

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

OA 2584/90

DATE OF DECISION: 31.05.1991

O.P. MADAN

...APPLICANT.

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS.

ADVOCATES:

APPLICANT IN PERSON.

SHRI P.H. RAMCHANDANI, SR. COUNSEL FOR RESPONDENTS

CORAM:

HON'BLE SHRI P.K. KARTHA, VICE CHAIRMAN(J)

HON'BLE SHRI B.N. DHOUNDIYAL, MEMBER(A)

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI B.N. DHOUNDIYAL)

This application has been filed under Section 19 of the Administrative Tribunal's Act, 1985 by Shri O.P. Madan, who has worked as Assistant Accounts Officer in the Department of Food and Civil Supplies.

2. The applicant was posted as Assistant Accounts Officer in the Field Pay Unit of the Office of the Commissioner of Income Tax, Rohtak. In response to circular No.A-22013/1/89/MF-CGA(A) Group-B dated 1.1.1990, he volunteered for the appointment as Accounts Officer in the same organisation at Rohtak. He feels aggrieved that he was denied this appointment and was transferred out to Delhi to the Ministry of Food and Civil Supplies as A.A.O. He has prayed

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that his request for promotion in the Field Pay Unit of Income Tax at Rohtak ^{BN} may be acceded to and his transfer from Rohtak to Delhi, vide impugned order dated 14.10.1990 be quashed.

3. The contention of the applicant is that his transfer was mala fide. Being the senior most Assistant Accounts Officer with 14 years of service, he contends that he deserves ^{BN} to be given promotion as Accounts Officer at Rohtak. He has alleged that he was transferred out of Rohtak with mala fide intention to deny him this promotion. His wife is working with the Customs Department at Rohtak and by transferring him to Delhi, the respondents have violated the instructions contained in the Department of Personnel and Training OM No.23034/7/86-Estt.(A) dated the 3rd April, 1986 which impressed ^e upon Cadre Controlling Authorities to consider posting of working couples ^{BN} at the same station. He has also alleged that one Shri B.K. Lal having around 10 years of service as Assistant Accounts Officer at Meerut has been promoted as Accounts Officer at the same place.

4. The respondents have contended ^{that} the ^{BN} applicant is holding Group 'B' Gazetted post as Assistant Accounts Officer. There are 1098 posts of Assistant Accounts Officers all over India in various Departmentalised Accounts Offices of the Central Government. The Assistant Accounts Officers have all India Transfer liability and such transfers do not affect their inter-se seniority. While the applicant was posted in the Field Pay Unit of the Office of the Commissioner of Income Tax, Rohtak, the Commissioner in her letter

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dated 25.10.1990 had expressed an opinion that the efficiency of the office has suffered because the Assistant Accounts Officer had developed a lot of vested interestⁱⁿ ~~interest~~ and had requested that he be transferred in the interest of efficiency and harmony in the office. As there were no other posts available at Rohtak, he was transferred to the nearby station i.e. Delhi. Subsequent to his transfer, the applicant had himself applied for deputation for the post of Assistant Accounts Officer in Delhi Electrical Supply Undertaking. As regards his promotion as Accounts Officer at Rohtak, these posts are filled up on the regular basis though at times, there is a gap between the occurrence of vacancy and the availability of regular persons at the Station where the vacancy exists. Many a time^{the} these vacancies are circula^ared more than once for having wider choice.

6. We have gone through the facts of the case and heard the contentions of the rival parties.

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7. The applicant has relied on the Judgement given by the Bangalore Bench of this Tribunal in case of N.K. Suparna Vs. U.O.I. and Others ((1991) 15ATC1) where it was held that transfer based on allegations of misdemeanours is mala fide and cannot be sustained. However, we find that the circumstances in this particular case are clearly distinguishable. In the circular No.A-32016/1/90/MF.CGA(A)/JAO/III/692, dated 21.12.1990, it has been clearly stated by the Controller General of Accounts that all Assistant Accounts Officers should have as far as possible an opportunity to work in at least two Ministries/Departments before they are promoted as Pay and Accounts Officer. The applicant has since been promoted and ~~that~~ there is no bias against him. In the case of Gujarat Electricity Board and Another Vs. Atma Ram, the Supreme Court has held that the transfer is an incidence of service and the employee has no legal right to resist it (1989(3)JT(S.C.)20). In the instant case, the applicant has not substantiated the allegation of mala fides against the respondents. There is also no violation of any statutory rule. Therefore there is no justification to interfere with the transfer order challenged in these proceedings.

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7

8. In the circumstances, we find that the application has no merit and the same is dismissed.

9. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 31/5/91
MEMBER (A)

P.K. Kartha
31/5/91
(P.K. KARTHA)
V.C. (J)