

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA 1798 of 1987 Date of decision 4.5.1988

Shri NEM KUMAR Applicant

Vs.

Chairman, Respondents
Central Water Commission

PRESENT

Shri N.L. Duggal ... Advocate for the applicant.

Mrs. Raj Kumari Chopra ... Advocate for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the order of transfer No. 25/1/87-ESTT XI. dated 16.11.1987 passed by the Central Water Commission followed by consequential orders regarding transfer of the applicant from Delhi to Baranwada Silt Site under Lower Chambal Sub-Division, Central Water Commission, Jaipur.

The brief facts of the case as stated in the application are that the applicant, Shri Nem Kumar, was appointed as Research Assistant in the Ganga Basin Water Resources Organisation (now renamed River Data Directorate) of the Central Water Commission deputed by Government for on 24.2.1973. He is a double Post Graduate and had been computer training and has been engaged on Computerisation of Hydrological Data of C.W.C. In December, 1986, he was transferred to Kishtwar under Chenab Investigation Circle Jammu on the basis of longest stay at one particular station to accommodate another officer at Delhi on compassionate grounds. The wife of the applicant is employed as a Trained Graduate Teacher in the Central School in Delhi. While the applicant and his wife requested for a change in posting, the post of Research Assistant in the Chenab Investigation Circle was abolished and in November, 1987, he was posted

to Baranwada Silt Site under Lower Chambal Sub-Division in the District of Swai Madhopur in Rajasthan. The applicant states that his transfer order is in violation of the transfer policy of the C.W.C. as the applicant being a Group 'C' officer is not normally liable to transfer under the transfer policy of the Commission, details of which are given in A-III to the application. The transfer policy lays down that officers deputed for training in specialised subjects should be posted to places where the experience/knowledge acquired during the training could be utilised best and that transfers as far as possible should be ordered once a year in the months of March/April since that cause the least disruption in the educational schedule of the children. Efforts are also to be made to accommodate the officers at or near the place of posting of the spouse. According to the applicant, he has been transferred to accommodate another officer on compassionate grounds. Although he has been ordered to move out on the basis of his longest stay in Delhi, but he feels that both in the matter of compassion and stay, he has been discriminated against. He is not being given a station where his wife could join him though vacancies are available at stations such as Lucknow, Bhopal and Hyderabad. Vacancies are also likely to be available at Agra, Jaipur and Varanasi where there are officers of his category who have been at those stations for 10 to 15 years and on similar considerations as applied in the case of the applicant, they should also be moved to other stations.

3. The respondents in their reply have stated that the application was not maintainable as the Chairman, Central Water Commission, who had no legal entity, could not be sued in the Tribunal and the applicant had failed to implead the Union of India as a party. The applicant has come to the Tribunal without exhausting the departmental remedies available to him. It has been stated that the applicant has been transferred on the basis of his longest stay in Delhi and in public interest and as such the courts should not interfere in such transfers as the Department is the best judge as to how and where to place its manpower. The Central Water Commission is the principal agency in the country which conducts hydrometric surveys in various river basins. It has 3 field Chief Engineers and 9 Circles and maintains a network of 720 hydrological

stations in all river basins of the country. Research Assistants are appointed to analyse the sediments at the field laboratories. The applicant was posted to Baranwada Sedimentation Site where a vacancy of a Research Assistant is existing. As the applicant has been in Delhi since 1973, being longest in service at Delhi, he was moved out. It was also to accommodate the Research Assistant at Jammu whose request was pending in the Commission since 1980 and the transfer is in conformity with the guidelines issued by the C.W.C. It is claimed by the respondents that the transfer of the applicant is in public interest, in the exigencies of service and for administrative requirements. The transfer has become essential for filling up the vacancy at Baranwada Silt Site and no discrimination has been meted out to the applicant.

4. As far as the preliminary objection that the Chairman, Water Commission, has no legal entity, it was argued by the counsel for the applicant that since the order of transfer has been passed by him, he has rightly been cited as the respondents. The applicant, however, moved an application for impleading the Union of India through Secretary, Water Resources, but it was agreed that this was not necessary.

5. The point argued by the learned counsel for the applicant was that the transfer of the applicant was made to accommodate somebody in Jammu on compassionate grounds and even though the application for transfer on compassionate grounds was pending before the respondents since 1980, no efforts were made to find out if anyone else was interested in moving out of Delhi during this period. The applicant himself was willing to go to some place where his wife could also be posted, but he was posted to Kishtwar in public interest without making any efforts whether there was any work there. Within a short period, the post in Kishtwar was found surplus and abolished and as such he could not have been posted in public interest. His case also comes under compassionate grounds as his mother is very sick and his children are studying in Delhi and his wife cannot be posted at Baranwada where there are no Central Schools. There are people at various places who have been longer

than the applicant and if the applicant had to be moved out of Delhi, he should have been moved out to some of the places like Agra, Varanasi, etc. and that he should not have been moved in the month of November when his children were in mid-session of the School. The respondents have not followed the guidelines issued by Government in every possible way. The counsel for the applicant cited the case of **Shri Dharma Kanta Phukan (G.C. 152/87)** in which the Guwahati Bench of the Tribunal ordered cancellation of the transfer under similar circumstances. There is no public interest in this transfer except accommodation of another officer now posted at Jammu. Besides, Shri H.R. Gupta, who was to be accommodated, also had not joined at Delhi during the last seven months which shows that he was not really interested in coming to Delhi.

6. Having heard the arguments of both the sides, I believe the transfer of the applicant from Delhi to Baranwada in Rajasthan will cause undue hardship to the applicant. While it is true that courts should not interfere in the transfers and that the applicant being longest in Delhi, cannot expect to stay there for a long time, but the transfer order cannot be said to be in public interest specially when the respondents accept that the applicant has been transferred in order to accommodate another officer posted in Jammu. Transferring an officer to accommodate another cannot be considered in public interest and should be considered bad in law specially when there are grounds of compassion in favour of the applicant also. In the circumstances, the transfer order is quashed. The respondents will, however, be at liberty to transfer him out of Delhi, but an attempt should be made to transfer him in such a way that, as far as possible, his wife could also be accommodated at that place. Such a transfer should not also be done during mid session of the children's education. The transfer of the applicant should not be the reason for accommodating someone else in his place in Delhi. In view of the above, the application is allowed in part. There will be no order as to costs.

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