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Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. O.A. 1.A. a1251 of 1987 Date of decision

30.5.88

Dr. Gajendra Kumar

....

Applicant

Vs.

Union of India

....

Respondents

PRESENT

Shri B.S. Mainee

...

Advocate for the applicant.

Shri S.N. Sikka

...

Advocate for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act 1985 against impugned orders transferring the applicant from New Delhi to Saharanpur.

2. The brief facts of the case are that the applicant was posted as Asstt. Divisional Medical Officer in Railway Dispensary, Punjabi Bagh, New Delhi, under the Chief Medical Officer, Northern Railway. The applicant was appointed as Asstt. Divisional Medical Officer through the UPSC and had served at Jodhpur, Moradabad and Rewari from 30.6.1981 to 31.5.1983 when he was transferred to Delhi. He belongs to a Scheduled Caste and was appointed against a reserved post. Consequent upon the formation of a new Division, known as Ambala Division, some Asstt. Divisional Medical Officers and other staff had to be posted to Ambala Division. The respondents took a decision to transfer the juniormost staff to Ambala Division. Accordingly, all other categories of junior staff were transferred to Ambala Division, but orders transferring them were withdrawn as it created a lot of difficulties for some staff in the matter of education of their children etc. The applicant and the other Asstt. Divisional Medical Officer, Dr. Rajendra Prasad, were transferred from Delhi to Ambala Division, but the orders in respect of Dr. Rajendra Prasad were withdrawn. The case of the applicant is that the Railway Board, keeping in view the diffi-

culties peculiar to the staff belonging to the Scheduled Castes, had issued orders on 14.1.1975 (Annexure III) laying down that the Scheduled Castes and Scheduled Tribes employees should be transferred very rarely and for very strong reasons only and should be confined to their native districts. The respondents have laid down guidelines to regulate transfers under which juniormost persons have to be transferred first. The applicant is neither the seniormost nor the juniormost. The applicant gives instances of some doctors junior to him who have been retained in Delhi. The applicant has claimed that he is having strained relations with his wife, Dr. Shakuntla, who had left his house with all the belongings. She is staying with her parents in Ghaziabad and has filed a case against the applicant in a court in Ghaziabad for restitution of conjugal rights. His father-in-law who is an influential man has threatened the applicant that he would get him transferred out of Delhi so that he cannot live with his parents. His father-in-law has been sending false complaints against the applicant and the transfer from Delhi to Ambala Division is done by the respondents under pressure from his father-in-law against the guidelines and administrative instructions issued by the Railways. The impugned orders are punitive in nature and against the principles of natural justice. It has also been stated that according to the instructions, Scheduled Castes persons should be transferred to such places where quarters are provided. While quarters were given to him at Saharanpur, he has now been transferred to Ambala where there are no quarters.

3. In their reply, the respondents have said that Class I officers of Indian Railways can be transferred anywhere in the country and that there is no blanket ban on the transfer of Scheduled Castes/Tribes employees. Transfers in exigencies of service are always allowed. The applicant has only been transferred to Ambala which is not far away from Delhi. A new Division at Ambala is being set up and a large number of staff from Delhi Division are to be moved to Ambala Division. To cater to the medical needs

of the members of the staff, some doctors were asked to go to Ambala in the exigencies of service. The applicant is a general duty doctor and has been working at Delhi since 1.6.1983. The other doctors mentioned by the applicant in his application, though junior to him, have worked in Delhi for a shorter period than the applicant. Some of them have been posted at Delhi only in 1986 and 1987. The respondents further state that the applicant has been transferred to Ambala Division not on administrative ground or under pressure from anyone.

4. The learned advocate for the applicant argued that the respondents have not indicated any reasons much less strong reasons for transferring the applicant from Delhi and he has been picked up from the middle of the seniority list in contravention of the Railway Board's orders and guidelines. It has been stated that soon after his transfer at Saharanpur, where he joined and where he was allotted Government accommodation, he has again been transferred to Ambala where no Government accommodation is available. This is only to harass the applicant. There^{are} a number of general duty doctors having longer stay than the applicant at Delhi, but they have not been transferred. There are also a number of juniors to the applicant who should have been transferred in accordance with the policy laid down by the respondents. Besides, no consideration has been given to the fact that the applicant is the only son of his father who is a heart-patient. His mother is also a heart-patient. This Tribunal held in a similar case - **A.T.R. 1987(1) C.A.T. 393 - Charanjit Lal Vs. U.O.I.** - that policy laying down transfers cannot be discriminatory and that action must be in conformity with the policy. According to the decision of the General Manager, Northern Railways, only juniormost staff should be transferred and no unwilling person was to be transferred from Delhi to Ambala. Again, no Scheduled Caste official should normally be transferred and that only to places where houses are available. The present transfer is not in the exigencies of service but a colour-

