

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1358/90
~~FAA No.~~

199

DATE OF DECISION 14.12.1990.

Shri D.D.Budhiraja ~~Petitioner~~ Applicant
 S/Sh.P.T.S.Murthy & M.L.Chawla, Advocate for the ~~Petitioner(s)~~ Applicant
 Union of India through Secretary, Versus
 Ministry of Defence & Others. Respondents
 Mrs.Raj Kumari Chopra, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J).

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble Mr.D.K. Chakravorty, Member)

The applicant while working as U.D.C in the office of the respondents filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to direct the respondents to take him on duty and permit him to rejoin duty from leave;
- (ii) to direct them to claim and pay him pay and allowances for the months of March, April, May & June, 1990 which they have not claimed wrongfully and illegally;

- (iii) to direct them to post him at Hissar instead of Bhatinda; and
- (iv) to direct them to follow the guidelines for postings/transfers in accordance with the Policy dated 21.5.75.

2. The application was filed in the Tribunal on 9.7.1990. On 13.7.1990, the Tribunal passed an interim order directing that the applicant may be allowed to rejoin duty on return from medical leave.

3. We have gone through the records of the case and have heard the learned counsel for both parties. We feel that this application could be disposed of at the admission stage itself and we proceed to do so.

4. The facts of the case in brief are as follows. The applicant joined the services of the respondents as L.D.C in 1963. He was promoted as U.D.C in 1969. He has stated that during his 27 years of service, he has been transferred seven times to various stations including tenure stations which are hard and difficult stations. The Transfer Policy envisages calling for volunteers for postings and transfers and as far as possible to post the volunteers to the stations of their choice. When the impugned transfer orders were notified, the applicant found that he had been transferred to Bhatinda instead of Hissar, the station to which he had volunteered for transfer. His representations to post him at Hissar on compassionate grounds were not acceded to.

5. The applicant is stated to have fallen ill on 26.2.1990. Therefore, he applied for leave from 27.2.1990 upto 21.3.1990. He produced medical prescriptions in proof of his illness. In the meantime, the movement orders were served on him. He, however, returned the same on the ground that no movement order can be served on an employee who is on the sick list. Subsequently, when he was declared fit for duty and he reported for duty with the fitness certificate, the respondents refused to take him back to duty.

6. The respondents have stated in their counter-affidavit that the applicant had been in Delhi since 1979 and that he had been transferred to Bhatinda for administrative reasons and in the exigencies of service in accordance with the guidelines/policy. They have relied upon numerous rulings of Courts and of this Tribunal to the effect that the transfer is an incident of service and that it is for the administration to decide as to where its employees are to be posted. The administrative authority could not accommodate the applicant at Hissar since there was no vacancy there. They have also contended that the applicant has no legal right to be accommodated against any vacancy arising at Hissar on the ground that there are more needy persons to be accommodated there on genuine and bonafide grounds. They have stated that the movement order was served on the applicant on 26.2.1990 while he was on duty in the office of the respondents. However, the applicant avoided accepting the same on that day and on the next day, he

came to the office and handed over an application for leave. Thereafter he did not report for duty. They have stated that the applicant had been posted to Bhatinda on tenure basis. The respondents have, however, obeyed the interim order passed by the Tribunal and allowed the applicant to join the duty. A fresh movement order was issued to him on 19.7.1990. He was also relieved from Delhi.

7. During the arguments, the learned counsel for the respondents stated that the applicant has already joined at Bhatinda and that the respondents have released the payment of pay and allowances to him for the months of March, April, May and June 1990. The learned counsel for the respondents submitted that the applicant has not alleged any malafide on the part of the respondents. The Policy guidelines are to be applied "as far as possible" and that the requirement of service is "paramount".

8. In our opinion, the applicant is not entitled to any relief as prayed for by him. In the absence of any mala fides, the applicant cannot succeed in the present proceedings.

9. In ^{the} ~~the~~ case of Gujarat Electricity Board, the Supreme Court observed that transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other, is an incident of service. No Government servant has a legal right for being posted at any particular place. Transfer from one place to another, is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest

and efficiency in public administration. The following observations made by the Supreme Court are pertinent:-

"Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer.

There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular place". (1989(3) J.T. 20)

10. In Kirtania's case, the Supreme Court observed as under:-

"The respondent being a Central Government employee, held a transferable post and he was liable to be transferred from one place to the other in the country. He has no legal right to insist for his posting at Calcutta or any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of public servant made on administrative grounds or in public interest, should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with respondent's transfer." (1989(3) Sec 455)

11. In the light of the aforesaid pronouncements of the Supreme Court, we see no justification to interfere with the action taken by the respondents. There is no merit in the present application and the same is dismissed at the admission stage itself.

There will be no order as to costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)

MEMBER 14/12/89

P. K. Kartha
(P.K. KARTHA)

VICE CHAIRMAN