

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 1387/90
T.A. No.

199

DATE OF DECISION 4.1.1991.

Shri J.G. Gugnani	Petitioner Applicant
Shri Avtar Singh	Advocate for the Petitioner(s) Aplicant
Versus	
Employees State Insurance	Respondent
Corpn. & Others	
Shri D.P. Malhotra	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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? /
4. Whether it needs to be circulated to other Benches of the Tribunal? / No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is an Insurance Inspector working in the Employees' State Insurance Corporation, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned orders dated 13.12.1988 and 15.12.1988 at Annexures A-1 and A-2 to the application. By the impugned order dated 13.12.1988, the applicant had been transferred from Delhi to Wankaner, District Rajkot (Gujarat region). By the impugned order dated 15.12.1988, the respondents had directed that the

applicant be relieved of his duties in the afternoon on 15.12.1988.

2. The applicant has not joined the place of posting mentioned in the impugned orders.

3. The facts of the case are as follows. The applicant was appointed as a Lower Division Clerk in 1958 in the Delhi region of the E.S.I.C. In 1962, he was promoted as Upper Division Clerk. In 1972, he was further promoted to the post of Head Clerk and posted to Gujarat. Para.5 of the Office Order dated 7.2.1972 at Annexure A-4 to the application stipulated that if the persons who have been promoted and posted to various places mentioned therein, did not move to the regions/offices of their new posting, they would be deemed to have refused compliance with the orders and the orders of their promotion would be treated as having been cancelled. It was also clarified that in case of failure to comply with the orders, they would stand debarred for promotion.

4. The applicant was promoted/posted as regular Manager Grade III (in the Cadre of Head Clerk/Assistant Manager Grade III) and transferred from Delhi region to Gujarat region by office order dated 8.8.1975. He expressed his inability to move out of Delhi due to his

peculiar family circumstances. In view of this, the respondents posted him as a regular Assistant at the Headquarters office in Delhi w.e.f. 8.9.1975. He completed his period of probation of two years satisfactorily in the post of Assistant on 1.11.1977. He was thereafter continued in the said post in a temporary capacity till further orders.

5. The applicant was offered a regular promotion to the post of Insurance Inspector by office order dated 25.3.1980 whereby he was to join Maharashtra region if the offer was acceptable to him. He, however, did not accept the offer of promotion due to various compelling domestic circumstances, such as the old age of his mother-in-law who was wholly dependent on him, the ailment of his wife and his son. On the aforesaid grounds, the offer of promotion was cancelled by the ESIC.

6. Another offer of promotion to the post of Insurance Inspector was made to him in 1981, whereby he was asked to join at Madhya Pradesh region. The applicant did not accept the same.

7. The respondents made yet another offer to him of promotion to the post of Insurance Inspector indicating that the place of posting would be Punjab & Haryana region. The applicant did not accept the said offer.

Or

8. The respondents again offered to him promotion to the post of Insurance Inspector in the Gujarat region in 1984. He did not accept the same. There upon, the respondents acceded to his request for posting in the Delhi region vide their order dated 25.2.1985.

9. By the impugned order dated 13.12.1988, the applicant has again been sought to be transferred from the Delhi region to the Gujarat region.

10. The applicant has contended that the impugned order of transfer is not bona fide. He has stated that while working as Manager Grade II in the Delhi region, where one, Shri S.N. Tiwari, was the Regional Director, the applicant had strained relations with him. He had to make certain reports in respect of certain employers at Delhi who evaded the provisions of ESIC Act. The reports submitted by the applicant were highly prejudicial to the financial interests of these employers as they had to pay ultimately huge amounts to the ESIC as a consequence of his reports. In this context, he has referred to M/s Needo Trading and Manufacturing Corporation, 768, Chabi Ganj, Kashmere Gate, Delhi, whose factory was also covered under the ESIC Act. For covering the factory under the said Act, it was essential to inspect their past records. The employer, however, refused to show the

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same. The applicant had to make a report to the Regional Director in this regard. The applicant has stated that it is possible that the said employer might have come to Shri Tiwari with some complaint. In order to harass him, Shri Tiwari got a complaint made from the said employer against the applicant regarding demanding of bribe, etc. The applicant thinks that it was Shri Tiwari who was responsible for the order of his transfer from Delhi.

11. The applicant has stated that there are several domestic circumstances compelling him to stay in Delhi. These include the treatment of his wife by one Tantrik for some supernatural evil spirit, the search for a suitable match for his marriageable daughter, and the education of his another daughter who is studying in the tenth class. He has stated that there are several similarly situated employees in the cadre of Insurance Inspectors who are having much longer stay in Delhi than the applicant.

12. The respondents have stated in their counter-affidavit that the impugned order of transfer has been made on administrative grounds. They have also denied the allegation of mala fides levelled against Shri Tiwari.

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13. We have gone through the records of the case carefully and have heard the rival contentions. The legal position in regard to transfers has been clearly laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board and Another Vs. Atma Ram, 1989 (3) J.T. 20 and Union of India Vs. H.N. Kritania, 1989 (3) SCC 455.

14. In 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 the 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.....

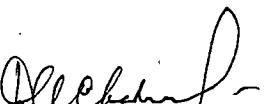
There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular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

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15. 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."

16. 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)
Administrative Member

4-1-1991


(P.K. Kartha)
Vice-Chairman (Judl.)

4/1/91