

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. OA 278/90 198
T.A. No.

DATE OF DECISION 26.9.1990.

Shri H.K. Mehra _____ Applicant (s)

Shri B.S. Arora _____ Advocate for the Applicant (s)

Versus
Union of India & Ors. _____ Respondent (s)

Shri R.M. Bagai, _____ Advocate for the Respondent (s)

CORAM :

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 ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

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

JUDGEMENT

The applicant, who is working as a Foreman in the Ordinance Factory, Dehradun, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the impugned order dated 9.8.1989 transferring him from Dehradun to Jabalpur.

2. The brief facts of the case which led to the filing of this application are as given below. The applicant was the first foreman who was given the productivity shield in 1987 for best production and discipline of his shop. It is alleged that the General Manager, Shri N.R. Banerjee, got annoyed with him due to his refusal to issue any inventory of prior date. An advice notice dated 29th March, 1989,

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was issued to him for late attendance. The applicant duly replied the same stating that no action had been taken against some of the other employees who are coming late every day. On 10-5-89, the applicant was transferred from M.C.D. to Q.C.(Lab.) and was made subordinate to another Foreman, Shri G.S. Vig, who was 7 years junior to him. Although he is a Foreman(Mechanical) he was transferred to a Department which is meant for persons qualified in Chemical Engineering. He protested against this inter-sectional transfer vide letter dated 27.5.89. It is alleged that the applicant has been transferred to Jabalpur at the instance of the General Manager. The applicant as well as Shri T.L. Dhar, another Foreman, made representations against their transfer. The request of the applicant was turned down while Shri T.L. Dhar was allowed to continue in Dehradun although he has been working in this factory for the last 28 years. It is further stated that he has applied for housing loan and his application is at priority No.1 but as the General Manager is aware that the applicant is ~~on~~ ^{transferred} the verge of retirement and, if the applicant will not be able to get the said loan.

3. The respondents have filed their counter-affidavit. They have denied the contention that no person should be transferred to more than two factories during the whole of his life. Rather, the Cadre Controlling Authority can utilise his services in any of the forty factories spread all over India.

As far as the awarding of the

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productivity shield is concerned, it is stated in the counter that the same is given to the shops/sections as a whole and not to any individual. It has also been denied that the General Manager is annoyed with the applicant. The advice note issued to the applicant is of routine nature to impress upon the employees to observe punctuality. It is neither a warning nor any punishment. The transfers are ordered by the General Manager from time to time in the overall interest of the factory and not because of any malice or ill will against any employee. The submission of the applicant that he was made subordinate to a Junior Foreman is also denied. It is also denied that the transfer of the applicant ^{to Jabalpur} has been ordered at the instance of Shri N.R.Banerjee, the General Manager. The transfer orders have been passed by the Chairman/Director General Ordnance Factories Board at Calcutta in the normal course and that the transfer order dated 9.8.89 is not only in respect of the applicant but it is also in respect of 122 other Foremen working in different factories all over India. The transfer is an incident of service and the placement of personnel by transfer from one station to another is in the exigency of service. It is stated that the transfer order in respect of Shri T.L.Dhar has been kept in abeyance ^{upto 30.11.1990} (in order to meet emergent functional requirements) and not cancelled. The allegation of the applicant that he has been transferred so that he may not get the housing loan and ~~lose~~ his seniority/priority is denied. The applicant will be entitled to his seniority/priority in the matter of grant of House Building Advance irrespective of the fact of his transfer anywhere in India.

4. The applicant has not produced any evidence to substantiate the allegations of mala fides against the respondents. The respondents have produced before us a copy of the appointment letter of the applicant as Chargeeman Grade-I(Tech.) in February, 1964 in which it is clearly stated that he is liable to serve anywhere in India. A copy of the Ministry of Defence Notification No.SRO-4 dated 4.6.1956 relating to the Indian ~~Ordnance~~Factories was also produced before us. In Appendix-D of the notification, it is indicated that the employees will have the liability to serve anywhere in India. The learned counsel of the respondents have submitted that the applicant had only three transfers in his entire career out of which the first one was at his own request and the second one on promotion. Further, the applicant is serving at Dehra Dun for the last ten years.

5. We have gone through the records of the case carefully and have heard the learned counsel of both parties. 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 the 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.

6. 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

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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 :--

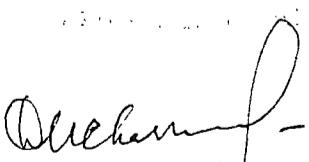
"Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not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

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

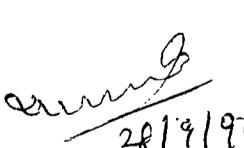
"The respondent being a Central Government employee, held a transferable post and he was liable to be transferred from one place to the other in the country. He has no legal right to insist for his posting at Calcutta or any other place of his choice. We do not approve of the cavalier manner in which 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 mala fide. There was no good ground for interfering with respondent's transfer."

8. In view of the aforesaid judicial pronouncements, we are of the opinion that the applicant will not be entitled to the reliefs sought in the present application. The application is, therefore, dismissed and the interim order stands vacated. The parties will bear their own costs.


(D.K. CHAKRAVORTY)

MEMBER (A)

28/9/890


28/9/90
(P.K. KARTHA)
VICE CHAIRMAN