

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1110/90

DATE OF DECISION: 26.7.1990.

SHRI SURENDRA PRASAD VERMA

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI J.K. BALI

ADVOCATE FOR THE APPLICANT

SHRI O.P. KSHATRIYA

ADVOCATE FOR THE RESPONDENTS.

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(Delivered by Hon'ble Shri I.K. Rasgotra, Member (A))

The application filed on 30.5.1990 by Shri Surendra Prasad Verma, applicant, is against the order of Senior Civil Engineer (Bridge) No.752-E/1 (Br. Line) dated 19.12.1989, transferring the applicant from Moradabad to Bareilly, under Section 19 of the Administrative Tribunals Act, 1985. The applicant was initially transferred from BRI (M) Moradabad to BRI (M) Bareilly vide order dated 15.11.1989. The applicant, however, represented against his transfer as it would disrupt the education of his children in mid session. The Senior Civil Engineer vide his order dated 4.12.1989 pended the transfer till the school session. However, vide another order dated 4.12.1989 (page 20 of the paper book), the order transferring the applicant to Bareilly were allowed to stand. The immediate provocation for the transfer seems to have been the complaint lodged by 65 members of the staff (total 107) working under

Bridge Inspector (M), Moradabad for undue harassment.
for

The applicant has prayed/quashing the transfer order dated 19.12.1989 (page 15 of the paper book) on the ground that transfer has been made on the basis of staff complaint and that therefore being punitive in nature, has been ordered without giving him an opportunity to explain his conduct. He has described the transfer as illegal also on the basis of the malafides relying on:

E.P. Royappa Vs. State of Tamil Nadu, 1974 (2) SCR 548 and

Santosh Mukherjee Vs. U.O.I., 1988 (7) SLR CAT.

2. The respondents in their reply have averred that the applicant was transferred on the basis of the staff complaint made by 65 persons working in the office of BRI (M) Moradabad. They had conducted an informal confidential enquiry as distinct from a DAR enquiry to ascertain veracity etc. of the staff complaint. As the matter was raised by one or the other of the two unions, the representatives of both the unions were also consulted informally to arrive at a mutually acceptable decision.

3. We have heard the learned counsel of both the parties on 11.7.1990. The learned counsel of the applicant attacked the order of transfer attributing malafides and abdication of responsibility by the respondents. In support of his case, the learned counsel relied on the following:-

- i.) 1985 (2) SLR 16, Achyuta Nanda Behra Vs. State of Orissa.
- ii) 1988 (7) ATC 253, Kamlesh Trivedi Vs. Indian Council of Agriculture Research & Another.

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On the other hand, the learned counsel of the respondents relied on ATR 1989 (1) CAT 10 Madan Lal Kapil vs. U.O.I. and others and Judgements Today, 1989, (3) SC 20 Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani.

4. We have considered the material before us and the submissions of the learned counsel of both the parties carefully. The transfer of the applicant seems to have been made on administrative grounds and in the interest of maintaining industrial harmony. The applicant has had a long innings in the office of BRI (M) Moradabad and therefore there seems to be nothing unusual in ordering his transfer. The material before us does not substantiate malafides against the respondents nor the transfer order seems to be of punitive nature. In fact, when a complaint by such a large number of staff is made against the Government Servant, it is imperative that the administrator should ascertain the truth to his own satisfaction to come to a conclusion that the circumstances warrant such a transfer. The enquiry in this case was not a DAR enquiry but merely an enquiry to satisfy so that no injustice is done to the applicant based on a general complaint of frivolous nature etc.

The transfer is a normal incident of service for the employees of the Central Government, holding transferable posts. The employee should normally make a representation to the competent authority, if he has any difficulty, and in such a situation, wait for the decision. Once the competent authority has given its decision there is no alternative for him but to abide by such a decision. In this particular case, the only ground that education of children would be adversely affected by mid session transfer, does not exist now. We, therefore, do not see

any merit warranting any interference by us. The application is, accordingly, dismissed without any orders as to the costs.

The order of status quo, as of today passed by the Tribunal on 14.6.1990 is also hereby vacated.

Delph
(I.K. Rasgotra)
Member (A) 24/7/90

Abc
(T.S. Oberoi)
Member (J) 24/7/90