

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1841/90
T.A. No.

199

DATE OF DECISION 13.12.1991

<u>Shri Badri Narain</u>	Petitioner Applicant
<u>Shri B.B. Raval</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Secy.,</u>	Respondent
<u>Miny. of Defence & Others</u>	
<u>Smt. Raj Kumari Chopra</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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? *Yes*
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, while working as a Daftry in the office of the respondents at Jaipur, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned movement order dated 6.9.1990, according to which, he was transferred to Kota from Jaipur. On 12.9.1990, when the case came up for admission, notice was issued to the respondents, returnable on 26.9.1990. The learned counsel for the applicant stated that the applicant was a low-paid employee who is normally not transferred except on compassionate grounds. He further

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stated that the impugned order dated 6.9.1990 transferring the applicant from Jaipur to Kota, has been issued while he was on casual leave and that it had not been formally served on him. In view of this, the Tribunal directed that as an interim measure, the respondents shall not give effect to the movement order dated 6.9.1990.

2. The interim order has thereafter been continued till the case was finally heard on 29.8.1991 and orders reserved thereon. It may be mentioned that on 11.10.1990, the learned counsel for the respondents stated at the Bar that the applicant had already been relieved before the receipt of the interim order passed by the Tribunal on 12.9.1990, but in deference to the orders passed by the Tribunal, the respondents had not given effect to the impugned movement order dated 6.9.1990.

3. The facts of the case in brief are as follows. The applicant joined the office of Garrison Engineer, M.E.S., Kota in 1963 as a Peon. He was thereafter transferred to Jaipur in May, 1965 as Peon and was subsequently promoted as Daftry in October, 1984.

4. On 11.5.1989, the applicant was transferred to Barmer. On 19.5.1990, he had made a representation to the Chief Engineer, Southern Command, Pune, wherein he stated that being a low-paid employee, he could not afford

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the expenditure at two stations, one at Barmer and another at his native place being far away. He added that according to his information, Shri Mohd. Ismail, Daftry, posted at Kota, had recently been promoted as Ferro Printer and due to this, a vacancy of Daftry might occur there. In view of this, he again requested that his case might be considered for posting at Kota. The respondents have annexed a copy of the said representation to their counter-affidavit at Annexure R-1, p.24 of the paper-book. The version of the applicant, however, is that he was in a way, misguided by his immediate superiors to make such a representation and at best it was only an interim effort made by him for saving himself from a posting at Barmer which he considered to be a greater evil compared to a posting at Kota (vide rejoinder affidavit, page 29 of the paper-book).

5. According to the applicant, the officers under whom he had been posted, had strongly recommended for his retention at Jaipur on medical grounds. He has also stated that Shri Narain Singh, Ferro Printer, posted at Jaipur, had represented for his posting to Jodhpur on compassionate grounds and that if this is done, the applicant could be adjusted against the resultant vacancy.

6. According to the respondents, the applicant holds a transferable post and ~~that~~ he has been transferred to Kota in the exigencies of service. He has been in Jaipur

since 1965. According to them, he is surplus at Jaipur. Being the senior-most, he was ordered to be transferred to Kota. As regards Narain Singh, they have stated that his posting to ~~Jodhpur~~ was considered by the authorities concerned, but due to want of vacancy there, he could not be transferred. They have also relied upon the representation made by the applicant on 19.5.1990, wherein he had requested for a posting at Kota.

7. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The applicant has not made any allegation of mala fides against the respondents. He has also not alleged violation of any statutory rules. According to the legal position enunciated by the Supreme Court, 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 of being posted at any particular place (vide Gujarat Electricity Board Vs. Atma Ram, 1989 (3) J.T.(SC) 20; and Union of India Vs. H.N. Kirtania, 1989 (3) S.C.C. 445).

8. In the light of the foregoing judicial pronouncements, we hold that the impugned order of transfer cannot be faulted on any legal ground. We, however, dispose of the present

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application with a direction to the respondents to consider posting the applicant at Jaipur as and when a vacancy in the post of Daftry arises there.

9. The interim order ~~xxxxxx~~^{or} passed on 12.9.1990, is hereby vacated with the ~~direction~~ that the applicant should be paid salary during the period from 12.9.1990 to the date of communication of this order. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal) 18/12/91
Administrative Member

P. K. Kartha
13/12/91
(P.K. Kartha)
Vice-Chairman(Judl.)