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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 912
~~T.A.X.No.~~

1986

DATE OF DECISION 8.5.1987

Shri V. Vivekananda Petitioner

Shri S. C. Luthra Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

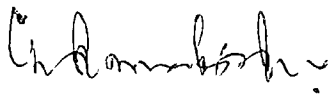
Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. Ch. RAMAKRISHNA RAO, 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


(Ch. RAMAKRISHNA RAO)


(S. P. MUKERJI)

8.5.87

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.912/86

DATE OF DECISION : 8.5.87

Shri V.Vivekananda . . . Applicant

Vs.

Union of India & Others . . Respondents

Shri S.C. Luthra . . Counsel for applicant

Shri M.L.Verma . . Counsel for respondents.

CORAM

The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

(Judgment delivered by Shri S.P.Mukerji,
Administrative Member)

ORDER

This is rather an unusual case where contrary to the general gravitation of officers to be posted in Delhi, (here) the applicant wants to be posted out of Delhi. But the respondent department is insisting upon his being retained in the Capital. The applicant is an Assistant Director in the Central Water Commission (CWC) posted in Delhi. He comes from Andhra Pradesh and he is retiring on 31.7.1989. His contention is that during the 32 years of his service under the department he never worked in his home State except for a spell of two years between 1983 and 1985 when he was sent on deputation to Hyderabad to work in the National

Water Development Agency. When in the middle of June 1985 he received orders of repatriation to the parent Department in New Delhi, he requested the Chairman, CWC to post him ~~in~~ any of the Circles in Andhra Pradesh with Head Quarters at Hyderabad. He referred to Clause 8 of the Transfer Policy in accordance with which an employee within three years of his retirement shall not ordinarily be transferred except to places of their choice. In spite ^{of} 13 representations, he was not posted in Andhra Pradesh. His grievance arises out of the fact that the CWC moved by his representations posted him in Hyderabad vide their order No.A-32014/1/86-Estt. V dated 19.6.86 (Annexure VIII to the application) but the Chief Engineer Southern Zone did not issue his posting order within Krishna-Cauvery Circle. In the meantime on 29.7.86 Orders ^{were} issued promoting him from the post of Extra Assistant Director (EAD) to the grade of Assistant Director (AD) in Delhi. ~~But~~ The applicant has alleged that the Chief Engineer of the Southern Zone belongs to Kerala and he is not allowing a Keralite to be transferred to Delhi and the applicant being a non-Keralite, he was not accommodated in Andhra Pradesh even after the CWC posted him there. The applicant has referred pertinently to the case of Smt. T.S.Yamuna Devi who was also on deputation with the NWDA was repatriated like him in August 1986 but being a Keralite she was posted under the CWC in Andhra Pradesh, even though her superannuation ^{was} ~~is~~ not due within ^{the} next three years. The applicant has also

referred to the case of one Shri Thomas Kutty who was transferred from Hyderabad to New Delhi after working in the Southern Zone for 20 years and yet was transferred back to the Southern Zone after working for a very short period in Delhi. The applicant's case is that his family commitment towards his unmarried daughters oblige him to seek transfer to Andhra Pradesh with Headquarters at Hyderabad.

2. The respondents have generally admitted the facts of the case and have conceded that even though the orders transferring the applicant to Hyderabad were issued on 19.6.1986, it could not be implemented for 'administrative reasons'. He had been sent on deputation to NWDA at Hyderabad on his own request for a period of two years and since he did not give his choice of posting in advance of his repatriation to the parent department, he could not be posted to Hyderabad. He was promoted as an Assistant Director on an ad hoc basis on 27.6.1985 and posted at the Headquarters in New Delhi. The respondents have conceded that Shri Thomas Kutty was promoted as an Assistant Director and posted to Delhi where he took over on 29.5.1986 from the Southern Zone, but was posted back to Nanded (Southern Zone) on 16.1.1987, on the ground of his own illness and because his wife was working as Professor at Nanded. No TA/D.A. was given to him.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The Central Water Commission is

a vast organisation having ramifications and field units spread all over the country. Hundreds of Engineers at various levels are working at various places. The ^{routine} ~~written~~ order of promotion and posting of EADs/Assistant Engineers/Assistant Directors (Annexure 8 to the application) covering 44 Engineers and copies endorsed to as many as 45 heads of offices/ departments is indicative of the gargantuan proportions of the Commission's setup. In such a setup, accommodating a junior level Engineer from one corner of a country to another part of the country would not, to our mind, generate administrative or organisational dislocations. Against this backgrounds, the Commission in their O.M. of 25th April, 1985 (Annexure 3 to the application) enunciated their Transfer Policy, Paras 6, 8 and 10 of which can usefully be quoted below.

"6. Employees transferred to stations away from their home States may be brought back, subject to exigencies of service and availability of vacancies after three years of posting at the stations outside the home State. In no case, the period of such a stay should exceed 5 years, unless voluntarily desired by the employee and also considered in the public interest. However, in case there are no vacancies to accommodate all such persons, a person having the longest stay outside his home State shall be given first preference."

