

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1157A/90
T.A. No.

199

DATE OF DECISION 16.8.1990.

Shri P.K. Gupta	Petitioner Applicant
Shri K.L. Bhatia	Advocate for the Petitioner(s) Applicant
Versus	
Union of India & Ors.	Respondent
Shri R.N. Bagai	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 ? *No*
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 working as Assistant Foreman in the Ordnance Factory, Dehra Dun, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed not to transfer him from Dehra Dun to Shahjahanpur. The pleadings in the case are complete. The application has not been admitted. We feel that it could be disposed of at the admission stage itself.

2. The facts of the case in brief are that the applicant was appointed as Supervisor-A/Tech.(Civil) at Ordnance Factory, Dehra Dun, in 1975. He was appointed to the post of Chargeman Grade II (Civil) w.e.f. 8.11.1978 in the same factory. He was promoted as Chargeman Grade I (Civil) and

was transferred to Ordnance Factory, Moradnagar w.e.f. 27.2.1982. He was again promoted to the post of Assistant Foreman (Civil) and was posted again at Ordnance Factory, Dehra Dun, w.e.f. 20.12.1984.

3. On 11.7.1988, the applicant was informed about the orders of his transfer to Shahjahanpur. It was stated that he should be ready for movement at a short notice.

4. According to the applicant, he has worked at Dehra Dun for $3\frac{1}{2}$ years only and he was not in a position to leave Dehra Dun due to domestic circumstances, such as illness of his father and the education of his children. He has alleged that a large number of his colleagues with longer service at Dehra Dun, are continuing to work there and he has been discriminated against and is being transferred to Shahjahanpur. He has stated that he submitted his representation on 31.10.1989 to which no reply was received by him. The respondents have, however, denied having received any such representation. He was on sick leave from 1.6.1990 and has not received the release order dated 2.6.1990. According to him, he is not in a position to leave Dehra Dun due to his domestic circumstances.

5. The respondents have stated in their counter-affidavit that the applicant has stayed at Dehra Dun for more than 12 years in different capacities and different spells during his service tenure of about 15 years. According to them, though the transfer order had been issued, he has not yet been transferred and

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the grievance regarding the disruption of his children's education in mid-academic session, does not survive any longer. They have contended that the applicant has been transferred in the exigencies of service. As regards the allegation that officers senior to him have been allowed to continue in Dehra Dun, the respondents have stated that the officers who have been allowed to continue at Dehra Dun, belong to different disciplines/trades.

6. The applicant has not alleged any mala fides against the respondents. The respondents have documentary evidence to show that the transfer order dated 31.5.1990 has been handed over to him on 31.5.1990. His name has been struck off the strength of the Factory at Dehra Dun w.e.f. 2.6.1990. Having considered the rival contentions and the material placed before us, we are of the opinion that the applicant has not made out a prima facie case against the impugned order of his transfer. The legal position in this regard has been clearly laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board and Another Vs. Atma Ram Saugomal Poshani, 1989 (3) J.T. 20 and Union of India & Others Vs. H.N. Kirtania, 1989 (3) S.C.C. 455.

7. 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:-

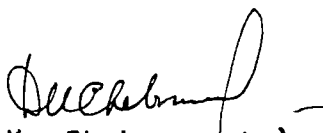
"Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not 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."

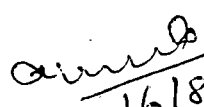
8. In Kirtania's case, the Supreme Court observed as under:-

"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 male fide. There was no good ground for interfering with respondent's transfer."

9. In view of the aforesaid judicial pronouncements, we are of the opinion that the applicant will not be entitled to the relief sought in the present application. The application is dismissed. The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member

16/8/90


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