

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.

198

T.A. No.

DATE OF DECISION

8-9-1988

Shri S.K. Gupta

Petitioner

Shri G.D. Gupta

Advocate for the Petitioner(s)

VERSUS

Union of India & Ors.

Respondent

Shri P.H. Ramchandani
Senior Standing Counsel

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE 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? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

....

DATE OF DECISION:

REGN. NO. O.A. 518/88.

Shri S.K. Gupta, Applicant ...

Shri G.D. Gupta,
Advocate, for the
applicant.

Vs.

Union of India & Ors., Respondents

Shri P.H. Ramchandani
Sr. Standing Counsel

CORAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

JUDGMENT.

This is Application No. 518 under Section 19 of the Administrative Tribunals Act, 1985, filed on 28.3.1988, wherein the applicant, Shri S.K. Gupta, who is working as a Stenographer grade 'C' in the Armed Forces Headquarters, New Delhi, has prayed that his transfer to Vishakhapatnam ordered vide No. A58548/88/CAO/AP-2 dated 23.3.1988, be set aside on the ground that the same is illegal. This transfer order is annexure 'A-4' to the Application and reads as under:-

"MINISTRY OF DEFENCE.
(OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER)

Sub:- POSTING & TRANSFERS: STENOGRAPHER GDE 'C'

On transfer from Naval HQ, Shri S.K. Gupta, Stenographer Gde 'C', is posted to Office of the Project Director, Ship Building Centre, C/o Naval Base, Visakhapatnam, with immediate effect against the post of Stenographer Gde 'B', in terms of Rule 43 of Financial Regulations, Part I.

2. Shri Gupta may please be relieved of his duties forthwith with the direction to report to his new office under intimation to all concerned.

3. The individual will be entitled for joining time and TA/DA as admissible under the Rules.

xxx xxx xxx xxx"

2. The facts leading to the application are that there was one post of Stenographer grade 'B' in the office of Project Director, Ship Building Centre, Visakhapatnam under Director-General, ATV Programme, and the respondents asked for volunteers ^{station} for posting to this/against the post encadred in A.F.H.Q. Scheme. Accordingly, a circular was issued on 28.8.1987 calling for applications from serving Stenographers grade 'B' for posting at Visakhapatnam against this duty post. The vacancy was re-circulated on 3.11.1987 (Annexure A-3 to the application). None of the working Stenographers grade B volunteered for posting at Visakhapatnam. Finding no volunteer Stenographer grade 'B', the applicant who had already been approved for promotion as Stenographer grade 'B' but was not being promoted as he was undergoing a penalty of withholding of increments, was posted to Visakhapatnam through the impugned transfer order. It may be pointed out here that the Armed Forces Headquarters Stenographers Service caters to the needs of the officers most of which are located at New Delhi. However, a few such offices are located outside Delhi also.

3. The applicant has challenged his transfer to Visakhapatnam, inter alia, on the grounds that the transfer stems from malafides and is in violation of the turn-over policy since he has not completed 10 years

period at Delhi and since he was elected as the President of the Armed Forces Headquarters Stenographers Association - a recognised Association, with its office at New Delhi, he cannot be transferred outside Delhi in accordance with the policy laid down by the Government of India vide their letter of 8th April, 1969 and since amended vide Department of Personnel & Training O.M. No. 9/34/87-JCA dated 8.3.1988. This policy letter is at Annexure R-7. He has also challenged his transfer on the ground that he being grade 'C' stenographer, cannot be compelled to go on transfer to grade 'B' post. According to him, stenographers grade 'C' and 'D' working in an office at New Delhi can be transferred ^{out} only with their consent and that such transfers can be made only of volunteers. In this connection, he relied on Annexure A-2 wherein the transfer from one office to another in New Delhi itself was made with the consent of the concerned stenographer.

