

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(3)

O.A.NO.1382/91

DATE OF DECISION: 28th Feb. 92

SH. K.K. JINDAL

....

APPLICANT

VERSUS

THE GENERAL MANAGER,
NORTHERN RAILWAY & ANOTHER

....

RESPONDENTS

CORAM:-

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

THE HON'BLE MR.T.S. OBEROI, MEMBER(J).

COUNSEL FOR THE APPLICANT : SH. G.D. GUPTA

COUNSEL FOR THE RESPONDENTS : SH. SHYAM MOORJANI

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J).

In this O.A. filed, under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was posted as Chief Parcel Supervisor in New Delhi, is aggrieved with his transfer from New Delhi to Meerut city, w.e.f. 15.5.1991. His case is that because of cancellation of his transfer, on earlier two occasions, once from New Delhi to Bhatinda and the other from New Delhi to Aligarh, vide judgements of this Tribunal, on applications having been filed by him, the respondents have not taken the same sportingly, and, therefore, in consequence, have taken up this opportunity again, barely after 5 or 6 months of his posting back, at New Delhi, pointing out the prejudice which the respondents

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nursed against the applicant. He has also prayed for payment of certain dues to him, consequent of his earlier transfers, which have not been properly accounted for and paid to him. He has prayed for the following reliefs:-

(a) to allow this original application of the applicant with costs;

(b) to issue, appropriate order or orders, direction or directions;

i) quashing the order of transfer dated 15.5.91;

ii) declaring the applicant not liable to be transferred again and again;

iii) directing the respondents to allow the applicant to continue to remain posted at New Delhi and further directing the respondents to release the entire arrears of salary from

30.9.1988 to 7.11.1990 with interest and also interest on difference of amount of salary and subsistence allowance for period 21.4.1986 to 23.5.1988;

(c) to issue such other and further appropriate order or orders as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice.

2. In the counter filed on behalf of the respondents, the applicant's case was opposed. Their main plea was that transfer is an essential incident of service, and so is the case in the case in hand. They further stated that it is the prerogative of the respondents/employer to make

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the best use of employees' services, and from that angle, the respondents had thought it best that the applicant may be placed at Meerut city, as a Chief Parcel Supervisor, so that with his experience and sagacity, things can be straightened up there. It was further pointed out that the applicant did not oppose his being shifted on earlier two or three occasions, within Delhi such as, his transfer from New Delhi to Old Railway Station or to Nizamuddin Railway Station, but whenever he was posted to an out-station such as, Bhatinda, Aligarh, on earlier two occasions, and now to Meerut city, he has resisted the same, so much so has come by way of applications, in this Tribunal, without even his availing of or awaiting orders on his representation, which is necessary, before filing the O.A., as in the present case, under the relevant provisions of the Administrative Tribunals Act, 1985.

3. In the rejoinder filed, besides reiterating the points earlier urged in the O.A., the applicant has urged that being the senior most Chief Parcel Supervisor, in the grade of Rs.2000-3200/-, and being a case of reduction of strength at New Delhi Railway Station, while increasing the same at Meerut city, or atleast making adjustments in the strength at both these stations, only the junior most incumbent in that grade could have been transferred to Meerut, rather than the applicant, in accordance with the departmental instructions on the subject.

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4. Arguments were heard, from both the sides.

5. The learned counsel for the applicant, by referring to several certificates/testimonials, copies of which have been placed on record, alongwith the O.A., pleaded that the applicant, with his diligence and hard work, has won approbation from his superiors, and his diligence and devotion to the duty has resulted in tremendous saving to the department. He, therefore, pleaded that instead of being rewarded for the same, he has been penalised, by his frequent transfers to other stations, at the behests of some one from those, who have stood to lose, on account of the good work done by the applicant. The learned counsel for the applicant further pleaded that the earlier two transfers were on account of some sort of suspicion entertained by the respondents against the applicant, regarding his integrity and alleged bad reputation and were thus punitive in nature, whereas in the present case, they had made use of the other weapon, making out that the expertise possessed by the applicant, is to be made use of at Meerut city. But, the purpose in dislodging the applicant from New Delhi, in either case, is the same. The learned counsel for the applicant also pointed out that the applicant is an office bearer of the Railway Men's Association at Nizamuddin, and his transfer to Meerut city has also been opposed by the concerned union, and from that angle also, his transfer to Meerut is not in accordance with the rules.

6. We have also heard the learned counsel for the

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respondents who pleaded that the law regarding transfer is well settled by now. By referring to a number of authorities, notably Gujrat Electricity Board Vs. Atma Ram Sungomal Poshani (JT (3) SC 20, he pleaded that the applicant having been relieved vide the impugned order, w.e.f. 15.5.91, he had no option but to join at the station of his posting, and grievance, if any, should have been brought to the notice of the administrative authorities concerned, and in the event of grant or otherwise of the same by them, he ought to have acted, nothing than coming before this Tribunal, by way of the present O.A., and seeking an interim order from this Tribunal, on 18.6.1991, without even disclosing that he has already been relieved from his post at New Delhi, on 15.5.1991, vide the impugned order. The learned counsel for the respondents again emphasised that is the prerogative of the employer to make the best use to the services of his employee, and, therefore, the same should not be denied to the respondents, in this case.

7. We have given our careful consideration to the rival contentions as briefly discussed above. We have also carefully perused the contents of the respective pleadings, the material placed while both the sides on record, including the additional affidavit filed on behalf of the applicant.

8. In the citation referred to by the learned counsel for the respondents, it was inter alia held:-

"Transfer of a Government servant appointed to a

[Signature]

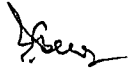


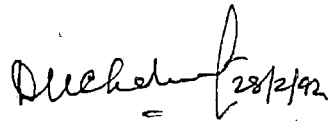
particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. 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 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. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

9. We also find that there is a representation dt. 16.5.1991 filed by the applicant, just on the next date of the issue of the impugned order. Presumably, action thereon had not been taken by the respondents, in view of the applicant having filed the present O.A. before this Tribunal, in terms of Section 19 of the Administrative Tribunals Act, 1985. Keeping the same in view and also the fact that, as stated by the respondents in their counter (Page 2, para B), the posting of the applicant at Meerut was approved by the competent authority for a period of six months, which, reckoned from the date of the impugned order, has since elapsed. Further, in view of the representation dated 16.5.1991 (Annexure A-C) already having been submitted by the applicant to the higher authorities concerned, but action thereon seems to have not been taken because of the filing of the present O.A., to our mind, it would, in the circumstances of the case, be appropriate if the respondents take a decision thereon within

two months from the date of receipt of a copy of this judgement, and pass suitable orders thereon. This would be in keeping with the directions of the Hon'ble Supreme Court in the citation referred to above, and also within the norms of administrative propriety, in a case of this nature. Till then, the applicant will remain posted at the place where he is presently working, in pursuance of the interim order granted by this Tribunal on 18.6.1991, and extended from time to time. After expiry of the said period, the applicant's posting will be governed by the orders passed by the respondents, on his representation, referred to above. As regards his previous dues, he may, after exhausting the departmental remedy, agitate about the same, in accordance with the provisions of law, if so advised.

10. O.A. decided, as above, with no order as to costs.


(T.S. OBEROI)
MEMBER(J)


(D.K. CHAKRAVORTY)
MEMBER(A)