

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1235/ 1988
T.A. No.

DATE OF DECISION 23.12.1988

Madan Lal Gakhar ~~Petitioner~~ Applicant.

Shri M.K. Gupta Advocate for the ~~Petitioner(s)~~ Applicant.

Versus

Union of India & Ors. Respondents

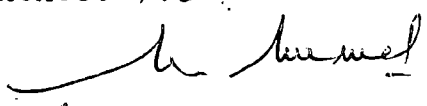
Shri M.L. Verma Advocate for the Respondent(s)

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)
MEMBER.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1235/88. DATE OF DECISION: 23.12.1988.

Madan Lal Gakhar Applicant.
V/s.
Union of India & Ors. Respondents.

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

For the Applicant Shri M.K. Gupta, Counsel.
For the Respondents Shri M.L. Verma, Counsel.

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as U.D.C. in the office of Chief Engineer, Delhi Zone/CWE (P), Delhi has called in question the order dated 10.3.1988 issued by the Chief Engineer, HQ Western Command Engineers Branch, Chandimandir, posting the applicant on transfer to the office of Chief Engineer Bhatinda Zone (GE Bhisiana).

2. The applicant joined the M.E.S. as^a/Lower Division Clerk on 3rd March, 1964. He was promoted as Upper Division Clerk vide order dated 3rd January, 1987 and posted in the office of CWE (P), Bikaner. He made a representation against his posting to Bikaner on 22.1.1987, filed as Annexure A-2 and another representation on 6.5.1987, filed as Annexure A-3 to the application. He also gave an undertaking on 17.6.1987 "to forego back-dated financial benefits if adjusted in Delhi on occurrence of future vacancy wef 1 Aug 87", filed as Annexure A-4 to the application. On 22nd July, 1987, the respondents issued an amendment to the earlier posting order dated 3rd January, 1987. This has been filed as Annexure A-5 accordingly to the application and/the applicant was posted in Delhi. However, on 10.3.1988, he was again transferred to the office of CE Bhatindia Zone / GE Bhasiana and it is this

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order which has been challenged by the applicant.

3. The case of the applicant is based on two grounds. Firstly, he states that having been accommodated in Delhi on compassionate grounds, he is entitled to protection against transfer for a period of three years as per para 10 of Appendix 'C' (Procedure for Compassionate Postings) to the Policy regarding transfer of civilian subordinates in MES spelt out in the letter dated 25th October, 1984, filed as Annexure A-10 to the application. Para 10 of Appendix 'C' reads as follows: -

"Liability for posting out"

10. Personnel posted within Command on compassionate grounds, are liable for posting out on completion of three years in the station."

The second ground on which the transfer is challenged is that the applicant was not the longest stayee in Delhi. Para 13 of the Policy Guidelines contained in the letter dated 25th October, 1984 envisages that "When posting becomes necessary the longest stayee in the station will be moved." It is contended by the learned counsel for the applicant that in the case of one Shri Lakshmi Narain Grover, who was promoted to the post of U.D.C. from a date earlier than the date when the applicant was promoted and who was also transferred from out of Delhi to the office of C.E. Bhatinda Zone by the order dated 10th March, 1988, it had been held by this Tribunal in O.A. No. 1448 of 1987, vide its judgment dated 16.9.1988 that Shri Lakshmi Narain Grover was not the longest stayee and accordingly the order of transfer dated 10th March, 1988 in so far as it related to Shri Lakshmi Narain Grover (applicant in O.A. 1448/87) had been quashed by the judgment dated 16.9.1988. It is ^{that} pointed out / Shri Lakshmi Narain Grover had been promoted in May, 1987 whereas the applicant was promoted only from 1st August, 1987 and he joined his duties on 7th August,

1987.

4. The case of the respondents is that the transfer of the applicant to Bikaner was not cancelled on compassionate grounds and, therefore, he was not entitled to protection of ^{his} retention in Delhi for a period of three years as envisaged by the Policy Guidelines. It is also contended by the respondents that since Shri Lakshmi Narain Grover had also been transferred out of Delhi along with the applicant vide order dated 10th March, 1988, the question of the applicant being not the longest stayee no longer remained relevant.

5. Learned counsel for the respondents Shri M.L. Verma pointed out that the applicant had remained in Delhi since 1st August, 1977 and in the letter dated 17th June, 1988, filed as Annexure A-9 to the application, HQ Western Command Engineers Branch, Chandimandir had clarified that the applicant was not posted to Delhi on compassionate grounds. Shri M.L. Verma also referred to the Policy Guidelines for posting on compassionate grounds and pointed out that in para 1 of Appendix 'C' it has been stated that 'Compassionate cases for postings from one station to another are those which are beyond the individual's control and are distinct from common grounds, such as, old age and illness of parents, education of children and maintenance of two or more establishments due to high cost of living which are common to all in these days'. According to the learned counsel for the respondents, the reference made by the Chief Engineer, Delhi Zone vide his letter dated 12th May, 1988 (Annexure A-8 to the application) for retaining the applicant in Delhi on compassionate grounds did not bind the respondents to the applicant being retained in Delhi as being based on compassionate grounds, since this was a mere recommendation to a superior authority viz., Headquarters Chief Engineer, Western Command, Chandimandir, who had clarified in his letter dated 17th June, 1988 that the applicant was adjusted in Delhi on

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promotion as a special case and was not allowed to be retained in Delhi on compassionate grounds.

6. In his representation dated 27.4.1988, the applicant had pleaded for his retention in Delhi on compassionate grounds stating inter-alia that his father had expired and mother remained indisposed on account of her old age. Thus, it is seen that the compassionate ground urged in the representation was not mere illness of the parents but the passing away of the applicant's father. The Chief Engineer, Delhi Zone, had also stated in para 4 of his forwarding letter dated 12th May, 1988 as follows: -

"4. Application of the individual alongwith photostat copy of medical certificate is forwarded herewith. Since the individual has been adjusted in Delhi on Compassionate grounds he be allowed protection of transfer for 3 years as per para 10 of Appx 'C' of your HQ Policy letter No. 30203/394/E1C(i) dt 25.10.84."

It is also a fact that the applicant was retained and adjusted in Delhi on promotion as U.D.C. Merely because the superior authority viz., Chief Engineer H.Q. Western Command, Engineers Branch Chandimandir stated in his letter dated 17.6.1988 that the applicant was adjusted in Delhi on promotion as a special case and was not allowed to remain in Delhi on compassionate grounds does not take out the case of the applicant from the purview of the Policy Guidelines relating to Procedure for compassionate postings. It has not been clarified by the respondents as to what the basis for treating the case of the applicant as a special case was if it was not ~~on~~ compassionate grounds. Obviously the applicant was retained in Delhi on the basis of his representation against posting to Bikaner and the only view that can be taken with reference to the grounds urged in the various representations is that the transfer order of the applicant to Bikaner was amended and the

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applicant was retained in Delhi on compassionate grounds. No other administrative grounds or exigencies of public service have been advanced by the respondents to justify the retention of the applicant in Delhi on grounds other than "compassionate grounds" or for treating his case as a special case. In fact, in the counter-affidavit filed by the respondents, it has been stated in para 2 under the heading "BRIEF FACTS OF THE CASE" as follows: -

"2. The applicant at the time of his promotion as UDC during Jan 87 was posted to CWE (P) Bikaner vide HQ CE WC Chandimandir letter No.31299/UDC/1054/EID dated 03 Jan 87 but he did not move and represented for its cancellation on account of his compassionate grounds. His request was accepted by HQ CE WC for one time adjustment and was posted to CWE (P) Delhi Cantt under their letter No.30312/907/EIC(I) dated 22 July 87."

7. The above averment in the counter-affidavit is a clear admission of the fact that the cancellation of the posting order dated 3rd January, 1987 was based on the request made by the applicant on compassionate grounds. This being the position, the applicant is clearly entitled to protection against transfer for a period of three years as enjoined by para 10 of the Policy Guidelines relating to "Procedure for compassionate postings".