4. Before we examine the contentions, the factual backgrounds needs to be noted.

The applicant has been working in the Naval Headquarters since 9.7.1977. The applicant is working as stenographer grade 'C' in the office of the Assistant Chief of Naval Staff (Operations) N.H. since 1.7.1986. He was transferred from this post to the G.S. Branch on 27th August, 1987 vide Annexure P-2. The transfer order reads as under:-

"1. It has been intimated by the CAO's Office vide their Note No. A/58548/CAO/P-2 dated 20 Aug 87 that following stenographers Grade 'C' have been transferred

(1)

to the offices mentioned against their names:-

<u>Name</u>	<u>Office to which transferred.</u>
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1. Sh SK GUPTA	GS
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2. Sh Ravinder Kumar	AIR HQ
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2. S/Shri Gupta and Ravinder Kumar will be relieved of their duties when their relievers report for duty. While relieving them, the enclosed outgoing proforma may please be got completed and forwarded alongwith relieving report."

However, it appears that he was not accepted by the G.S. Branch and continued to work in the Naval Headquarters. It also appears that while working in the Naval Headquarters, the applicant brought to the notice of his superiors that he had not completed the prescribed period for transfer under turn-over policy as he had been under suspension from 3rd June, 1982 to 30th June, 1986 and, accordingly, the A.C.N.S. (Operations) Rear Admiral R.B. Suri asked his Deputy Director of Administration (Civil) to examine this aspect (Annexure P-2 to Rejoinder). The matter was accordingly taken up with the Chief Administrative Officer, who is of the rank of Joint Secretary. It appears that no action was taken on this communication of the Naval Headquarters but the applicant's transfer to G.S. Branch was cancelled vide order dated 23.3.1988. It was argued on behalf of the applicant that this cancellation was in view of the recommendations of the A.C.N.S. Naval Headquarters. However, office records show that this transfer was cancelled as the applicant was not acceptable to G.S. Branch.

At present, the applicant is undergoing the penalty of withholding of increments. As soon as the period of penalty expires, the applicant is to be promoted as stenographer grade 'B' since his name is on the panel of stenographers grade 'B' (Annexure R-V). According to this

annexure, there are 16 names on the select list of stenographers grade 'C' for promotion to grade 'B'.

In this panel, the name of the applicant figures at serial No. 2.

5. The first contention of the learned counsel for the applicant is that the transfer stems from malafides. He argued that though the vacancy in stenographer grade 'B' of the Armed Forces Headquarters Stenographers Service arose in August, 1987, none of those who were promoted thereafter was posted to Visakhapatnam. In this connection, he relied on Annexure P-1 to the rejoinder wherein three stenographers grade 'C' of AFHQ were promoted as stenographers grade 'B' on ad-hoc basis vide order dated 27.11.1987 and were not posted out to Visakhapatnam. He further went on to argue that all the three stenographers, i.e. S/Shri M.L. Arora, Pritam Singh and O.P. Paliwal were junior to the applicant. Similarly, he again relied on annexure P-1 to the rejoinder wherein Shri G.P. Singh, stenographer grade 'C' was promoted to grade 'B' on an ad-hoc basis in the Service with effect from 3.12.1987 and he was not posted out. Similar order of promotion on ad-hoc basis was issued in respect of stenographer grade 'C' Shri M.L. Khurana and he was not moved to Visakhapatnam. He further went on to argue that vide order dated 5.1.1988 as many as 19 stenographers grade 'C' of AFHQ Stenographers Service were appointed as stenographers grade 'B' on temporary basis under Rule 12 (3) of the AFHQ Stenographers Service Rules, 1970 but the post at

Visakhapatnam was left vacant. Again, a similar promotion was given to Shri M.H. Gopal, another stenographer grade 'C' and again to Shri I.S. Grover, another stenographer grade 'C' and Shri L.D. Magoo, another stenographer grade 'C' who was promoted vide order dated 7.4.1988. He further argued that all the four stenographers grade 'C', who were promoted under Rule 12 (3) of the AFHQ Stenographers Service Rules 1970 vide order dated 11.5.88 (Annexure P-1 to the rejoinder) were junior to the applicant but none of them was moved out to Visakhapatnam. The learned counsel for the applicant further argued that even for transferring a stenographer grade 'C' and 'D' from one officer in Delhi to another, a consent of the concerned stenographer ^{and a} is to be obtained and when ~~this~~ consent is necessary, the transfer of the applicant to Visakhapatnam, a far off place, is definitely in violation of the policy and is due to malafide action on the part of the respondents.

