

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1164 of 1986
T.A. No.

DATE OF DECISION 23.10.1989

Shri Prakash Chand Sharma Applicant (s)

Shri G.N. Oberoi Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri P.P. Khurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

An application was filed by the applicant, Shri Prakash Chand Sharma, under Section 19 of the Administrative Tribunals Act, 1985 against his orders of transfer to Kasauli on the ground that it contravened the declared transfer policy by his Department. This application was rejected by this Tribunal on 22.12.1986, but on a review application filed by the applicant, the same was allowed and the original application was admitted on 20.3.87.

2. The applicant who is working as a U.D.C. in the Military Engineering Service has challenged his transfer from a tenure station to Kasauli on the ground that it contravened the declared Transfer Policy laid down by the Department. The applicant had given his choice for three stations, namely, Ambala, Kasauli and Nahan in the order in which these stations are mentioned. While the applicant was still posted at the tenure station, he was transferred to Chandigarh which posting he declined and opted for a longer stay at the tenure station. On his transfer to Kasauli, he agitated that he had not been accommodated at Ambala which was the first station of his choice. It has also been stated that after the applicant's undertaking to allow him to continue at the tenure station, two

other persons who were posted at Lagar Jattan and Suratgarh were accommodated at Ambala. While rejecting the original application, the Bench had held that since the applicant had been accommodated in one of the three stations whose choice was given by him, the transfer policy had not been contravened and that there was no discrimination in regard to two other persons who were earlier accommodated at Ambala.

3. In the review application, the applicant had contended that there is patent omission of appreciation of facts, declared Transfer Policy, rules, laws and principles of Natural Justice, equity and good conscious that if the order is not reviewed, there would be substantial miscarriage of justice. The applicant contended that the following additional new facts which were vital for the determination of the issue involved either could not be brought out in their proper perspective because of non-availability of service records or were caused to be omitted for reasons beyond comprehension causing substantial miscarriage of justice:

The Transfer Policy clearly, precisely and specifically lays down inter alia in clause 7 that an individual serving in a tenure station will be allowed to opt for return to the original station from where he was posted or to another choice station and that personnel serving in tenure station may opt for another tenure, if they so desired.

The applicant before proceeding to tenure station was posted at Ambala. Accordingly, on completion of his tenure he was entitled, according to the declared transfer policy, posting back at his original place of posting i.e. Ambala. By way of abundant precaution, the applicant gave names of three choice stations, but Ambala was the first right. An undertaking was given by the applicant and accepted by the competent authority to continue at the tenure station until a vacancy was available at Ambala and the applicant was accommodated at that station only. The competent authority, however, wrongly decided to post the applicant at the second choice station i.e. Kasauli, without considering the right of the applicant to be posted back to the original station i.e. Ambala. While the request of the applicant for being posted at Ambala was still pending, two persons junior to the applicant were posted at Ambala in preference to the applicant which is discriminatory being violative of Articles 14 and 16 of the Constitution.

4. The respondents in their reply have stated that the applicant has not come to the court with clean hands. The applicant had given three choice stations in descending priorities as Ambala/Kasauli/Nahan. The competent authority issued posting orders to one of his choice stations keeping in view the vacancy position. The respondents are not bound by 'desires' of each employee that he must be posted to the place of his desire. The respondents have to see the overall administrative necessity in posting various persons to different places. As each employee is required to give his three choice stations in the matter of repatriation and as the applicant has been posted to one of his choice stations, namely, Kasauli, there could be no question of departure from the existing policy. They have further stated that an individual can only be considered for posting after completing a period of three years which excludes the absence of leave etc. The applicant availed of 161 days leave during his stay at the tenure station which is subject to deduction for the purpose of seeking the period of service to be counted. The applicant availed 77 days of excess leave. Therefore, he automatically becomes junior to Shri R.S. Kalyan and Shri O.P. Dhawan, UDCs, and his claim under Articles 14 and 16 of the Constitution becomes invalid. Moreover, his piecemeal attendance has affected smooth running of office.

5. I have gone through the pleadings and heard the arguments of the counsel on both sides. The case of the applicant is that he has been transferred to Kasauli, his second choice station, although he had given his first preference for posting to Ambala and delayed his stay at the tenure station to get posted at Ambala whereas two of his juniors

have been

brought to Ambala. The 'declared Transfer Policy' provides that 'an individual serving in a tenure station will be allowed to opt for return to the original station from where he was posted or to another choice station. Personnel serving in tenure station may opt for another tenure if they so desire. Every effort would be made to accommodate a person in one of the three choice stations (to be given by an individual before completion of tenure while submitting his repatriation form) after he has completed tenure at ^{the} tenure station. In case of non-availability of a vacancy in any of the three choice stations, CE Command may move out a volunteer. In the absence of a volunteer the individual may opt for posting to another station near to his choice station or he may opt to continue to stay in the tenure station till a vacancy becomes available in one of his choice stations." The applicant has been accommodated in one of his three choice stations which is according to the declared Transfer Policy and there is no contrvention of the Transfer Policy. The Supreme Court in the case of Union of India & Others Vs. H.N. Kirtania, Judgments Today 1989 (3) SC 132, has held that Central Government employees working on transferable posts are liable to be transferred from one place to the other in the country and such transfers should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal. The Supreme Court has held that such an officer has no legal right to insist for his posting at any particular place of his choice. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on ground of mala fides. In this case there is no mala fide as the competent authority has transferred the applicant to one of the stations of his choice. In another case of Gujarat Electricity Board and another Vs. Atma Ram Sungomal Poshani - Judgments Today 1989 (3) SC 20 - the Supreme Court has held that transfer is an incident of service and the transferee can, at best, make a representation against the transfer order for consideration by the appropriate authorities but he cannot refuse to go on transfer. The applicant made a representation to the respondents which was

considered and rejected. While transfer policies are for general guidance, they are not statutory in nature and do not provide any legal basis to a Government employee to challenge the transfer which may not be in accordance with the transfer policy. Even otherwise, no Central Government employee has a right to stay at a particular place of his choice. In this particular case, however, the applicant has already been accommodated to one of the places of his choice and, therefore, no case is made out for the court to interfere in such a transfer order. In the circumstances, the application is rejected. There will be no orders as to cost.

B.C. Mathur
(B.C. Mathur)
Vice-Chairman