

4

DATE OF DECISION July 22, 1988.

(KAUSHAL KUMAR)
MEMBER
22.7.1988.

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 575/88.

DATE OF DECISION: July 22, 1988.

Ajit Singh Applicant.
V/s.
Union of India and
Others Respondents.

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

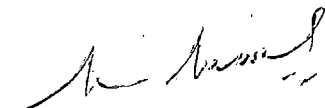
For the Applicant Shri S.C. Luthra, Counsel.
For the Respondents Mrs. Raj Kumari Chopra,
Counsel.

Hon'ble
(Judgment delivered by/Mr. Kaushal Kumar, Member)

JUDGEMENT

The applicant, who is a Junior Scientific Assistant, Composite Food Laboratory, ASC, 12 Rajpur Road, Delhi, which is an organisation under the Directorate General of Supplies and Transport, QMG's Branch, Army Headquarters, New Delhi, has in this application filed under Section 19 of the Administrative Tribunals Act, 1985, called in question the order dated 7th April, 1988 transferring him to FIU ASC (Golconda) Hyderabad.

2. The case of the applicant is that he has put in about 19 years of service in the Food Organisation under the Ministry of Defence and that during this period, he has been posted at 12 stations, out of which four years were at hard tenure stations from 1983 to 1987. It is also contended that he had served previously at a hard tenure station in Leh for about two years from 1968 to 1970 and that he has been transferred 10 times during the course of 15 years. At his request, he was transferred from Gauhati to Delhi only in May 1987, after which he has put in less than one year's service at Delhi before being transferred to Golconda, Hyderabad. It is further contended that the



present transfer which has been challenged in this application, is against the transfer policy and guidelines issued by the Respondents and/^{that}he has been discriminated against in the matter of transfer.

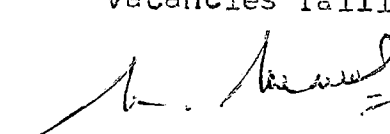
3. The case of the respondents is that the present application is pre-mature inasmuch as the applicant has not exhausted the departmental remedies and, therefore, the application is barred by jurisdiction. It is further contended that the transfer has been made in the exigencies of service and public interest on administrative grounds.

4. Paras 4 and 5 of Office Memorandum No.32(4)/73/D(Appts), dated 21st May, 1975 issued by the Ministry of Defence on the subject of "Transfer of Class III and Class IV employees of the Defence Installation - Guidelines for" are extracted below: -

"4. Class III personnel should not be transferred except in the following cases: -

- i) adjustment of surpluses and deficiencies of personnel borne on common roster.
- ii) Promotions.
- iii) Compassionate grounds/Mutual basis.
- iv) Exigencies of service or administrative requirements.

"5. The following further guidelines will be observed while making postings/transfers of Class III employees: -

- a) No compulsory turnover from non-tenure station will be made after completion of any period of service except to cater for turnover from hard/tenure stations or to meet job requirements.
 - b) There will be a maximum of 3 years of tenure to a hard station. Requests for stay for longer periods will be considered on merits.
 - c) Persons reaching the age of 55 years or over should not be transferred except at their own request and to stations of their choice unless the transfer is necessitated by promotion.
 - d) Compassionate postings in the desired stations shall normally be effected only against clear vacancies failing which against volunteers."
- 

5. Corps Order No.6 to 9/79, dated 1st June, 1979, on which reliance has been placed by the respondents, is also extracted below: -

- "1. CLASS III (GROUP 'C') Civilian scientific personnel employed in the units of food inspection organisation will be turned at regular intervals in accordance with the instructions contained in this order.

TENURE OF DUTY

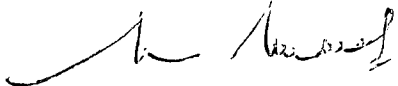
2. The normal tenure of duty for class III (group 'C') civilian scientific personnel employed in units of Food Inspection Organisation will be as under:
- (a) Food Inspection Units other than Army HQ (ST8) 3 years.
 - (b) Army Headquarters - 3 years extendable to 4 years.

EXTENSION OF TENURE

3. Extension beyond the limit stipulated in para 2 above may be granted in deserving and very very exceptional cases only.
4. This supersedes ASC Corps order Part I No.18/67."

