

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1409/90
T.A. No.

199

DATE OF DECISION 21.12.1990.

<u>Shri Jainti Parsad Gupta</u>	Petitioner
<u>Shri B.B. Raval</u>	Advocate for the Petitioner(s)
Versus	
<u>The Union of India through the</u>	Respondent
<u>Secretary, Ministry of Home Affairs & Another</u>	
<u>Shri K.C. Mittal</u>	Advocate for the Respondent(s)

CORAM

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

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*

JUDGMENT

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

The grievance of the applicant who has filed this application under Section 19 of the Administrative Tribunals Act, 1985 relates to his transfer from Delhi to Tezpur by the impugned order dated 6.4.1990. He has also challenged the validity of the order dated 20.6.1990 whereby the representation made by him on 6.6.1990 was rejected.

2. The facts of the case in brief are as follows. The applicant joined Intelligence Bureau, Ministry of Home Affairs as Junior Intelligence Officer in 1967. The appointment carries with it the liability to serve in any part of India or abroad.

3. By order dated 1.3.1967, the applicant was appointed as an outside candidate to the post of Junior Intelligence Officer at Bureau Headquarters with effect from 15.2.1967. The applicant has stated that from 1967 till date, he has been posted on transfer to Delhi, Sikkim, Jammu & Kashmir & Mizoram.

4. The applicant was promoted as Assistant Central Intelligence Officer Grade-II by order dated 10.12.1975. He was posted in Mizoram at Aizwal in 1987. He has stated that while posted there, he came to know that in February, 1987, Shri J.R. Yadav, his junior was promoted as Assistant Central Intelligence Officer Grade-I and that he was superseded. The representations filed by him did not receive any favourable response. He, therefore filed OA 1949/89 in this Tribunal. He feels that because of this, the respondents got annoyed.

5. The applicant has stated that while working on the borders of Mizoram, he became ill and had to be under Medicare at Civil Hospital, Aizwal. ^{As} ~~he~~ was not responding to the treatment, he was referred by the Medical Specialist, Civil Hospital, Aizwal, to All India Institute of Medical Sciences, New Delhi. He has stated that on his way from Aizwal to Delhi, his condition deteriorated, necessitating consultation and treatment

at Calcutta enroute to Delhi. On arrival at Delhi, he was admitted at G.B. Pant Hospital, New Delhi, from 4.8.1986 to 26.8.1986. Thereafter, he continued to be under the treatment of G.B. Pant Hospital. He was also referred to Neurologist for further investigation and treatment of his disease. In March, 1987, he had to undergo brain C.T. Scan and the treatment continued for a month thereafter. He has stated to be continuously under observation and treatment at G.B. Pant Hospital. On 23.4.1990 when he developed some complications, he was further checked up and advised some specialised test (TMT) and date given was 6.8.1991. This was followed by Echo Cardiogram on 12th May, 1990 and on 21st May, 1990. He has stated that he was advised to come again after six months and to continue the treatment in the meanwhile.

6. According to the applicant, due to continued illness, he was required to take periodical bed rest. Though, a copy of the transfer order was not handed over to him, he was asked to read and note its details. He submitted a representation on 6.6.1990 which was rejected by the respondents by a non-speaking order dated 20.6.1990.

7. The respondents have stated in their counter-affidavit that being a Central Government employee, the applicant is liable for All India transfer and posting. After remaining posted at I&B Headquarters at Delhi since 1.11.1986 for about 3½ years, he was transferred to

15.

OA 1409/90

8.10.1990.

Present: None for the applicant.
Shri K.C. Mittal, Counsel for the respondents.

The case is adjourned to 22.10.1990.

(Signature)
(D.K. CHAKRAVORTY)
MEMBER (A)

(Signature)
(P.K. KARTHA)
VICE CHAIRMAN (J)

Rej pld on 8-10-90

22-10-90

Applicant through Shri B.B. Raval, Counsel.
Shri Rajinder Virmani, proxy counsel for Shri K. C. Mittal,
counsel of the respondents.

List for further directions/final hearing on
30-10-90 at 3.00 PM.

(Signature)
(D.K. CHAKRAVORTY)
MEMBER

(Signature)
(P.K. KARTHA)
VICE CHAIRMAN

30-10-90.

Applicant through Mr. B.B. Raval, Counsel

*List for further directions/
final hearing on 31-10-90.*

(Signature)
(D.K. CHAKRAVORTY)
member

(Signature)
(P.K. KARTHA)
vice chairman

1.11.90

Present: Mr. B.B. Raval, Adv. for Applicant
Mr K.C. Mittal, Adv. for Respts-

Arguments heard & concluded. Judgment
Reserved.

(Signature)
(D.K. Chakravorty)
Member (A)

(Signature)
(P.K. Kartha)
VC (J)

Tezpur during annual transfers on the recommendation of the Junior Personnel Board, comprising of senior officers which, inter alia, took the earlier postings of the officials into consideration before deciding their next posting. Along with the applicant, 50 other ACIOs-II were also transferred by order dated 6.4.1990 in public interest to meet the administrative requirements. The name of the applicant figures at S.No.39 of the said list.

8. The respondents have also stated that the representation submitted by the applicant against his transfer to Tezpur was duly considered and rejected by the authorities on 20.6.1990.

9. The respondents have given the details of his various postings during his service career as under:-

"(a)	I.B. Hqrs.	-	15.2.67 to 26.4.71
(b)	Gangtok	-	27.4.71 to 28.2.74
(c)	I.B. Hqrs.	-	1.3.74 to 30.4.75
(d)	J & K	-	1.5.75 to 16.7.79
(e)	I.B. Hqrs.	-	17.7.79 to 17.2.83".

10. According to the respondents, since the joining of the applicant in the IB, he has done outstation posting only for 7 years 10 months while he remained posted at I.B. Headquarters for ~~only~~ 10½ years.

11. The respondents have ~~also~~ denied the allegation that they felt annoyed by the applicant filing OA No.1949/89. They have also denied the allegation of mala fides alleged by the applicant. In our opinion, the applicant has not substantiated the allegations of mala fides against the respondents.

11. We have carefully gone through the records of the case and have considered the rival contentions. The applicant has raised a preliminary objection to the effect that Smt. Renuka Muttoo, Assistant Director who has signed and sworn the affidavit, should not be taken on record on the ground that she is not competent to file it on behalf of respondent No.1

(The Secretary, Ministry of Home Affairs). She is working as Assistant Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi and has filed the counter-affidavit in official capacity. The Union of India functions through its officers who normally perform their duties in official capacity. The fact that the applicant has impleaded the Secretary, Ministry of Home Affairs as the first respondent does not mean that he should necessarily file the counter-affidavit. We see no substance in the preliminary objections.

12. There is no doubt that the applicant is holding a transferable post. That being so, in the absence of any malafides or violation of any statutory rules, the order of transfer cannot be called in question. It is for the respondents and not for the Tribunal to consider the genuine difficulties of the applicant and to take a decision. The legal position has been clearly laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board Vs. Atma Ram Saugomal Poshani, 1983(3) JT 20 and Union of India Vs. H.N. Kirtnia, 1989(3) 333 403

13. 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".

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

2 "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 respondents transfer".

15. 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.

The parties will bear their own costs.

D.K. Ghakavorty
(D.K. GHAKAVORTY)
MEMBER (A) 21/12/90

P.K. Matha
21/12/90
(P.K. MATHA)
VICE CHAIRMAN (J)