

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 702/86
T.A. No.

198

DATE OF DECISION 30.5.1989

S.P. Gupta

Petitioner

Shri G.N. Oberoi

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

None

Advocate for the Respondent(s)

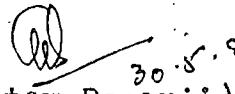
CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. V.S. Bhir, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
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 it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000


30.5.89
(Amitav Banerji)
Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-702/86.

Decided on 30.5.1989

S.P. Gupta

.....Applicant.

Vs.

Union of India & Others

.....Respondents.

For the Applicant ... Shri G.N. Oberoi, Advocate.

For the Respondents ... None for the Respondents.

CORAM: HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
HON'BLE MR. V.S. BHIR, ADMINISTRATIVE MEMBER.

(JUDGEMENT OF THE BENCH BY HON'BLE
MR. V.S. BHIR, ADMINISTRATIVE MEMBER.)

JUDGEMENT:

The above application has been filed in this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant is serving as U.D.C. in the office of Garrison Engineer, Red Fort, Delhi. Under the impugned orders dated 13.3.86 (Annexure-A), he is under orders of transfer to the office of Garrison Engineer (AF), Suratgarh. The learned counsel for the applicant contended that the above transfer order is not in conformity with the transfer policy of the department , vide Annexure-F. The applicant had served in a snow bound areas in Leh/Kargil from 26.3.74 to 1.8.77. As the tenure for these stations is only 2 years, the applicant had overstayed at these places for about one year and four months, and according to para 9(c) of the transfer policy letter dated 25.10.84 , vide Annexure-F, the employees, who in previous tenure have overstayed for the period over 12 months and upto 18 months, are given deferment of one year when their turn comes for the next posting to a tenure station. Para 9 of the above Transfer Policy letter

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reads as under:-

" Overstaying in Tenure stations

9. In case of delay in repatriations of an employee from a tenure station due to administrative difficulties of the Department, he will be given the following benefit in seniority for his re-posting to tenure station in his next turn for such posting:-

(a) Upto six months stay in excess of the tenure

No benefit to be given.

(b) Over stay of over six months and upto 12 months

The affected individuals will be given a deferment of six months when their turn comes for next posting to tenure stations.

(c) Over stay of over 12 months and upto 18 months

The affected individuals will be given a deferment of one year when their turn comes for next posting to tenure stations.

(d) Over stay of over 18 months and upto two years

The affected individuals will be given a deferment of 18 months when their turn comes for next posting to tenure stations.

(e) Over stay over two years

The affected individuals will be given a deferment of two years when their turn comes for next posting to tenure stations.

The above benefit will not be admissible to an individual who delays his move on repatriation for his own reasons. The overstay will be worked out on the basis of physical attendance in the office. In this connection, refer to para 3(d) of this appendix."

The applicant's request to the Chief Engineer, Western Command requesting deferment of the transfer by one year on the basis

of the above transfer policy letter was, however, rejected by the respondents on 21.5.1986 vide Annexure-C. The applicant's counsel averred that the respondents had given this benefit to other employees, like S/Shri V.K. Gupta and B.K. Dhingra, thus showing discrimination against the applicant.

3. The learned counsel for the applicant further argued that the applicant had during his tenure at Kargil had contracted diseases like Hypertension and Rheumatoid Arthritis and his impending transfer to Suratgarh, which is hottest place in the country, will adversely affect his health. It was also contended that Suratgarh is a field area station, where the army personnel get full service concessions like free rations, free clothing etc; but civil employees like the applicant do not get these concessions. The applicant's counsel, therefore, urged that the respondents should revise their policy of transferring civilinas to such stations and only armed personnel should be posted to these places. The applicant's counsel, therefore, prayed that his transfer to Suratgarh may be quashed.

4. While none has appeared from the Respondents' side today, it is seen from the written statement filed on behalf of respondents that the applicant had served in the snow bound area for a period of 2 years and 8 months (and not 3 years and 4 months as claimed by the applicant). The applicant is, therefore, entitled to the benefit of deferment of 6 months when his next turn comes for posting to a tenure station under para 9(b) of the transfer policy letter dated 25.10.84, referred to above. It has also been contended that service in MES Department involves a liability to serve anywhere in the country on All India basis and the applicant at the time of his entry into the Department had signed a bond to serve anywhere in the country. It was, therefore, averred that his posting to Suratgarh was not discriminatory. It was also denied that any concession was given to other employees like

Shri V.K. Gupta as alleged by the applicant in the matter of transfer to a tenure station. It was also stated that MES comprises of individuals both civilians and army personnel, the ratio between them being 67%; 33% (for subordinate establishment). Accordingly, every individual who becomes senior most according to length of stay at a station has to move to a tenure station/field area as per the seniority roster maintained at Chief Engineer's level. It was, therefore, argued that the proposed transfer of the applicant to Suratgarh was perfectly in order.

5. We have heard the learned counsel for the applicant and examined the papers very carefully. It is seen that the applicant had served in snow bound area in the office of A.G.E. Kargil, 865 Engineer Works Section from 4.12.74 to 1.8.77 i.e. for a period of 2 years and 8 months, as against the normal tenure of 2 years in a snow bound area station. He had thus overstayed in the tenure station by about 8 months and he was entitled under para 9(b) of the transfer policy letter dated 25.10.84 of the department to the benefit of deferment of 6 months when his turn comes for the next posting to a tenure station. In the present case since the applicant's transfer orders dated 13.3.86 to Suratgarh has not been given effect to so far for various reasons, including the stay given by this Court, the above benefit has in fact been given to him. We may refer to the judgement of the Supreme Court in the case of B. Varadha Rao V. State of Karnataka and others 1986(4) SCC 131, which says:-

"It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. (emphasis supplied).

That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature

and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

6. Relying upon the above judgement of the Supreme Court, the Full Bench of this Tribunal decided in the case of Kamlesh Trivedi vs. I.C.A.R. & Another A.T.R. 1988(2) C.A.T. 116 that, "the Govt. has the power and authority to transfer in the exigencies of administration," and the Tribunal will not normally interfere in the matter unless it is proved and established that the transfer was made due to, "malafide, or in colourable exercise of power." In the present case, there is no allegation that the transfer was made on malafide grounds or as a result of colourable exercise of power. The transfer in question was made in routine way as per the declared transfer policy of the department.

It is, however, seen that the applicant has submitted that there are no adequate medical facilities for civilian employees at Suratgarh, which is also one of the hottest places in the country. The applicant has enclosed a medical certificate from the Senior Physician, C.G.H.S., Dr. Ram Manohar Lohia Hospital, New Delhi, according to which he suffers from hypertension.

In the circumstances, we decline to quash the impugned order dated 13.3.86 transferring the applicant to Suratgarh but we direct the respondents to reconsider the matter of transfer and if feasible, may transfer the applicant to an alternative station where adequate medical facilities are available for civilian employees.

This application is disposed of accordingly with no order as to costs.


(V.S. BHIR)
ADMINISTRATIVE MEMBER


(AMITAV BANERJI)
CHAIRMAN