8. As regards the second ground as to whether the applicant was the longest stayee in Delhi or not, it has been stated by the respondents in para 6 (ix) of their counter-affidavit as follows: -

"Para 6 (ix) is not admitted as no senior to him has been left out except female employees who were exempted for posting to hard/tenure stations as per policy in force then. Consequently move of female employees is under consideration and policy decision is awaited from E-in-C. As regards Sh L N Grover, UDC, is concerned he also stands posted to GE Sriganganagar vide CE WC Chandimandir letter No. 30312/Rept/88/5/EIC(I) dated 10.3.1988 (Srl item 3 refers)."

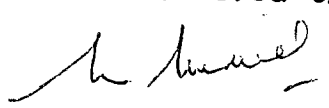
However, it has already been held in the judgment dated 16.9.1988 in O.A. 1448 of 1987 that Shri L.N. Grover was not the longest stayee on which ground his transfer vide order dated 10.3.1988 was also cancelled. The plea of the learned counsel for the applicant that he was not the longest stayee in Delhi having been promoted after Shri L.N. Grover has also to be upheld.

9. Learned counsel Shri M.L. Verma referred to the observations made by the Bhubaneswar Bench of this Tribunal in Gokul Chandra Nag v. State of Orissa and Others (I (1987) ATLT 307) to the following effect: -

".....However, we find that the impugned instructions do mention that Government can transfer any officer even before three years and during the middle of the academic session on administrative grounds and in exigencies of public service. It is well settled that the Government, as employer, has unfettered right to transfer Government servants and any instructions issued by Government for regulating the transfer of Government servants are only advisory and not directory or mandatory. In this view of the matter the Tribunal will be loath to interfere with transfer matters unless they are actuated by malafides or suffer from arbitrariness."

10. Learned counsel Shri M.L. Verma also referred to the observations of the Jabalpur Bench of this Tribunal in Rajendranath Gupta v. Union of India and others (1987(3) SLJ 447) wherein it was held that "unless a transfer is ordered for malafide reasons, or it has the effect of varying materially, the conditions of Service of a Railway Servant to his disadvantage the Tribunal cannot invoke writ jurisdiction or interfere in such matters"

11. The same view was held by the Ahmedabad Bench of this Tribunal in D.H. Dave v. Union of India and Others (1986 Administrative Tribunal Cases 579) wherein the Bench observed that "in matters of transfer, unless there are



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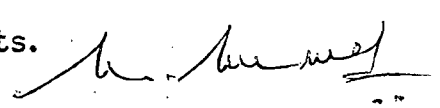
strong grounds for intervening due to mala fide, or abuse of powers, courts should be reluctant to intervene."

12. There can be no dispute with regard to the proposition of law enunciated in the above cases. However, where the Department itself has issued policy guidelines for regulating transfers, it must adhere to the same unless there are over-riding considerations of public interest or administrative exigencies of service justifying a departure therefrom. In such a situation, those over-riding considerations must be clearly spelled out to save the transfer order from an attack on grounds of arbitrariness or discrimination. In *Kamlesh Trivedi v. Indian Council of Agricultural Research and Another* (1988) 7 Administrative Tribunals Cases 253), a Full Bench of this Tribunal to which I was a party, after discussing in detail the case-law on the subject, observed as follows: -

"....we hold that any order of transfer must be in public interest and in the exigency of service on administrative grounds. It must not be in colourable or mala fide exercise of power. It should not be arbitrary. It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy." (emphasis supplied)

13. In the present case, having reached the finding that the applicant's retention on promotion in Delhi was on compassionate grounds and that he was not the longest stayee, his transfer was obviously contrary to the policy guidelines and as such is liable to be quashed.

14. In view of the above discussion, the application is allowed and the transfer order dated 10th March, 1988 in so far as it relates to the applicant's transfer is set aside with no order as to costs.


(KAUSHAL KUMAR)
MEMBER
23.12.88.