ful exercise of powers. Some doctors who belong to Punjab/Haryana may be willing to go to Ambala, but no effort was made by the respondents to find out whether someone else was interested in going to Ambala. He emphasised that administrative instructions not inconsistent with the statutory rules are statutory in nature and as such the impugned order of transfer should be quashed.

5. Shri Sikka, learned counsel for the respondents, reiterated the fact that the applicant is liable to be transferred anywhere under the Indian Railways and the Jodhpur Bench of the Tribunal has confirmed this in **1(1988) A.T.L.T.(CAT)(SN) 32**. The Tribunal held that an officer is liable to be transferred to any part of the country at any time at short notice on administrative grounds. Shri Sikka said that the general guidelines were in respect of Class III and Class IV staff. He denied that the transfer was done due to pressure of the father-in-law as Railways are not interested in the personal or domestic affairs of their employees. He also cited the case of the Orissa State Administrative Tribunal **1(1987) A.T.L.T. 307** - where it was held that the transfers are an integral part of the service conditions and normally the courts should not interfere in these matters.

6. Shri Mainee quoted from **SLR 1975 (2) page 115** where the Supreme Court has held that Government can frame administrative rules to supplement the rules framed under Article 309 of the Constitution and such administrative rules so long as they are not inconsistent with the rules framed under Article 309 would govern the conditions of service. In another case - **Union of India Vs. K.P. Joseph AIR 1973 SC 303** - a plea was taken by the Union of India that an order being an administrative direction conferred no justifiable right upon the civil servant, but such a plea was overruled and the Supreme Court observed, "to say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights, that we have imported the principles of natural justice

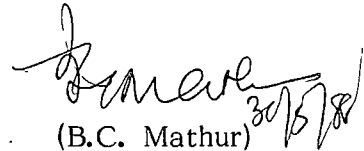
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of audi alteram partem into this area."

7. There can be no doubt that administrative rules and guidelines should normally be valid, at the same time these are not mandatory unless the rules of natural justice warrant the same. It may be true that the applicant may not have had the longest stay in Delhi or may not be the juniormost person in his cadre at Delhi - he has cited the cases of five doctors junior to him who were posted to Delhi - the respondents, therefore, furnished the dates of their postings indicating that they had joined at Delhi much later than the applicant. There is no absolute ban that Scheduled Castes Officers in Class I will not be transferred from one place to another and when a new Division is carved out of the Delhi Division, it is natural that some persons would have to be transferred to the new Division. The applicant was transferred from Delhi to Saharanpur which is under the Ambala Division and the applicant had actually joined there. In his representation dated 21.8.87 addressed to the Chief Medical Officer, Northern Railway, the applicant had prayed for cancellation of his anticipated transfer order from New Delhi to Saharanpur on grounds of pressure from his father-in-law. He had also mentioned that he would have to attend court very frequently at Ghaziabad and, therefore, it would be inconvenient for him to move out of Delhi. The applicant has, however, not produced any evidence to show that his father-in-law actually pressurised the respondents to transfer him. He has actually been working at Delhi since 1983 and it cannot be said that only the seniormost or the juniormost person has to move from one place to another. The question of juniormost person going would arise in cases where surplus staff occur. Here it is a case of a Class I officer being transferred from one Division to another and the question of being surplus would not arise. Besides, Saharanpur or Ambala are not far away from Delhi for the purpose of attending court at Ghaziabad. In any case, the applicant accepted the position and joined at Saharanpur. I would not consider the transfer order of the applicant as malafide and unfair. However, he being a Scheduled Caste and having ailing parents, respondents may consider keeping him at a place.

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keeping him at a place where a Government quarter is available to him. With the above observations, the application is dismissed.


(B.C. Mathur)
Vice-Chairman