

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 545/ 1988.
~~T.A. No.~~

DATE OF DECISION 15.11.1988.

Shri Yadhvir Chadha ~~Petitioner~~ Applicant.

Shri R.N. Gupta Advocate for the ~~Petitioner(s)~~
Applicant.

Versus

Union of India & others Respondents

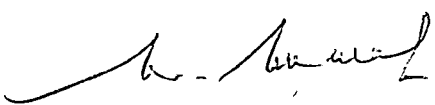
Shri A.K. Bahera, Proxy Advocate for the Respondent(s)
Counsel for Shri K.C. Mittal

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A)

~~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)
MEMBER (A)
15.11.1988.

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 545/88. DATE OF DECISION: 15.11.1988.

Shri Yadhvir Chadha Applicant.

V/s.

Union of India & others Respondents.

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

For the Applicant Shri R.N. Gupta, Counsel.

For the Respondents Shri A.K. Bahera, Proxy
Counsel for Shri K.C. Mittal
Counsel.

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant, who is a Superintendent B/R Grade I in the office of Garrison Engineer (R&D) Delhi, has called in question the order dated 26.12.1987 filed as Annexure A-I to the application transferring him from the GE R&D Delhi to CWE (AF) Jodhpur.

2. Learned counsel for the applicant Shri R.N. Gupta has contended that the transfer order is violative of the Policy Guidelines issued by the Department filed as Annexure A-II. The Policy Guidelines are contained in Appendix 'A' to E-in-C's Branch Army Head Quarter letter No. 79040/EIC(I) dated 30 Dec., 1983 and para 10 relied upon by the learned counsel for the applicant reads as follows: -

"POSTING ON PROMOTION : 'SELECTION' POSTS

"10 When the DPC panel is out, this HQ will decide as to how promotees will be adjusted within that command and how many will move out. This decision will be primarily guided with a view to balance the deficiencies in all the Commands. If promotees within a Command are more than the numbers allocated by this HQ to be adjusted within that particular Command, the

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surplus promotees will be posted out in other Commands if volunteers are not available. Before any promotee is adjusted even within the Command, the longest stayees among the promotees in non-tenure station in a Command will move to other Command as allocated. The period to determine the longest stayee for this purpose will be from the time he returned last from a tenure station. Thereafter, the left overs will be adjusted within that Command based on the seniority in their respective stations. The promotees transferred to other Commands will be adjusted in the tenure stations of the receiving Commands."

3. Learned counsel for the applicant argued that the persons who had been promoted much earlier than the applicant were still retained in Delhi. In this connection, he referred to the averment made in para 6.8 of the application wherein the names of certain persons who had returned from the last tenure station during the period from May 1978 to October 1981 are shown as still serving in the present formation. Learned counsel for the applicant could not point out a single case out of the promotees in the panel issued in September 1987 where any person who had a longer stay in Delhi than the applicant was retained in Delhi and not sent out. He referred to two names mentioned in para 6.5 of the rejoinder viz., Shri Vinay Mahajan and Shri Suresh Kumar Goel, but he could not show these names as having figured in the panel of promotions issued on 29.9.1987 (Annexure A-3 to the application). Obviously, the Transfer Policy and the guidelines relied upon by the learned counsel for the applicant, refer to promotees from out of a particular panel and what the instructions envisage is that if any promotee from out of the panel has to be sent out of his existing place of posting, the person who has the longest stay in a particular station where he is promoted should move out first.

Shri Mahajan

4. Learned counsel for the applicant further contended that the posting order which was issued in September, 1987 related to regular postings and, therefore, para 9 of the Policy Guidelines was applicable. This guideline refers to transfer not on promotion but for other considerations and states that "when transfers are inevitable, volunteers will be given preference. In the absence of volunteers, the longest stayee will be moved."

5. Learned counsel for the Respondents has produced the order issued by the Headquarters Western Command Engineer's Branch Chandimandir on 5.12.1987 referring to the HQ letter of posting/transfers of Supdt B&R Grade I dated 29th September, 1987 which shows that 13 persons referred to in the earlier order had been allocated to the CE Southern Command. It is also clarified in para 3 of the order dated 5.12.1987 that "the above postings have been necessitated due to the fact that the individuals who were Supdt B&R Gde-I (Adhoc) were made regular and placed in position "In situ" vide our letter quoted above, as the date of validity of Adhoc period was to expire on 30 Sep., 87. In order to avoid financial loss to them, their promotion orders had been issued as a "Stop-gap" measure."

6. From the said order of 5th December, 1987 it is clear that the posting on promotion in September 1987 cannot be considered a regular posting of the concerned incumbent and merely because the applicant happened to continue for three months in Delhi it cannot be contended that his posting on promotion in September 1987 was a regular posting in Delhi itself and he should be considered a regular incumbent of the higher post in Delhi. As such the guideline regarding transfer of the longest stayee as enunciated in para 9 of the Policy Guidelines is not applicable in the present case.

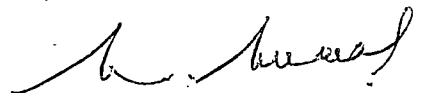
7. The last contention of the learned counsel for the applicant is that volunteers were not called for in the

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present case before issuing the transfer order. Learned counsel for the Respondents has clarified that there is a system in the Department that those who want to opt for moving out give their options and their names are noted in a register and that in the instant case there were no volunteers who opted for moving out of Delhi. Learned counsel for the applicant has also not shown the names of any individuals who were willing or had opted for moving out of Delhi.

8. There are no allegations of mala-fide in the present case. Admittedly, the applicant has remained posted in Delhi continuously from July, 1983. He had been promoted on an ad-hoc basis as Supdt. Grade I in February 1986 and it was only after he was promoted on an officiating basis in September 1987 that he was transferred out of Delhi after he had completed more than four years. The transfer as such cannot be considered either to be arbitrary or discriminatory or violative of any Policy Guidelines issued by the Department.

9. In view of the above discussion, the application fails and is accordingly dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER
15.11.1988.