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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 482/87
T.A. No.

198 7

DATE OF DECISION 22.5.1987

Shri Anand Prakash Petitioner

Shri Avtar Singh Vir Advocate for the Petitioner(s)

Versus

E.S.I.G. Respondent

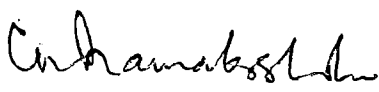
Shri D.P. Malhotra Advocate for the Respondent(s)

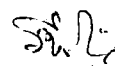
CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

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


(Ch. Ramakrishna Rao)
Judicial Member


(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No.O.A.482/87

Date: 22.5.1987.

Shri Anand Prakash

.... Petitioner

Versus

E.S.I.C.

.... Respondents

For Petitioner

.... Shri Avtar Singh Vir,
Advocate.

For Respondents

.... Shri D.P. Malhotra,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.

Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

JUDGEMENT

(Delivered by Shri S.P. Mukerji)

Shri Anand Prakash who is working as Senior Hindi Translator in the Office of the Regional Director, Employment State Insurance Corporation (ESIC), has moved the Tribunal with this application, dated 6.4.1987 under Section 19 of the Administrative Tribunals Act praying that the respondents be directed to regularise him as Senior Hindi Translator in the Regional Office in Delhi against the regular post available.

2. The brief facts of the case can be recounted as follows. While working as a Junior Hindi Translator on a regular and permanent basis in the regional office of the ESIC in Delhi, the applicant was promoted on an ad hoc basis as a Senior Hindi Translator in the same Office on 11.3.1983 till 28.3.1985. He was considered by the Departmental Promotion Committee in March, 1985 and was included as the only candidate in the panel for promotion as Senior Hindi Translator. However, on 29.5.1985, he was again promoted as Senior Hindi Translator ^{only} ~~though~~ on a temporary basis. He continued in the

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same capacity when on 18.3.1986, he was promoted as Senior Hindi Translator on regular basis but transferred to the regional office at Poona. His representation to be retained as Senior Hindi Translator in the regional office at Delhi against which post he had been officiating earlier, was rejected on 24.2.1987. His main contention is that the vacancy of Senior Hindi Translator in the Regional Office in Delhi should have been filled up by his regular promotion but it is being kept vacant and he is being transferred to Poona for ulterior motive. His allegation is that the Director General of the ESIC is interested in one, Shri Mahesh Sharma, who is working as Junior Hindi Translator, who is next in the line of promotion as Senior Hindi Translator and the post of Senior Hindi Translator in the Regional Office is being kept vacant by the applicant's transfer so that Shri Sharma ^{can} ~~could~~ be accommodated on promotion in Delhi itself. The respondents, however, have stoutly denied any ulterior motive and have stated that the transfer of the applicant to Poona has been made in the public interest as in the Poona Regional Office, against one post of Senior Hindi Translator and three posts of Junior Hindi Translators, three posts are lying vacant, whereas in Delhi all the posts have been filled. Poona being in a non-Hindi speaking area, according to the respondents, the need for filling up the vacant post in the interest of promotion of Hindi is compelling.

3. We have heard the arguments of the learned counsel for both the parties and gone through the

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documents carefully. The learned counsel for the respondents, during the course of arguments, showed to us the photostat copies of the notings on relevant file recorded on 6th and 7th February, 1986 by which the chain of postings was finalised. By this ~~change~~^{change in chain} Shri Sharma, the Senior Hindi Translator was posted from Poona to Haryana (Faridabad) in the same capacity and the Senior Translator of Haryana, Shri M.K. Goel, was posted from Haryana to the Headquarters Office in Delhi. The applicant was posted from the Regional Office at Delhi to the Sub-Regional Office at Poona on regular promotion to fill up the post held by Shri Sharma transferred to Faridabad.

4. From the photostat copy of the notings which were shown to the learned counsel for the applicant also, it was clear that the Director General who approved the chain of postings, was not the ^{present} Director General but, who according to the applicant, ^{was} interested in the Junior Hindi Translator Shri Mahesh Sharma. It appears that the present Director General took over after the aforesaid chain of postings had been finalised by his predecessor. Accordingly, we dismiss without any further comments the allegations of mala fides thrown up by the applicant against the present Director General who has not even impleaded in his personal capacity as a party in this case. The Supreme Court in E.P. Royappa 1974(1) S.L.R. 500, Vs. State of Tamil Nadu in similar circumstances of transfer unequivocally stated that the burden of establishing mala fides is very heavy on the person who alleges it, especially when the allegation is of grave

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nature and is against a senior officer and the courts cannot accept the allegation on mere superficial suspicion. In the instant case even the possibility of superficial suspicion does not arise.

5. It was argued by the learned counsel for the respondents that in accordance with the general practice, an officer on his first promotion is generally transferred outside. The applicant's contention that he should have been accommodated in the post of Senior Hindi Translator ^{in the Regional Office in Delhi, &} which he has been holding on an ad hoc or temporary capacity, cannot be accepted because ad hoc and temporary promotions being of short and uncertain nature, are made locally and such a local arrangement cannot confer any right to hold the post even after regular promotion. If there is such a right, the right should accrue to those Senior Hindi Translators who are senior to the applicant. The applicant, because of his first regular promotion, would be junior to those who had been appointed as regular Senior Hindi Translators earlier than him. Accordingly, Shri S.S. Sharma, Senior Hindi Translator at Poona and Shri M.K. Goel, Senior Hindi Translator of Haryana, who are both senior to the applicant, had been rightly posted to Delhi and Faridabad in accordance with their preference. The applicant cannot crib against posting at Poona where there is an acute shortage of Hindi Translators. The respondents as the employers, have the supreme right to deploy the applicant in accordance with his condition of service to any place in the country in

the public interest. In Sudhir Prasad Jain Vs. Union of India, A.T.R. 1986(2) 304, the Principal Bench of the Tribunal held that the transfer in exigencies of service and devoid of mala fides cannot be interfered with. In Shri Amarnath Vaish Vs. Union of India, ATR 1987(1), C.A.T. 353, it has been held that transfer of a public servant in the exigencies of service is to be decided by the Competent Authority in accordance with its subjective satisfaction. The Supreme Court in B. Vardarao Vs. State of Karnataka & Others, ATR 1987(1) S.C. 397, held that transfer of a Government servant appointed to a particular cadre of transferable posts from one place to another being an ordinary incident of service, does not amount to an order of penalty. The Supreme Court had held in K.B. Shukla Vs. Union of India 1979(2) SLR 58 that the subjective satisfaction of Government responsible for good administration, regarding transfers in exigencies of service, cannot be judged ~~in~~ ^{for} its propriety ^{or} ~~of~~ ^{of} ~~self~~ ^{of} sufficiency by the courts by objective standards, save where the process of forming subjective ^{satisfaction} ~~judgement~~ is vitiated by the mala fides, dishonesty, extraneous purpose, etc.

6. In view of the circumstances of the case as discussed above, we are satisfied that there is no merit in the application. Accordingly, the application is dismissed with no order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
22.5.87
(S.P. Mukerji)
Administrative Member