

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1686/90
T.A. No. 199

DATE OF DECISION 15.2.1991.

Shri Amarjit Singh Dhanjal ~~Petitioner~~ Applicant

Shri Astander Kumar Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through Secy., Respondent,

Min. of Defence & Others

Mrs. Raj Kumari Chopra, Advocate for the Respondent(s)

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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? *Yes*
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 who has worked as Storekeeper, Grade I in the Office of G.E, Red Fort, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the transfer order dated 21.9.89 be cancelled. By the impugned order, the applicant has been transferred from Delhi to Bhatinda.

2. The applicant was initially appointed in 1966 as Store Keeper Grade II at Delhi and was promoted to the post of Store Keeper Grade I in 1972. He was transferred to Bhatinda in 1975 and remained there upto May 1979 when he was transferred back to Delhi.

5

3. The applicant has stated that on 30.5.88, while on duty, he met with a serious accident involving his two wheeler scooter with a motor cycle and received serious injuries on head as well as on various parts of his body. He remained under medical treatment with private Doctors in Delhi as well as Irwin Hospital, Dr. Ram Manohar Lohia Hospital, Batra Hospital and Medical Research Centre, All India Institute of Medical Sciences and Safdarjang Hospital. He was got operated of head injury in Batra Hospital on 17.9.89. He still feels giddiness and headache. He also feels loss of memory and mental disorder and so he has been given very light work in office.

4. The applicant has stated that the Board of Directors comprising of three eminent Doctors of Safdarjang Hospital where he had been getting medical treatment had declared the permanent disability of the applicant to 50% and issued a certificate to this effect vide No.2-21/89-MR dt.4.1.90 stating the disability and description of disability as " 1½ years old case of (R) sides Mildly spastic Hemiparesis following surgery for sub-dural hematoma". On the basis of disability, Garrison Engineer granted Special Leave of 50 days to him vide his Part-II Order P.T.O. No.13 dated 26.3.90.

5. The applicant made a representation against the transfer order to C.E. Western Command, Chandigarh on

4.11.89 but the same was rejected and movement order was issued in December, 1989. He relied upon the Transfer Policy issued by the respondents on 13.3.87. Paragraphs 5 and 7 of the said Policy read as follows:-

"5. Disabled persons should not be posted to a tenure station if the disability prohibits his free movement/functioning. The same should be decided by the CE Commands on merit of each case.

7. Where both the husband and wife are central Govt. employees, the present policy to keep both at the same station as far as possible may be maintained. However, there will be no exemption to the husband from tenure posting in his turn. On repatriation, the husband will be posted to a station where his wife is employed subject to the availability of vacancy. "

6. The applicant has stated that the posting orders of Shri Budh Ram Yadav, Barrack Supervisor(BSS/II) who had got 40% disability had been cancelled in accordance with the policy. Shri P.P.Bhatnagar D.C., Shri P.C.Gupta, AO-II, Shri Ahuja, SK-II were also posted on tenure station. Though they were not disabled themselves, but their transfer orders were cancelled in consideration of disability of their sons/daughters and other relatives.

7. The respondents have stated in their counter-affidavit that the applicant is holding a transferable post. He has served at Delhi for a very

long part of his service i.e. 9.2.66 to 4.5.73 and from 25.4.79 to date. The respondents have stated that the transfer of the applicant has been ordered in routine and as per declared transfer policy. The proper authority has duly considered the representations of the applicant as per laid down policy and has decided that the applicant is to move to next duty station.

8. We have gone through the records of the case carefully and have considered the rival contentions. The applicant has not alleged mala fides on the part of the respondents. Admittedly, he is holding a transferable post. He has worked in Delhi for a fairly long period. In the facts and circumstances, this does not appear to be a fit case in which the Tribunal should interfere with the action taken by the respondents in the exigencies of service. 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 State Electricity Board and Another Vs. Atma Ram Saugomal Peshani, 1989(3) JT 20 and Union of India & ors. Vs. H.N.Kirtania, 1989(3) SCC 455.

9. In the case of Gujarat Electricity Board, the Supreme Court observed that transfer of a Government servant /

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appointed to a particular cadre of transferable post 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."

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

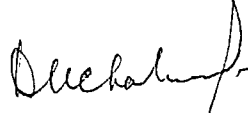
9

cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a 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."

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.

12. The interim order passed on 24.8.1990 and continued thereafter, is hereby vacated.

There will be no order as to costs.


(D.K.CHAKRAVORTY)
MEMBER


(P.K.KARTHA)
VICE CHAIRMAN