In this connection, he relied on circular dated 8.3.1988 (Annexure A-2 to the application). This annexure reads as under:-

"Subject: Posting of stenographers grade 'C' & 'D' to Naval HQ (Dte. of Naval Design) located in Kailash Colony, New Delhi.

One post each of Stenographer Grade 'C' & 'D' is required to be filled in Naval HQ (Dte of Naval Design) located in Kailash Colony, New Delhi. Applications are invited from serving Stenographers Grade 'C' & 'D' of AFHQ cadre who are desirous for posting to the said Office.

From the above, it is clear that for transfers of stenographers 'C' and 'D' even from one place to another at Delhi, volunteers were called by the respondents. It is

also clear that a number of stenographers 'C' have been promoted to the post of stenographers grade 'B' but none of them was posted to Visakhapatnam.

6. We have to examine if the transfer of the applicant stems from malafides or otherwise. It is the case of the respondents that they have been inviting applications of volunteers stenographers grade 'B' for posting to Secunderabad and Visakhapatnam but since no stenographer grade 'B' had volunteered for posting, this does not entitle the applicant to raise the allegation of malafides. From the files produced by the respondents, it is clear that they had been repeatedly asking for volunteers but none was available. The relevant portion of the office noting concerning the transfer of the applicant from Delhi to Visakhapatnam is reproduced below:-

"One post of Stenographer Gde 'B' to be filled by a member of AFHQ Stenographers' Service, has been authorised at each of the ATVP's work centres at Secunderabad and Visakhapatnam. We have been exploring the possibilities for filling up these posts by transferring suitable Stenographers Gde 'B' to these places. Despite best efforts, it has not been possible to identify suitable individuals for posting to these places. It was, therefore, proposed to explore the possibility of posting of Steno Gde 'C' against these two vacancies. We approached DG ATVP for their views in the matter.

2. DG ATVP have given their no objection to the posting of experienced Stenographer Gde 'C' of AFHQ Stenographers' Service to AT Work Centres at Secunderabad and Visakhapatnam, if Grade 'B' Stenographers are not available for posting. They have further added that their requirements being urgent, necessary action be taken urgently to post the Stenographers latest by 05 Apr 1988 priority being given to filling up of post at Visakhapatnam.

3. Since their encadrement, DG ATVP have been pressing for filling up of the posts of Stenographers at the above named two places. We had asked for volunteers for posting to these places. However, no individual volunteered for posting to any of these places. In view of our past experience and urgency of the matter as emphasised by DG ATVP, we may consider posting of some Stenographer Gde 'C' to their project at Visakhapatnam in the first instance without circulating the vacancy and asking for volunteers.

(4)

Thus, departure from the earlier practice has become necessary against the above background and we may identify suitable individual for posting at Visakhapatnam. The posting of individual at Secunderabad will be examined separately.

4. As stated above, the vacancy at Visakhapatnam exists in Stenographer Gde 'B'. The Stenographer Gde 'C' to be identified for posting to that place should be due for promotion as Steno Gde 'B' so that he is able to take over the higher appointment on promotion and he should also be due for turn-over from his present organisation. One Stenographer Gde 'C' namely Shri S.K. Gupta, has been deployed in Naval HQ since 9-7-77. He remained under suspension from 3 June 1982 to 1 July 86 and the period of suspension has been treated as period spent on duty. Thus for all purposes, Shri Gupta continues to be borne on the strength of Naval HQ for a period over 10 years and is thus due for turn-over, in terms of the revised turn-over policy as applicable to members of AFHQ Stenographers' Service. He has been approved for promotion as Steno Gde 'B' but he will be promoted in June, '89 as he is currently undergoing penalty of withholding of increments. It is, therefore, considered that Shri Gupta may be transferred to ATV Work Centre at Visakhapatnam as Steno Gde 'C' in terms of the provisions of Financial Regulation 43 and on promotion he will be retained there. According to FR 43, an excess appointment in a lower rank, grade or class may be made against a vacancy left unfilled in higher rank, grade or class, but for each vacancy in a higher rank, grade or class, only one extra appointment in a lower rank, grade or class is admissible. Further, such an arrangement requires approval of the authority having power to make appointment in the higher grade. Additional Secretary, Min. of Defence is the appointing authority in Steno Gde 'B'. If the above proposal is agreed to, the approval of Addl. Secy (C) is solicited. "

