is indicated as Bhatinda / Bhasiana. Para 25 of the said circular dated 25th October, 1984 under the heading 'Postings to tenure station' reads as follows: -

"25. The instructions/guidelines in Appendix E to this letter will be followed with regard to posting to / from tenure station."

Para 3(d) of Appendix 'E' relating to instructions / guidelines regarding transfer from / to tenure stations reads as follows: -

"(d) Every individual nominated for service in tenure station must complete his full tenure before posting back to one of his choice stations. For the purpose of determining the period of stay in a tenure station, an individual must be physically present in that office for the full period of tenure except for the leave earned during that period. If, for reasons, due to illness or extreme compassionate grounds an individual is repatriated prior to completion of his tenure, he will again be nominated to tenure station after an expiry of 3 years of service."

The concept of 'physical presence' as envisaged in the policy guidelines for transfer from a tenure station to one of his choice stations, was further clarified by HQ Western Command Engineers Branch, Chandimandir letter No. 30203/505/EIC (I), dated 23rd November, 1987, filed

A. Kumar as Annexure A3(b) to the counter-affidavit. Para 2 of

the said letter dated 23rd November, 1987 reads as follows: -

"2. Para 3 (d) of Appendix 'E' to this HQ letter No. 30203/394/EIC(I) dated 25 Oct 84 stipulates that every individual posted to a tenure station must complete his full tenure before posting back to one of his choice stations. For the purpose of determining the period of physical stay at a tenure station, the individual must be physically present in that office for the full period of tenure except for the leave earned during that period. It has been observed that the above stipulation is not being implemented correctly, in that individuals posted at tenure stations are being repatriated earlier than the expiry of the stipulated tenure of 3 years or 2 years, as the case may be. It is further clarified as under: -

(a) The individual posted in a office at tenure station must be physically present in that office for the full period of tenure.

(b) The individual serving at a tenure station is entitled to avail leave earned during the period of tenure viz 30 days each year which will not be treated as absence from the tenure station for the purpose of determining the period of physical stay. However, if the individual does not avail such leave, there shall be no proportionate reduction in the stipulated period of 3 years or 2 years."

7. The respondents in the counter-affidavit filed in the case of O.A. 32/1988 have stated that the applicant in the said O.A. completed his three years tenure on 20th October, 1987 since he had availed of 145 days' E.L. and 40 days' HPL against his entitlement of 90 days E.L. and 60 days HPL upto the date of submission of repatriation proforma. Thus, the applicant had availed of 55 days E.L. more than what he was entitled and, therefore, he had to serve physically upto 20th October, 1987 for becoming eligible for repatriation. Similarly in the case of the applicant in O.A. 150/1988, the applicant had availed of

M. N. Khan

117 days' E.L. and 55 days' HPL as against 90 days E.L. and 60 days HPL to which he was entitled upto the date of submission of repatriation proforma. Thus, the applicant in O.A. 150/1988 had availed of 27 days E.L. more than that to which he was entitled and thus although he had joined the tenure station of Sri Ganganagar on 28th August, 1984, he had to serve physically at that station upto 23rd September, 1987 for becoming eligible for repatriation.

8. It has also been pointed out in the two counter-affidavits filed in the two cases that Shri Mahesh Chander, IDC, whose case has been referred to by the applicants as having joined Sri Ganganagar on a date later than theirs but having been repatriated and posted to Delhi earlier to them, that although Shri Mahesh Chander had physically reported at Sri Ganganagar on 4th September, 1984, he had availed of only 85 days E.L. and 19 days commuted leave (within the limits of his entitlement during the tenure period) upto the date of submission of his repatriation proforma and thus he became entitled for posting on repatriation on 4th September, 1987.

9. Learned counsel Shri G.N. Oberoi, appearing for the applicants, contended that the O.M. regarding physical presence was issued only on 23rd November, 1987 (Exhibit A3(b) to the counter-affidavit) and the same could not regulate the transfer orders which had been issued prior to the said date. It is, however, noticed that the circular dated 23rd November, 1987 was only a clarificatory circular and Appendix 'E' issued with reference to para 25 of the main letter dated 25th October, 1984 containing the policy guidelines leaves no doubt whatsoever that an individual must be physically present in the office of his posting at the tenure station for the full period of tenure except for the leave earned during that period. Therefore,

M. Bawali

the contention that the clarificatory circular of 23rd November, 1987 had been given retrospective effect cannot be sustained. Both the applicants having availed of leave more than what they had earned during the period of their posting at the tenure station of Sri Ganganagar, the period of three years had necessarily to be extended as per the policy guidelines to the extent of excess leave availed of by them during the period of tenure. This extended period extended their tenure upto 20th October, 1987 in the case of the applicant in O.A. 32/1988 and upto 23rd September, 1987 in the case of the applicant in O.A. 150/1988, whereas Shri Mahesh Chander, IDC, had availed of Earned Leave only to the extent of his entitlement during the period of his tenure at Sri Ganganagar and, therefore, he had completed his tenure on 4th September, 1987 and thus he was entitled to earlier repatriation in terms of the policy guidelines.

10. The second leg of arguments by Shri Oberoi was that the period of the longest stayee had to be determined with reference to incumbents posted in all the tenure stations under a particular Command. He could not show any policy guidelines to the said effect. Para 13 of the policy guidelines contained in the letter of 25th October, 1984 referred to above envisages that in determining the longest stayee in a station, all the MES formations located in the station and the adjacent localities will be taken into consideration and further that grouping of various adjacent stations will be as per Appendix B. This grouping shows that for the Bhatinda Zone, only the formations located at Bhatinda and Bhasiana had to be taken into account and not the formations in other tenure stations under the Western Command. The case of Shri Chander Shekhar Rawat who was in a different Zone viz., Chandigarh Zone and who had been transferred from Sirsa to Delhi cannot be considered to be in violation of the policy guidelines. His position as also the position

M. Kumar

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of certain other persons referred to in the applications has also been satisfactorily explained in the counter-affidavits.

11. In view of the above discussion, both the applications are held as devoid of any merit and are accordingly dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER
23.12.88.