"8. Employees due for retirement on superannuation within a period of 3 years, before their superannuation, shall not ordinarily be transferred, but requests for transfer to places of their choice, if made, would be considered sympathetically."

"10. Officers due for transfer, including officers returning from foreign postings, should give their preference for places of posting, well in time, and the same would be considered subject to exigencies of work and administrative requirements, along with requests of other officers in the grade, entered in the Request Register, maintained for the purpose."

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4. The case of the applicant falls ^{well} within the parameters of ^{each of} the aforesaid three paras on the following three grounds :

(a) While working under the CWC he had never been posted in his home State of Andhra Pradesh during 32 years of his service. Thus, in accordance with para 6 of the transfer policy he deserves to be posted ~~to~~ Andhra Pradesh;

(b) He is superannuating on 31.7.1989 and in accordance with para 8 of the transfer policy quoted above his request for transfer to his home State should have been considered sympathetically; and

(c) Having been in foreign service with NWDA for two years he could have claimed a posting of his choice in accordance with para 10 of the transfer policy.

5. It is perhaps on the aforesaid three solid grounds that the applicant was posted to Krishna-Cauvery Circle (in Hyderabad) of the CWC on 19.6.1986. Normally the Commission's posting order should have been implemented by the Chief Engineer, Southern Zone but for reasons not revealed to us that order remained ^{un}implemented. It was not withdrawn or cancelled. Thus, the applicant has a right to get his posting ~~to~~ Hyderabad in accordance with Commission's own orders. The fact that the applicant was promoted as Assistant Director after his posting to Hyderabad should not make any difference because his promotion as Assistant Director was not on ^a regular basis but on ^{an} ad-hoc basis.

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An ad hoc promotion is generally made at the place of posting of the officer. Thus, if the applicant had been allowed to take over in Hyderabad as an E.A.D. immediately after 19.6.1986 when the order of transfer to Hyderabad was passed, he could have been accommodated even as Assistant Director on promotion on 29.7.1986 at Hyderabad itself. We were told during the course of arguments that the duties of the post of E.A.D. and A.D. are more or less inter-changeable and in any case, we cannot visualize any insuperable difficulty for the respondents in accommodating the applicant as EAD or as AD in Hyderabad, if the Chief Engineer Southern Zone had complied with the transfer order issued by the Commission.

6. We do not wish to go into the details of the case of Smt. Jamuna Devi or Shri Thomas Kutty cited by the applicant to substantiate his point that the officers of his grade and similarly circumstanced have been accommodated in accordance with their requests. It is not necessary for us to analyse these cases because the CWC themselves had issued orders transferring the applicant to Hyderabad. The transfer order could not materialise because of the intransigent attitude adopted by the Chief Engineer Southern Zone. We are bemused by the fact that the orders of transfer and posting issued by the CWC in respect of the applicant and several other officers remain unimplemented and on paper only. In case of Shri Thomas Kutty the transfer order from the South to Delhi having been implemented was retracted/

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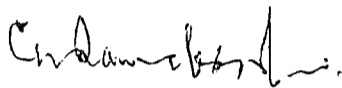
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and he was posted back to Nanded.
few months. Such a situation is likely to give
cause for legitimate grievance in the minds of
officers who are situated like the applicant in
this case.

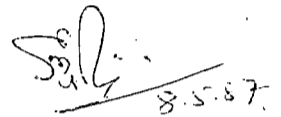
7. We are fully ^{conscious} aware of the fact that the administrative authority has the fullest right to transfer or deploy their officers to places where their services are required and the Tribunal would be loath to intervene unless elements of arbitrariness, malafide or discrimination are (clearly) discernible. In the instant case the applicant has clearly established a claim to be posted to his home State founded on not one but three specific and independent criteria prescribed in the Transfer Policy. Added to that, the Commission itself had conceded his claim by issuing the transfer order in June 1986 itself. In the circumstances we would not be encroaching upon the administrative arena, if we allow the claim of the applicant based on the orders of transfer issued by the respondents themselves.

8. In the result, we allow the application and direct that the applicant in accordance with the transfer policy and in furtherance of the transfer order issued by the Commission on 19.6.1986, should be posted as Assistant Director to Krishna-Cauvery Circle in Hyderabad or to any other Circle with Head Quarters at Hyderabad. Since there is no dearth

of officers who would like to be posted in Delhi, we visualize no difficulty for the respondents to find a suitable berth for the applicant in Hyderabad and getting his post in Delhi filled up appropriately. The orders of transfer and posting should be issued and implemented within a period of two months from the date of communication of this order. There will be no order as to costs.



(Ch. RAMAKRISHNA RAO)
JUDICIAL MEMBER



(S. P. MUKERJI)
ADMINISTRATIVE MEMBER