A portion of this note was also examined during the course of the arguments and read out to the learned counsel for the applicant. ^{ab} From the foregoing, it is clear that there is not even an iota of evidence that the impugned transfer stems from any malafides or from any punitive motives. The case has been examined purely from the angle of administrative exigency due to the non-voluteering of any Stenographer Grade 'B' for posting to Visakhapatnam. Therefore, the ratio of the

judgments relied upon by the learned counsel for the applicant in the cases of K.K. Jindal Vs. General Manager Northern Railway & Ors.¹, E.P. Royappa v. State of Tamil Nadu and another, ² Prasadilal Sharma Vs. Union of India³ and the celebrated judgment of the Hon'ble Supreme Court in the case of B.Varadha Rao v. State of Karnataka and others,⁴ will not apply in the instant case because it cannot be made out that the transfer is either punitive or stems from malafides. So far as punitive aspect is concerned, the penalty proceedings were completed in July, 1986 (averment made in para. 6 sub-para (p) of the counter).

7. The next contention of the applicant is that he has not completed 10 years of service at Delhi which is the minimum period laid down by the turn-over policy. The learned counsel for the applicant strenuously contended that the recommendations of the Rear Admiral R.B. Suri, referred to above, clearly show that the applicant's period of 10 years' posting at Delhi was not completed. The learned counsel for the respondents has resisted this argument on the ground that the Rear Admiral was not the competent authority to decide this matter. There is weight in the argument put forth by the learned counsel for the respondents. The competent authority for deciding whether the period of suspension was to count towards duty was the Chief Administrative Officer who has clearly taken a decision that the suspension period is to be counted towards duty for all purposes and once this decision has been taken, the period of suspension will naturally count towards the period spent on duty. The opinion

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of the Rear Admiral R.B. Suri was only by way of recommendation and that too, of a tentative character. The real note in this regard is in the file of the respondents called 'Posting/Transfers (all Grades) under turn-over policy' started in January, 1986. The crucial note in this regard is reproduced below:-

"NOTE 50"

The case relates to turnover of Stenographers in AFHQ/IS organization in terms of the revised policy on the subject. Lists of Stenographers Grades 'B', 'C' and 'D', who have completed/are completing 10 years of service in their present organisations are placed at Enclosures 50A, 50B and 50C. No Steno Grade 'A' except Shri K.S. Sachdev, P.S. to COAS has completed 10 years in their present organisation. Shri K.S. Sachdeva, already stands transferred to Air H.Q./AOM organisation. He has however, not been relieved as Shri K.V. Nair who is to replace Shri Sachdeva, is not being relieved by AOM (Staff Officer to AOM met CAO & Dy. CAP(P) and explained their difficulties.)

2. From the list at encls. 50A, it would be seen that all the stenographers Grade 'B' due for turn-over under the revised policy are deployed in Naval H.Q. They will be turned over in Oct./Nov. 87 when their replacements from other organisations become available consequent upon the availability of results of Departmental Competitive Exams.

3. In Steno Grade 'C', Shri S.K. Gupta (Serial No. 4 of the list at encls 50B) was posted to NHQ on 1.1.1977. He remained under suspension from 3.6.82 to 1.7.86, but continued to be on strength of NHQ. Normally, such period is not excluded for computation of continuous tenur in the organisation. It is for consideration and orders if Shri Gupta should be turned around at this stage. As regards Steno Grade 'D', there is no problem and their postings are being planned separately."

On this note, the CAO gave his decision as follows:-

"52.

"The individuals should be transferred. No relaxation for period of suspension etc. for turn over purposes."

Thus, this argument that the applicant had not completed 10 years at Delhi is not open to the applicant.

8. The next main argument of the applicant is that he being president of the aforesaid association, was exempt from transfer from Delhi which is the headquarters of the association. It also appears that there was considerable correspondence by the association with various officers.



of the Government of India in this regard. We have to see the implications of the policy laid ... by the Government of India in this regard. The relevant portion of the policy letter with regard to transfer of office-bearers of an association, reads as under:-

"....It has been decided that the Chief Executive as defined in the Constitution of the association/union/federation or the General Secretary, or where the Chief Executive has not been specifically defined, the General Secretary may be brought on transfer to the Headquarters or any other office under his control of the Headquarters of the appropriate head of administrations as far as possible...."

A reading of the above portion will show that only the Chief Executive of an association etc. is to be kept at Headquarters and that too, as far as possible, (emphasi added) It is the contention of the respondents that the applicant is not the chief executive. It is the General Secretary and he is at Delhi. It was further argued by the learned counsel for the respondents that there is no absolute exemption. The policy envisages keeping only the chief executive of an association at its headquarters. He further went on to argue that there is no provision to show that the applicant was the Chief Executive. It has also been averred by the respondents in their counter that the orders regarding the applicant's transfer to Visakhapatnam were issued on 23.3.1988 before his election as president of the AFHQ Stenographers Association. The elections of the said association were held on 25th March, 1988 wherein the applicant was elected president. It was, therefore, argued that there

was no question of transferring him for his being president or for his association activities.

However, the learned counsel for the applicant relied on the Supreme Court judgment in the case of the Management of the Syndicate Bank Ltd. v. The Workmen¹ wherein it was held that the Industrial Tribunal could set aside an order of transfer where it arose for purposes of punishing an employee for his trade union activities and the mala fide exercise of power is not considered to be a legal exercise of power. However, the ratio of this judgment can be used only when there is a finding of malafide. In the instant case, the Tribunal does not find that the applicant has been transferred from Delhi because of his trade union activities. The fact remains that he is the President of the Stenographers association and the policy framed by the Government is to keep the chief executive at the headquarters of the association as far as possible, although this policy letter does not exclude for ever the possibility of even a Chief Executive being transferred because the words used are 'as far as possible'.

In the absence of facts indicating mala fides, the mere allegation of malafides cannot be sustained, nor is violation of the policy letter established.

9. The next contention of the applicant is that Stenographers grade 'C' and 'D' are not liable to be posted out of Delhi. In this connection, he relied on Annexure A-3 to the application dated January, 1987 on the subject of recruitment to the post of Stenographers grade II, on the basis of Stenographers Examination, 1986. Paragraph 3 of this circular reads as under:-

"3. I am also directed to inform you that the offices of Armed Forces Headquarters are located in NEW DELHI only. Even though the job carries the liability of serving anywhere in India, the posting will be in New Delhi only. As such, any request for posting to any place other than Delhi, will not be entertained by this office on any ground...."

However, the respondents maintained that the applicant has liability to be posted anywhere in the country. According to them, the members of the AFHQ Stenographers Service have a liability to serve in any part of India. Apparently, the stand of the respondents on this issue is merely confined to paper statement because even for transferring stenographers from one office to another, even at station like Delhi, they have been calling for volunteers. If the stenographers are liable to be posted from one place to another, it is not understood why the respondents went to the length and trouble of seeking consent of the stenographers for being posted from one place to another, in Delhi itself.

/This was brought out from Annexure A-2, reproduced above, wherein stenographers grade 'C' and 'D' of AFHQ, who were desirous for posting to the Naval Headquarters located in Kailash Colony, New Delhi, were asked to give their consent. The question would arise if the stenographers grade 'C' and 'D' are to be called upon to furnish their consent for

transfer from one office to another in the same station, will this yardstick not apply for posting of stenographers of these two grades outside Delhi?