6. From the above it will be seen that the transfer policy guidelines issued by the Ministry of Defence regarding transfer of Class III and Class IV employees of the Defence Installation and the Corps Order applicable in the case of Civilian Scientific Personnel employed in the units of Food Inspection Organisation clearly envisage that the tenure of duty in case of Food Inspection Units other than Army HQ is three years and further that there will be no compulsory turnover from non-tenure station after completion of any period of service except to cater for turnover from hard tenure stations or to meet job requirements.

7. Admittedly the applicant, after having served for a period of four years at a hard tenure station, had put in only one year's service at Delhi and had not completed the normal tenure of three years. Further the transfer to Golconda, Hyderabad is not to cater for turnover from hard tenure station and thus the transfer in question is against



the policy guidelines and the specific standing orders applicable in the case of the organisation to which the applicant belongs. The only ground on which the transfer is sought to be justified is that it has been made to meet job requirement and that it is in the exigencies of service and on administrative grounds. These have been stated in para 6.8 of the counter-affidavit as being:

- (a) Capability of incumbent.
- (b) Commitment to Indian Peace Keeping Force (IPKF) and forces of Southern Command.
- (c) Urgent requirement of fulfilment of posts at Hyderabad due to inadequacy of the staff to meet the commitments.

8. The ^{above} grounds as forming the basis for exigencies of service have been controverted in the rejoinder where it is shown that the applicant does not possess any special qualifications which other persons in the organisation do not have. Minimum qualifications of all the Scientific staff in the Food Inspection Unit is B.Sc. in Chemistry, and they are all required to analyse the food samples. It is pointed out that the applicant has not been issued any special commendation showing his special qualifications or capability. As regards commitment to Indian Peace Keeping Force (IPKF) and forces of Southern Command, the same appears to be rather remote and the posting of the applicant to Golconda, Hyderabad cannot be considered as being directly linked to commitment of provision to IPKF and forces of Southern Command. There are already two other Junior Scientific Assistants in the Golconda Laboratory and in case a third post is required to be filled up, the same could be filled up by posting another person in accordance with the policy guidelines and the standing orders issued by the respondents.

9. Where the respondents themselves have issued any transfer policy guidelines or standing instructions, they have to show strong grounds for departing therefrom. Exigencies of service or administrative reason is too wide a term which cannot be made as a ground for departure from the policy

[Signature]

9

guidelines unless the exigencies of service or administrative grounds are specific, concrete, non-nebulous and established as genuine necessitating an unavoidable departure from the general policy norms laid down by the Government.

10. There is a positive averment in para 6.13 of the application regarding the applicant having been transferred 10 times during the course of 15 years and he having served at a hard tenure station in Leh for about two years from 1968 to 1970 and for about four years at Silchar and Gauhati from 1983 to 1987. In the counter-affidavit in reply to para 6.13, it is stated "The contents of sub para 13 and main para 6 are wrong and denied. In fact the statement of the individual does not seem to be correct as in this case the individual had any stage felt aggrieved, he was at full liberty to seek redressal which he has never done at any point of time. Hence his contention is baseless and unfounded." However, when the respondents were asked to produce the service records of the applicants regarding the places at which he was posted since the date of his joining service, they produced a copy of the record which is placed on the file. The said record shows that the applicant was posted at different stations for different periods as indicated below: -

(i) CFL C/o 360 Coy ASC - from July 68 to 24 Aug 70.

It was conceded at the time of oral submission that this Company was stationed at Leh during the said period.

(ii) CFL Jammu - 25 August 70 to 1st Aug 73.

(iii) CFL Bombay - 2 August 73 to 5 Oct 74.

(iv) FIU Agra, Dehradun
and Rohtak - 6 Oct 74 to 21 Aug 79.

(v) CFL ASC Jammu - 22 Aug 79 to 30 April 83.

(vi) FIU Silchar - 1 May 83 to 17 April 87.

(vii) CFL ASC in Delhi - 18 April 87 to date.

