

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1448 of 1987 198
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DATE OF DECISION 16.9.88

Lakshmi Narain Grover Petitioner

Mr RK Kamal Advocate for the Petitioner(s)

Versus

Union of India through the Engineer Respondent
In Chief, Army Hqs. New Delhi &
2 others
Mr PP Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial 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? *ND*
4. Whether it needs to be circulated to other Benches of the Tribunal? *ND*

Ch. R. Rao
16.9.88

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Sixteenth day of September, one thousand
nine hundred and eighty eight.

PRESENT

Hon'ble Ch. Ramakrishna Rao, Judicial Member.

ORIGINAL APPLICATION NO. 1448 of 1987

Lakshmi Narain Grover

: Applicant

-Vs-

1 Union of India through the
Engineer-in-Chief, Army Hqs.
New Delhi-110001.

2 The Chief Engineer
Western Command Hq.
Chandi Mandir- 134107

3 C.W.E (Utilities)
Delhi Cantt.

} Respondents
}
}

Mr RK Kamal

: Counsel of Applicant

Mr PP Khurana

: Counsel for Respondents

ORDER

The applicant was working as Lower Division Clerk (LDC) in the Office of the Chief Engineer, Western Command 1982 when (CW, WC Hqs) since 1963 until he was promoted as Upper Division Clerk (UDC) and posted to Bhatinda Zone. As it was difficult for the applicant to move out of Delhi, he requested CE, WC Hqs. to cancel the order of promotion subject to his foregoing the promotion for one year, on loss of seniority which was accepted by the latter. The applicant, however, was not promoted as UDC after the expiry of one year though several persons junior to him were being promoted. As a result of the representations made by the applicant he was promoted as UDC and posted

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to CWE (Utilities) Delhi Cantt. It was stated in the Movement Order that the posting on promotion was permanent. Three months thereafter, the applicant was sought to be moved out of Delhi Zone to Chandi Mandir Zone by order dated 8.7.87. The applicant represented to C.E, Delhi Zone against the order of transfer, but in vain. Aggrieved, the applicant has filed this application.

2 During the pendency of the application this Tribunal directed the respondents to maintain the status quo. Despite this direction, an order was passed by the CE, WC.Hq. on 10.3.88 whereby the applicant was transferred from Delhi Zone to Ganganagar in Bhatinda Zone. This Tribunal granted leave to the applicant to amend the application on 18.7.88 and accordingly the applicant has filed a amended application seeking cancellation of the second order of transfer.

3 Shri RK Kamal, learned counsel for the applicant strenuously contents that the order of transfer passed initially on 8.7.87 (Annexure-A1) and the order dated 8.10.87 (Annexure-A2) rejecting the representation are illegal and arbitrary since they offend the principles governing transfer enunciated in the letter dated 13.3.87 (Annexure-A-6) addressed by the Army Headquarters to all Chief

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Engineers. Shri Kamal has developed his argument thus:

The ban on the promotion of his client as UDC expired on 15.2.84, but no steps were taken to post him on

promotion until 20.5.87. His client had suffered by

foregoing promotion from 1982 until 28.2.87 when the

order promoting him as UDC and posting him at CE(AF)

North Palam, Delhi was issued. The same was implemented

on 20.5.87 by issuing the Movement Order. This posting

was on a permanent basis and, within three months

thereafter, it was not open to the authorities to

transfer his client from the Office of CE(AF) North Palam,

Delhi. According to para 3 of Annexure-A6 which contain

the instructions governing transfers, when a repatriate

from hard/tenure station is to be accommodated 'longest

stayee' should be moved out to a nearer station/choice

station as far as possible. There are many persons

with longer stay in Delhi than the applicant and as

such the orders of transfer passed on 8.7.87 and 10.3.88

are discriminatory.

4 Shri PP Khurana, learned counsel for the respondents

submits that the seniority list of LDCs, on the basis of

which promotions to the post of UDCs is effected, was

circulated, but the applicant did not point out the

omission of his name in the list. When he made a

representation his name was duly considered for promotion

and orders passed granting him the promotion. Regarding

the subsequent posting from Delhi to Chandi Mandir

Shri Khurana submits that one Jaidev, UDC on repatriation

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from a tenure station had to be accommodated and the applicant being the senior most UDC among the three choice stations given by Jaidev he had to be transferred. This is in conformity with the principles laid down in Annexure-A6. The orders of transfer are, therefore, valid.

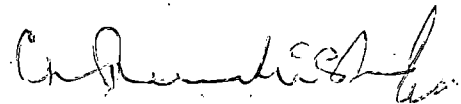
5 In my view the respondents were at fault in delaying the promotion of the applicant who should have been promoted in 1983 soon after the expiry of one year from the date he refused promotion as UDC in 1982, but it was delayed till 1987 because of the omission to include his name in the list of LDCs, on the basis of which promotion to the post of UDCs was to be effected. Consequently, LDCs junior to him were promoted during 1983 and 1987. On account of this, the date of actual promotion in 1987 should not be taken as the date for reckoning 'longest stay' but the date in 1983 when the applicant became eligible for promotion. This view is supported by the decision in Charanjit Lal Vs Union of India - ATR 1987(1)CAT- 393 on which reliance is placed by Shri Kamal. So reckoned, the applicant will not be the 'longest stayee'. Consequently, the order of transfer dated 8.7.87 (Annexure A-1) as also the order of transfer dated 10.3.88 (Annexure-A to the Amended Application) are legally unsustainable and are quashed. The applicant is not liable for transfer until the expiry of the period indicated above.

6 Before concluding, I am constrained to animadvert the manner in which the respondents passed the order of transfer dated 10.3.88 when the earlier order of transfer dated 8.7.87 was under challenge in the application and



this Tribunal directed the respondents on 11.4.88 to maintain the status-quo until further orders. Without obtaining the orders of this Tribunal, the respondents chose to issue order dated 10.3.88 and thereby flout the direction given by this Tribunal. The applicant was content with amending the application and did not file a contempt petition against the respondents, in his anxiety to obtain expeditious disposal of the main application. The attitude displayed by the respondents is, to say the least, Unhealthy and has to be deprecated. I am not pursuing this aspect in view of the explanation given by Shri Khurana that the order was passed by the respondents unaware of the implications of an order directing maintenance of status-quo and his assurance that there will be no repetition of such orders in violation of directive given by this Tribunal.

7 In the result, the application is allowed without costs.



(Ch. Ramakrishna Rao)
Judicial Member
16.9.88