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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

O.A. No.      100      of 198 7.  
T.A. No.

**DATE OF DECISION** 29.11.88

Shri O.M. Kaushal      **Petitioner**

Mrs. Avnish Ahlawat      **Advocate for the Petitioner(s)**

**Versus**

Union of India & Others      **Respondent**

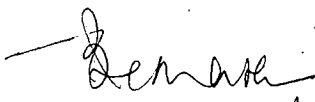
Shri AK Behera for Shri KC Mittal      **Advocate for the Respondent(s)**

**CORAM :**

**The Hon'ble Mr.**      B.C. MATHUR, VICE-CHAIRMAN

**The Hon'ble Mr.**

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? —

  
(B.C. Mathur) 29/11/88  
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. OA 100 of 1987

Date of decision: 29.11.1988.

Shri O.M. Kaushal

Applicant

Vs.

Union of India and Others

Respondents

PRESENT

Mrs. Avnish Ahlawat

Counsel for the applicant.

Shri A.K. Behra  
for Shri K.C. Mittal

Counsel 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 filed by Shri O.M. Kaushal, Junior Scientific Officer in the Ministry of Defence (DGI) Production and Inspection Establishment Naval Delhi/Faridabad against his transfer from Faridabad to CIE, Pune, on promotion to the Grade of Senior Scientific Officer, Grade II.

2. The brief facts of the case, as mentioned in the application, are that the applicant joined the service in the Ministry of Defence, Warship Project Cell, Bombay, as Technical Assistant on 13.9.1967. He was promoted as Junior Scientific Officer on 28.10.1975 at Delhi and has been continuing as such since then. On 1.10.82, the applicant was transferred as Junior Scientific Officer from the Directorate of Warship Projects, Delhi, to Chief Inspectorate of Machinery Spares, Bombay, and was transferred again on 15.9.1984 from CIMS, Bombay to IEFS, Faridabad (now changed to PIEN Delhi/Faridabad. The transfer of the applicant was stated to have made in exigencies of services. The applicant joined as JSO at Faridabad on 11.10.1984. Vide orders dated 19.11.86 (Annexure A-1), the applicant has been promoted as SSO-II and shifted from PIEN, Faridabad, and posted at CIE Pune. The case of the applicant is that this transfer is in violation of the declared policy of the respondents. The officers of the DGI cadres are

not to be transferred from one station to another unless they have completed a period of five years, including the service rendered in lower ranks or grades. The transfer policy is at Annexure A-II. It has also been stated that the policy is not being uniformly applied and the respondents have adopted the method of pick and choose in the matter of posting. It is alleged that Shri K.S. Karir, JSO, has also been promoted as SSO-II alongwith the applicant and has been adjusted at his original place of posting, namely, I of E, Faridabad to I of E Faridabad even though Shri Karir has spent 4-1/2 years in Faridabad and is junior to the applicant who has completed only two years at Faridabad. The applicant is being sent to Pune inspite of the fact that there is a vacancy of SSO II lying vacant in DWP (H/Q), Delhi. The applicant made a representation to the DG, Inspection, on 25.11.1986, but no decision has been conveyed to him. As he apprehended that he would be asked to hand over charge and move to Pune, he came to the Tribunal and this Tribunal directed the respondents on 27.1.87 to permit the applicant to continue in his present post as he was foregoing his right of promotion for the present till the case was disposed of.

3. The main grounds advanced by the applicant against his transfer are that it is against the policy announced by the respondents on 19th May, 1982 and 13th November, 1982 and that there is discrimination inasmuch as his junior Shri K.S. Karir who has also been promoted and who has been in Faridabad for a much longer period is being adjusted at Faridabad itself while the applicant is being posted to Pune despite a strong recommendation by the Deputy Director (Admin) of the Directorate of Warship Projects.