N. K. Mehta

It was later clarified that the period of four years from 1983 to 1987 related to his posting at Silchar and Gauhati, both being hard tenure stations and that the applicant was transferred to Delhi in April, 1987. The service records amply corroborate the averments made in the application that the applicant has been subjected to transfer nine times during the period from 1968 to 1987 and that he has also served at hard tenure stations, namely, Leh, Silchar and Gauhati. In the circumstances, the transfer of the applicant from Delhi again only after one year of his posting is patently against the policy guidelines and the standing orders issued by the respondents and as such cannot be sustained. The so-called exigencies of service and administrative reasons heavily relied upon by the learned counsel for the respondents Mrs. Raj Kumari Chopra do not stand deep scrutiny and examination. Learned counsel for the respondents also contended that the application was pre-mature and without jurisdiction as the applicant had not exhausted all departmental remedies. Sub-section (1) of Section 20 of the Administrative Tribunals Act, 1985 clearly envisages that "A Tribunal shall not ordinarily admit an application (emphasis supplied) unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances." Thus it will be seen that even in cases where all the departmental remedies have not been exhausted, the Tribunal has the discretion to admit and hear an application. Learned counsel for the respondents also pointed out that the impugned order was really not an order of transfer and it merely enjoined upon the applicant to keep in readiness. However, it is seen that the order dated 7th April, 1988 clearly envisaged that "your move is required to be completed by 10 Apr 88". The order was issued on 7th April, 1988 and it was required to be complied



with within three days. In such circumstances, the plea that the present application was pre-mature cannot be sustained.

11. Learned counsel for the respondents Mrs. Chopra relied on certain rulings in support of her contention that the transfers are justified on the ground of exigencies of service and administrative reasons.

12. In G.S. Singh and others v. Union of India (1987 (2) Administrative Tribunals Cases 372), the Jabalpur Bench of this Tribunal held that -

"Administrative considerations also cannot be overlooked in defence establishments involved in national security, unless mala fides on the part of departmental authorities are established, or discriminatory or arbitrary action is involved. Otherwise also normal transfers cannot amount to violation of any fundamental right. The transfers ordered are clearly on normal administrative grounds after the petitioners have stayed sufficiently long at Jabalpur." para 12.

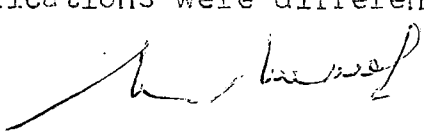
The facts of the present case are clearly different from those giving rise to the above judgement in which case the petitioner had stayed sufficiently long at Jabalpur. In the present case, the applicant has been in Delhi for only one year.

13. In Krishna Dev Dutt v. Union of India and Another (1987 (2) Administrative Tribunals Cases 574), the Calcutta Bench of this Tribunal held that norms made by the Government cannot be made the basis for seeking immunity from transfer. Obviously there cannot be any two opinions about this legal proposition. But there have to be strong administrative grounds or exigencies of service to warrant departure from the general guidelines.

14. In S.K. Sarkar v. Union of India and Others (1987 (2) Administrative Tribunals Cases 576), the Jabalpur Bench of this Tribunal held that "If the transfer is not arbitrary or mala fide it is not hit by Article 16 or


Article 14". Learned counsel for the respondents Mrs. Chopra also referred to the rulings of the Cuttack Bench of this Tribunal in Sachidananda Swain v. Union of India and Others (1987 (2) Administrative Tribunals Cases 950) wherein the Bench held that non-availability of Government accommodation was not a good ground for challenging transfer. The facts of these cases have no relevance in relation to the one under consideration. Learned counsel for the respondents also referred to the judgement of the Patna Bench of this Tribunal in Rajeshwar Prasad Singh v. Union of India and Others (1987 (2) Administrative Tribunals Cases 368) wherein it was held that "transfers in the interest of service may be ordered by the competent authority even though they do not fall within the purview of the above guidelines." In the said case, the petitioner had been mostly in Bhagalpur town and so his transfer to an unpopular station could not be said to be not justified.

15. The facts giving rise to the cases relied upon by the learned counsel for the respondents are clearly distinguishable from those of the instant case. She also referred to the judgement of the Principal Bench of this Tribunal dated 23.1.1987 to which I was a party in O.A. No. 418/1986 (V.M. Thareja v. Secretary, Ministry of Defence and others), O.A. No. 591/1986 (Narain Das Gulati & C.S. Shivnani v. Union of India and others), and O.A. No. 600/1986 (Satish Kumari Wahi v. Union of India and others). In the said cases, the applicants belonged to the same organisation as the present applicant and the petitions were dismissed while directing that the transfer orders would be effective only after a certain date as indicated in the order. The policy guidelines and the standing instructions relied upon by the respondents were also examined in the said judgement. However, the circumstances and facts giving rise to those applications were different from the ones in the present



application and there is no difficulty in holding that in this case the policy guidelines have been blatantly violated without sufficient grounds and the so-called exigencies of service and administrative reasons do not stand the test of judicial scrutiny so as to warrant departure from the said guidelines.

16. The application is accordingly allowed and the impugned order dated 7.4.1988 is hereby quashed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER
22.7.1988.