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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 527
~~TAX No.~~

1986

DATE OF DECISION 22.1.87

D.S. Chauhan Petitioner

Shri G.D. Gupta Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

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.

(H. P. BAGCHI)

(S. P. MUKERJI)

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D. S. Chauhan . . . Petitioner

Vs

Union of India . . . Respondent

Sh. G.D. Gupta . . . Counsel for petitioner

Mrs. Raj Kumari Chopra . . . Counsel for Respondent

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

(Judgment delivered by Shri S. P. Mukerji,
Administrative Member) *Shri H.P. Bagchi*
Judicial Member

JUDGMENT:

The petitioner Shri D.S. Chauhan, who was working as Director, Small Industries Service Institute (SISI), Okhla under the Department of Industrial Development, Government of India, moved the Tribunal under section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order of his transfer dated 8.7.86 transferring him from SISI, New Delhi to Process-cum-Product Development Centre (PPDC), Meerut may be quashed and that the petitioner should not be transferred at the fag-end of his service. The brief facts of the case can be summarised as follows.

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The petitioner is a confirmed Deputy Director in the Ministry of Industrial Development and was officiating as Director in the SISI, Okhla, New Delhi. He is to retire on 28.2.89 on superannuation. There is no dispute about the fact that the petitioner is a full-fledged Government servant. The Department of Industrial Development in the Government of India has set up the PPDC at Meerut under the administrative control of Small Industries Development Organisation as a Registered body fully owned and administered by the Government of India and registered under the Registration of Societies Act. On the retirement of the Director of the PPDC the petitioner was transferred to the PPDC by the impugned order along with his post of Director which he was holding in the SISI. The main contention of the petitioner is that since he is a Government servant his transfer to a registered society along with his post will be tantamount to ^{depriving} ~~deprive~~ him of his status of Government servant and is against Article 309 of the Constitution of India. The respondents on the other hand have stated that the Centre ^(i.e. PPDC) being for all intents and purposes an organisation of the Government, the petitioner will be given all the facilities of a Government servant. It may be noted that apart from the ~~blank~~ order of transfer no terms and conditions of transfer of the petitioner have so far been issued by the respondents.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The reply of the respondents

in the counter affidavit is ambivalent insofar as the protection of the status of the Applicant as a Government servant is concerned. Though it is admitted that the PPDC is a Registered Society fully owned and controlled by the Government of India, the learned counsel for Respondents could not give any undertaking even after consulting the respondents that the petitioner would continue to enjoy the status of a Central Government employee even after his transfer to the society. This creates a valid apprehension in the mind of the petitioner that he will lose his status as Government employee and will become an employee of the Registered Society. There is considerable validity in his apprehension. It is also admitted that his consent had not been taken for being transferred to the PPDC. The contention of the respondents that under the proviso to Clause(a) of FR 110 consent of the Government servant for transfer to such a body is not necessary, cannot be accepted by us so long as the respondents do not categorically state that the Applicant's transfer to the PPDC will be in the form of a deputation with his lien remaining intact in the SISI.

3. After going through the provisions of FRs 110 and 113 we are satisfied that the concept of transfer contemplated in FR 110 covers only temporary transfer on deputation and not permanent transfer alongwith lien. FR 113 clearly states that "a Government servant transferred to foreign service shall remain in the cadre or cadres in

which he was included in a substantive or officiating capacity immediately before his transfer". Accordingly, the proviso to FR 110(a) laying down that prior consent of the Government servant to foreign service is not necessary applies only when the transfer is on deputation and the interests and status of the Government servant in the parent cadre both in a substantive and officiating capacity remain protected and intact.

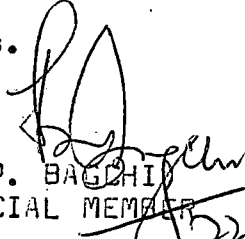
4. Further, on transfer to foreign service the borrowing organisation has to pay leave salary/ Pension, C.P.F. contributions to the lending Department of the Government. If the transfer had been on a permanent basis, the question of payment of such contributions would not have been laid down in FR 110. It is also laid down in Government of India's Order below FR 111 that the terms and conditions of transfer to foreign service are to be settled well in advance so that the recovery of foreign service contributions in time is facilitated.

5. In the instant case since the consent of the petitioner had not been taken before his transfer to the PPDC, under aforesaid proviso to FR 110, it has to be presumed that the transfer must be on a temporary deputation basis and accordingly the terms and conditions of deputation including the conditions of recovery of leave salary and pensionary contributions had to be settled before the petitioner can be obliged to comply with the order of transfer. As a Government servant he has

got the status of a Government employee as also the protection available to him under Article 311 of the Constitution of India which may not be available to him if he is transferred lock, stock and barrel alongwith his permanent post to a Registered Society albeit owned and controlled by the Government of India. When he is retiring within less than $2\frac{1}{2}$ years, unless the terms of his transfer on deputation including payment of leave salary and pensionary contribution by the PPDC are settled in advance, he is justified in apprehending that his pension and leave salary may be adversely affected and delayed. He will also lose the rights that he has acquired as a Government servant by being transferred along with his lien in Government service.

6. We make it clear that we have no objection at all insofar as the transfer of the petitioner to Meerut is concerned so long as it is in accordance with the prescribed rules and so long as there is no assault on his status and rights as a Government servant and so long as his lien on the post which he has been holding in the SISI is kept intact. Since these elementary pre-requisites have not been satisfactorily provided for in the impugned order of petitioner's unilateral transfer to a Registered Society along with his post, we have to quash the impugned order insofar as the petitioner is concerned, being bad in law and against the FRs quoted above. The Application is, therefore, allowed and the

impugned order is quashed in relation to the p. 111 Applicant, with the direction that the respondents are at liberty to transfer the Applicant to the PPDC only temporarily on deputation basis after settling the terms and conditions well in advance. His status as a confirmed Deputy Director and officiating Director in the parent cadre will have to be protected along with such promotions and rights and benefits which would have accrued to him in his parent cadre as if he remains in the parent cadre. He will be considered to be on deputation on foreign service from the Government and entitled to all the facilities and rights and ^{or} benefits admissible to him under the FRs and other service Rules. The applicant will continue to work as a Government servant in his parent cadre till such time his temporary transfer to PPDC on the above lines materialises in accordance with law. It is, however, made clear that the respondents will be at liberty to transfer him as a Government servant to any organisation or department of Government to which he is liable to be transferred in the public interest in accordance with service rules without prejudice to his rights to seek redressal in accordance with law. The application is allowed on the above lines. There will be no order as to costs.


(H. P. BAGCHI)
JUDICIAL MEMBER

 22.1.87
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER