

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(5)

O.A. No. 740/90
T.A. No.

199

DATE OF DECISION 15.2.1991.

Shri J.K. Sharma

xPetitioner Applicant

Shri Narinder Singh,

Advocate for the Petitioner(s) xApplicant

Versus

Union of India & Another

Respondent

Shri P.P. Khurana

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? 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 of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as an Upper Division Clerk in the Defence Estates Office, Delhi Circle, Delhi Cantt., filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order dated 11.4.1990, whereby he has been transferred from Delhi to Jaipur.

2. On 25.5.1990, the Tribunal passed an interim order whereby the respondents were restrained from giving effect to the impugned transfer order dated 11.4.1990 insofar as it applies to the applicant. The interim

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order has been continued thereafter, till the case was finally heard on 7.2.1991.

3. The facts of the case in brief are as follows.

The applicant is working as U.D.C. and is posted at Delhi since 9.3.1984 on compassionate grounds. He was transferred from Meerut to Delhi.

4. The applicant has stated that the respondents are maintaining a common seniority list of male and female employees in the grade of U.D.C. all over India, and that he has been shown at Serial No.95 in the seniority list as on 31.12.1985. As per the seniority list, Smt. Vijaylaxmi and Smt. Sharda Gopi, U.D.Cs, are the senior-most at Delhi, vide ~~the~~ the seniority list at Annexure A-5 to the application. The applicant has relied upon the transfer policy contained in the Office Memorandum dated 29.11.1972 issued by the respondents, according to which, there will be a maximum of three years of tenure in a hard station and persons reaching the age of 55 years or above, should not be transferred, except at their request and to stations of their choice. Further, compassionate postings in the desired stations shall be effected only against clear vacancies, failing which, against volunteers.

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5. One of the points mentioned in the transfer policy is that to the extent possible, women employees should not be posted to hard/tenure stations, except at their own request.

6. The applicant has submitted that he has been transferred in violation of the guidelines issued by the respondents and in a mala fide manner. According to him, Smt. Sharda Gopi and Smt. Vijay Laxmi are senior to him at the Delhi station and the senior-most is to be transferred.

7. The respondents have stated in their counter-affidavit that there is no seniority list of UDCs working in various offices all over the country. They have submitted that the applicant has been transferred by the impugned order in view of the exigencies of service. According to them, the transfer is not always effected on the basis of seniority of tenure at a particular station. As far as the ladies are concerned, the respondents have stated that they are not transferred to hard/tenure stations to the extent possible. Efforts are also made not to disturb them in the stations from which their output of work and dedication can be expected to the optimum and conducive to family harmony. The

respondents have pointed out that the applicant has been in Delhi for about six years and was ordered to be moved out to accommodate other staff members in Delhi.

8. We have carefully gone through the records of the case and have considered the rival contentions. We see no legal infirmity in the transfer policy of the respondents insofar as it relates to women employees. Posting to a tenure station involves hardship and the transfer policy in regard to the transfer of female employees can be justified as a special provision in favour of women within the meaning of Article 15 (3) of the Constitution (Vide Charan Singh & Others Vs. Union of India & Ors., 1979 (1) SLR 553).

9. The legal position in regard to transfer is well settled. In this context, reference may be made to the decisions of the Supreme Court in Gujarat Electricity Board and Another Vs. Atma Ram, 1989 (3) J.T. 20, and Union of India & Others Vs. H.N. Kritania, 1989(3) S.C.C. 455.

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

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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."

11. 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 mala fides. There was no good ground for interfering with respondent's transfer."

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12. The applicant has not substantiated the allegations of mala fides against the respondents. There is also no violation of any statutory rules in the instant case. In view thereof, we are of the opinion that the applicant is not entitled to the relief sought in the present application. The application is, therefore, dismissed at the admission stage itself. The interim order passed on 25.5.1990 and continued thereafter, is hereby vacated.

There will be no order as to costs.

Dulal Chakravorty
(D.K. Chakravorty)

Administrative Member

Partha
15/2/91
(P.K. Kartha)
Vice-Chairman(Judl.)