4. The respondents in their reply have stated that the applicant was promoted as Junior Technical Officer and later on merged in the cadre of JSO and had been in Delhi from June 1969 to September 1982 in DWP HQ New Delhi. He was transferred to Bombay in 1982 as he had already stayed in Delhi for about

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13 years. Eversince his transfer and posting to CIMS, Bombay, the applicant represented several times for his posting at Delhi on compassionate grounds and only on humanitarian grounds, the applicant was posted at PIEN, Faridabad, which is near Delhi. Even then the applicant was not satisfied and he started putting in his representations for his posting at Delhi itself. It is stated that the respondents rejected his appeals. The applicant figured in the panel for promotion to the grade of SSO-II and was posted against an existing vacancy at CIE Pune in the normal manner. There is no question of shifting. The transfer policy of five years is for rotational transfers and not postings on promotion. The respondents have said that there was no vacancy in the higher grade in the station the applicant is serving and, therefore, had to be accommodated in a different station where the vacancy is existing. The policy letters dated 13.11.82 and 19.5.82 quoted by the applicant are not relevant and the applicant was transferred on promotion due to non-availability of any vacancy in the higher grade in the station of his service and was not transferred due to turn over policy. The respondents have also denied that there has been any discrimination against the applicant and that he was sent out to accommodate Shri K.S. Karir. After working for five years in Madras, Shri Karir was transferred to Dehu Road where he worked till April 1982. He then worked at New Delhi from May 1982 till July 1984 and served at IE Faridabad from July 1984 to February 1986 in the grade of JSO and was promoted to the grade of SSO-II in November, 1986. There was no vacancy in the grade of SSO-II in IE, Faridabad, but there was a vacancy in the grade of SSO-II in IE WING Kanpur which is a detachment of IE Faridabad. Shri Karir worked in Faridabad only from July 1984 to February 1986 and not 4-1/2 years, as alleged by the applicant. The respondents have pointed out that the applicant is having an all-India service liability and cannot claim posting of his choice on promotion. The applicant has spent nearly 13 years in Delhi from 1969 to 1982, both in the gazetted and non-gazetted grades. There are several vacancies in different stations but the applicant has mentioned about the vacancy lying in Delhi only.

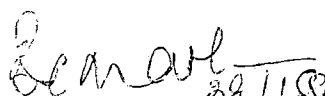
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The respondents have cited the case of Shri Kamal Narain, Draughtsman Grade II who was promoted to the Grade I and posted out from Kanpur and his application against the transfer was summarily rejected by the Allahabad Bench of the Tribunal on the grounds that the applicant cannot refuse promotion merely because the promotion is accompanied by a transfer which does not suit him. A copy of the judgment is at Annexure 'E'. The applicant had made a representation on 25.11.1986 and after due consideration, he was informed of the position on 15.1.1987.

5. The learned counsel for the applicant has stressed on the point that since there has been violation of the transfer policy and since Shri Karir who had put in longer period at Faridabad should have been posted out instead of the applicant and that the applicant was brought from Bombay to Faridabad in public interest and not on any compassionate grounds, as is evident from the transfer order, the transfer order of the applicant to Pune should be quashed. She further pointed out that the entire Department was transferred from Delhi to Faridabad and the applicant was not transferred as such and was not allowed any T.A. or D.A. for moving to Faridabad. She also said that there is no sanctioned post of SSO-II or JSO separately at Kanpur. Even if there is a detachment at Kanpur, there is no sanctioned post there as such.

6. After hearing the arguments on both sides it becomes quite clear that the transfer of the applicant from Faridabad to Pune was not <sup>a</sup> rotational transfer, but a transfer on promotion. Even otherwise, the applicant has stayed in Delhi/Faridabad for several years. It may be true that the transfer order of the applicant from Bombay to Faridabad is reported to be in public interest, but it is also on record that he had been making representations for such a transfer and it appears that he had been transferred on the basis of his representations in public interest. The applicant also did not at that time say that his transfer from Bombay to Delhi after two years was against the transfer policy as it suited him to be in Delhi or near Delhi. His various representations

make it very clear that he wants to stay in Delhi or near Delhi, but it is for the respondents to decide where they should utilise his services in the best interests of the Department. Even if it is accepted that Shri Karir who is junior to the applicant and had put in longer period at Faridabad and should have been sent out is a matter for the respondents to decide and the courts may not ordinarily interfere in the matter of postings and transfers unless there is a malafide. It cannot be said that the applicant has been transferred merely to accommodate Shri Karir. The respondents have to see the vacancies at different places and decide which of the vacancies should be filled first and as such even if there is a vacancy at Delhi, it is for the respondents to decide whether they would like to fill up the vacancy at Delhi or at Pune. The fact that the applicant has been prepared to forego his promotion in order to remain at his present place of posting is not material. It is a matter for the respondents to consider separately according to rules. In the circumstances of the case, the application cannot be allowed and it is dismissed. There will be no order as to costs.

  
 (B.C. Mathur)  
 Vice-Chairman