There is no doubt that the applicant has a liability to be transferred anywhere in India. He has tried to dispel this liability by relying on Annexure A-1 to the Application wherein recruitment to the posts of Stenographers grade 'D' on the basis of the Stenographers Examination, 1986 was made. He has emphasised that vide para. 3 of the said letter, the stenographers have been assured that the posting will be in Delhi only.

However, this is only the half portion of this paragraph.

The full sentence reads as under:-

".....Even though the job carries the liability of serving anywhere in India, the posting will be in New Delhi only...."

From the foregoing, it is clear that the liability of serving anywhere in India is there but it seems to have been modified by the respondents by adding that 'the posting will be in New Delhi only'. In addition to the above liability, there is also the policy that the Stenographers will be liable to transfer once they have completed 10 years tenure at one station. However, in practice, these two policies i.e. the liability to serve anywhere in India and the turn-over policy have been negatived and diluted to almost non-existence by the respondents themselves by repeatedly calling for volunteers whenever a question of posting arose and seeking their consent even for a posting from one office to another at the same station like Delhi.

This has been brought out from annexure A-II to the Application, which deals with the posting of stenographers grade 'C' and 'D' of AFHQ Cadre to Naval Headquarters located in Kailash Colony, New Delhi itself. Thus, the respondents despite having a policy on paper, failed to implement it and caused a serious erosion of this policy by their acts. This erosion is so radical that the policy stands modified and it now amounts that there will be no transfer without the consent of the affected individuals. No doubt, from the welfare point of view of the employees, it is better to post willing individuals but such welfare policy cannot be taken to such a length where only welfare remains and policy becomes inoperative. This would appear to have happened from the mass of documents placed before the Tribunal by both the parties.

10. Now the question would arise whether enforcing the liability to transfer anywhere in India in respect of the applicant would be legal in the facts and circumstances of the case. Evidently, the applicant has been picked up for a posting though a number of Stenographers were promoted and none of them was sent to Visakhapatnam. Again, a number of volunteers were called but none was posted against his consent. Such facts of the situation, therefore, plainly proclaim that the posting of the applicant is based on no uniform policy but on the principle of 'picking up' alone. His posting also amounts

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to discrimination in terms of Article 14 of the Constitution of India because while other unwilling employees have been spared, the applicant is being compelled to proceed on transfer. It is well settled proposition of law that Article 14 is the charter for equality and equality and arbitrariness are sworn enemies. In the case of Paradise Printers and others Vs. Union Territory of Chandigarh and others¹, it has been clearly stated by the Supreme Court in para. 16 that Articles 14 and 16 strike at arbitrariness in State action and are meant to ensure fairness and equality of treatment. Again, the applicant is being sent on promotion but he does not accept his promotion though it is at some distant future. Thus, to compel him to go on transfer will again look unreasonable and it has been clearly held by the Hon'ble Supreme Court in the case of Maneka Gandhi Vs. Union of India and another² that the principle of reasonableness is an essential element of equality or non-arbitrariness pervading Article 14.

11. To sum up, there is not an iota of evidence of malafides in this case. As held in the case of E.P. Royappa Vs. State of Tamil Nadu and another (supra), the onus to prove malafides lies on the petitioner and in the instant case, the applicant has failed to adduce any evidence of malafides on the part of the respondents. Again, his allegation that the transfer is punitive is certainly devoid of merit because there is not a whiff

1. (1988) 1 SCC 440

2. ATR 1978 SC 597.

of punitive malice in the transfer ordered by the respondents. However, the transfer order does suffer from an element of arbitrariness because despite a clear-cut policy, the same was allowed to be whittled down and whittled down by the respondents by the respondents by their own actions and the transfer of the applicant to Visakhapatnam is certainly an act of arbitrariness in singling out the applicant for transfer whereas this principle was not applied to others, as already brought out. Accordingly, this Application is allowed and the impugned order of transfer is hereby set aside. However, this order will not debar the respondents from enunciating a clear policy and acting upon it according to law. There will be no order as to costs.

8/9/88
✓
(BIRBAL NATH)
Member.
8.9.1988.