

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1334 1987
T.A. No.

DATE OF DECISION 2.11.1987

Smt. A.K.Khanna

Applicant
Petitioner

Shri R.L.Sethi,

Applicant
Advocate for the Petitioner(s)

Versus

Union of India & others

Respondents

Shri M.L.Verma,

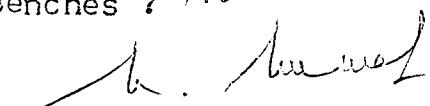
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member

The Hon'ble Mr.

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
4. Whether to be circulated to all the Benches? No


(Kaushal Kumar)
Member
2.11.1987

Central Administrative Tribunal
Principal Bench: Delhi

Regn.No.OA 1334/87

Date of decision: 2.11.87

Smt. A. K. Khanna Applicant

Vs.

Union of India & others Respondents

Coram: Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Shri R.L.Sethi, Counsel

For the Respondents Shri M.L.Verma, Counsel

(Judgement delivered by the Hon'ble Member Mr.Kaushal Kumar)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant, who is working as a Senior Computer in the Central Water Commission, has called in question the order dated 29.6.1987 transferring her from the Ministry of Water Resources, New Delhi to the Middle Ganga Circle, Varanasi.

2. The transfer has been challenged on the ground that it violates the Transfer Policy issued by the Respondents inasmuch as the applicant does not have the longest stay at Delhi. It has further been questioned on the ground that the post along with the work in so far as the applicant is concerned, has not been transferred to Varanasi. In the application it has also been stated that the applicant is facing certain domestic troubles as such deserves a sympathetic consideration on compassionate grounds as well.

3. The 'Transfer Policy for CWC employees' which has been filed as Annexure R 3 to the Rejoinder was circulated vide Office Memorandum No.A-49011/13(A)/85-Estt.IV dated 27.5.87 issued by the Government of India, Central Water Commission. Para 2 thereof states as under:-

" Subject to exigencies of public service and administrative requirements, transfers from one station to another are to be kept to the minimum extent possible".

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Para 3 of the said Transfer Policy enjoins that Group C&D personnel should not normally be transferred from one station to another except to meet certain inevitable contingencies which have been spelled out in the para.

Para 4 of the said Transfer Policy further provides that:-

" When transfers from one station to another are inescapable for any of the aforesaid reasons, persons to be transferred should be in the following order:-

- (a) Those who volunteer for transfer.
- (b) Persons with longest continuous stay at the place of their current posting should generally be transferred to fill a vacancy elsewhere. For this purpose persons available for that post from the list of promotees should also be considered, on the same basis
(emphasis supplied)
- (c) The period spent on deputation at that place should also be considered for purposes of counting the longest stay.
- (d) The period spent on deputation outside the country will be treated as the period spent at Delhi for counting the period of stay at Delhi.
- (e) For counting the stay at Delhi/Faridabad, the period will be counted after the return to Delhi/Faridabad from the date of the last posting outside Delhi/Faridabad.
- (f) Posting to Faridabad before 1972 when HRA/CCA and other facilities were not available will not be counted as Service at Delhi for the purpose of transfer/posting."

4. It has been stated in the rejoinder that:-

".... if the stay of the applicant in Delhi has been taken w.e.f. 10.8.1961, from the date the applicant joined the Department of Ministry of Irrigation as a L.D.C., then why the name of Shri Phool Chand, who is in Delhi since 7.8.1961 has been omitted. He is working as Senior Computer and his s.no. is 67 as per the Disposition list of posts of Junior Computers dated 1.5.1984 ".

5. The learned counsel for the Respondents concedes at the time of the arguments that Shri Phool Chand has been posted at Delhi since 7.8.1961 and he has in fact a longer stay than the applicant. He, however, contends

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that Shri Phool Chand has been working as a Senior Computer on an ad hoc basis since 26.3.1982. If a person has been working as a Senior Computer for more than 5 years on an ad hoc basis that is no reason that he is immune from transfer. As such the transfer of the applicant is definitely in violation of the Transfer Policy which lays down that a person who has the longest continuous stay at the place of current posting should generally be transferred to fill a vacancy elsewhere.

6. Another ground taken in the counter to justify the transfer is that:-

" the transfer of the petitioner Smt.A.K.Khanna, Senior Computer from Delhi to Varanasi was necessitated consequent upon the transfer of work alongwith posts relating to checking of data and preparation of Water Year Book from R.D.Directorate to other field offices. As the work was to be done by the field offices without dislocation, the staff which had become surplus over and above the sanctioned strength at Delhi, had to be transferred to the field offices outside Delhi."

This ground taken in the counter is belied by Annexure R-1 filed along with the rejoinder. Office Order dated 15.5.87 regarding transfer of work relating to checking of the data/ preparation of water year book from R.D.Dte. to field circles is reproduced below:-

" Consequent upon the transfer of work relating to checking of the data and preparation of water year book from R.D.Dte, ^{and} to field circles, following transfers along with posts are hereby ordered in public interest with immediate effect:-

Sl.No.	Name of staff with designation	Office from where transferred	Office to which transferred	Re-mark
1.	Sh.R.M.Nigam Sr.Computer	R.D.Dte, New Delhi	Upper Ganga Circle, New Delhi	
2.	Sh.A.K.Pal Sr.Computer	-do-	Lower Ganga Circle, Maithon	
3.	Sh.R.L.Kalra, Sr.Computer	-do-	Upper Ganga Circle, New Delhi	
4.	Sh.B.S.Saini Sr.Computer	-do-	Middle Ganga Circle, Varanasi	

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5. Sh.J.P.Dhawan, Sr.Comptor	R.D.Dte, New Delhi	Lower Ganga Circle Maithon
6. Sh.R.C.Katnoria, Jr.Comptor	- do -	U.G.Circle, New Delhi
7. Sh.Gavender Pal Singh, -do- Jr.Comptor		L.G.Circle, Maithon

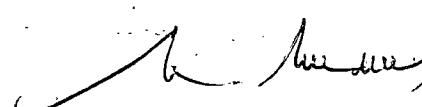
This issues with the approval of Member(RM)".

7. From the above, it is observed that neither the name of the applicant nor the post held by her finds a place in the said Office Order. Obviously, the applicant's transfer cannot be justified on the ground that her post along with work has been transferred to Varanasi.

8. The learned counsel for the respondents argued that no allegations of mala fide have been made in the application. A transfer can be held to be bad even where there are no allegations of mala fide particularly when it contravenes the Transfer Policy issued by the respondents themselves. It has been held by a Bench of this Tribunal to which I was a party in K.K.Jindal Vs. General Manager, Northern Railway & others (ATR 1986 CAT 304) that:-

" It cannot be gainsaid that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard Though the State is not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to rules if any framed and policy, if any enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a constitutional requirement which every order must satisfy."

9. Thus it is clear that where no Transfer Policy is laid down, each case of transfer has to be judged on its own merits but where a Transfer Policy has been formulated it has to be ensured that the same is scrupulously followed and there should be strong grounds and reasons for deviating therefrom.



10. In the present case, the Respondents have not been able to explain as to why the Transfer Policy issued by them has not been adhered to while issuing the order of transfer of the applicant. No exigency of service or compulsion of administrative requirement has been pointed out to justify the transfer in contravention of the Transfer Policy.

11. The learned counsel for the Respondents has relied on the ruling of the Supreme Court in B.Varadha Rao Vs. State of Karnataka & others (A.T.R. 1987(1) S.C.396) wherein the Supreme Court held:-

".... 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."

12. I am afraid the above ruling does not advance the case of the Respondents. It is not the case of the applicant that she is not liable to be transferred. No immunity from transfer as such has been claimed. The point at issue is why a particular Transfer Policy enunciated by the Respondents has been contravened. No satisfactory answer has been forthcoming.

13. The learned counsel for the Respondents also referred to the judgement of the Ahmedabad Bench of the Central Administrative Tribunal in D.H.Dave Vs. Union of India & others (A.T.R 1987(1) C.A.T. 47) wherein it was held that:-

".... in matters of transfer unless there are strong grounds for intervening due to malafide, or abuse of powers Courts should, be reluctant to intervene. While Government policy is to keep husband and wife together when they are Government employees, it cannot be pleaded that it must always be so disregarding administrative exigencies or that in this case they must be together necessarily in Ahmedabad."

14. In this case there are no allegations of mala fide and it is also not considered necessary to examine the merit of the ground that it violates the guidelines issued by the Government to ensure posting of husband and wife at the same



station as far as possible. The ground that the criterion of longest stay in Delhi is not satisfied by the applicant and also the ground that the work along with the post of the applicant has not been transferred to Varanasi are sufficient and adequate grounds for striking down the transfer.

15. The learned counsel for the Respondents also referred to the judgement of the Bhubaneshwar Bench of this Tribunal in Gokul Chandra Nag Vs. Stage of Orissa & others (1 (1987) ATLT 307) wherein it was held that:-

"... It is well settled that the Government, as employer, has unfettered right to transfer Government servants and any instructions issued by Government for regulating the transfer of Government servants are only advisory and not directory or mandatory. In this view of the matter the Tribunal will be loath to interfere with transfer matters unless they are actuated by malafides or suffers from arbitrariness."

16. While there can be no quarrel with the above proposition, in the present case the action of the Respondents in transferring the applicant when a person with longer stay was available at Delhi suffers from the vice of arbitrariness and is obviously discriminatory.

17. In view of the above discussion, the application is allowed and the order dated 29.6.87 in so far as it relates to transfer of the applicant, Mrs. A.K.Khanna, from New Delhi to Varanasi is hereby quashed.

18. In the circumstances, there shall be no order as to costs.



(Kaushal Kumar)
Member
2.11.1987