

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(8)

O.A. No. 1747/91
T.A. No.

198

DATE OF DECISION 30th Jan., 1992.

Shri Anil Kumar Nigam Applicant (s)

Shri B.B. Rawal Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri Jog Singh Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *afs*
2. To be referred to the Reporter or not ? *dn*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *it*
4. To be circulated to all Benches of the Tribunal ? *it*

Sharma
(J.P. SHARMA)

MEMBER (J)

Debbarma
(D.K. CHAKRAVORTY)

MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(a)

REGN. NO. OA 1747/91

Date of decision: 30th Jan., 92.

Shri Anil Kumar Nigam Applicant

Vs.

Union of India Respondents

CORAM: THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant Shri B.B.Raval,
Counsel.

For the Respondents Shri Jog Singh,
Counsel.

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.J.P.SHARMA, MEMBER(J))

The applicant is aggrieved by the order dated 25.6.1991 issued by the Assistant Director(Administration) by which the representation of the applicant was rejected. The applicant was transferred from New Delhi to ARC, Doon Dooma by the order dated 15.4.1991 and was ordered to join there by 31.5.1991. The applicant claimed the relief ^{of} quashing the order of transfer dated 15.4.1991(Annexure A-7) and the impugned order dated 25.6.1991(Annexure A).

2. The applicant has assailed his order of transfer on the ground that he joined the cadre of Stenographer Grade-II only in July, 1988 and belongs to the common cadre of Stenographer Grade II maintained for four different Directorates DG(S). He was transferred in

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1989 to ARC Charbatia which had been later modified to ARC Doom Dooma and the applicant was eager to go and also moved for transfer and booked his rail reservation for journey on 7.6.89 but it was ultimately cancelled. However, the present transfer order is not in accordance with the Transfer Policy.

3. The respondents contested the application and stated that the transfer of staff is an essential condition of service and the same is a discretionary matter under the control of the administrative authorities. The transfer of any member of staff depends on the administrative exigencies- efficiency of administration and other factors and is purely an administrative action. The transfer of the applicant does not involve any fundamental right, law or rules and should not be interfered by the Tribunal. The transfer is an inherent part of the condition of service and is the matter of administrative requirement and exigency and is a matter of policy of the Government in the department. According to the respondents, the DIGs/ DDS of Directorate General of Security were eligible for Steno-II. From 8.12.1988, the DIGs/DDSs had been made eligible for Sr.P.As instead of Steno-II. Consequently, the posts of Steno-II attached to the DDSs and DIGs had been upgraded. This resulted in the promotion of certain Steno-II to Sr.P.As and they had to be rotated

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wherever the posts of Sr.PA were available.

As per Transfer Policy dated 16.9.1988(Annexure

R-I) where the posts are abolished/transferred

the junior-most in the grade are to move out in

case the vacancies for them are not available

at that station. Accordingly, the following

three Steno-II were transferred to CBT from Delhi

who were the juniormost as Steno-II:

1. Shri V.P.Sharma

2. Shri A.K.Nigam

3. Shri M.K.Gupta

Shri M.K.Gupta moved on transfer to Charbatia.

Shri A.K.Nigam,i.e. the present applicant made

informal request that he should be transferred to

Doom Dooma instead of Charbatia as he would be

eligible to retain the Government accommodation

to
in Delhi on transfer. This was agreed/and his

transfer was changed from Charbatia to Doom Dooma

(Annexure R-II) Shri V.P.Sharma, however, represented

his case for cancellation of his transfer as he

/a
had already done/number of outstation hard postings.

The transfer of the applicant had been cancelled

because at that time he did not have the longest

stay at Delhi. The Transfer Policy has been

that the persons having longest stay as Steno-II

at the station should be transferred. Since

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one of the Steno-II at ARC, Doon Dooma had completed his normal tenure of posting at that station and had requested for his transfer to Delhi, the transfer order of the applicant transferring him from ARC, New Delhi to ARC, Doon Dooma on the basis of longest stay at Delhi had been issued. This has been done as per the Policy on transfer in the ARC dated 16.9.1988 (Annexure-R-I). On the representation of the applicant dated 29.5.91 as a reminder to his earlier representation dated 7.5.91 forwarded by the Officer Commander, ARC (Airwing), Palam on 31.5.1991, it was informed that his request was not found genuine and it was also intimated that the period of stay on a particular station is to be considered. The period with reference/particular of pay grade/for the purpose of transfer is not relevant one. The applicant was also given personal interview with the Principal Director where he requested that the Transfer Policy be changed. The Aviation Research Centre is an independent unit and the transfer of its staff cannot be linked to the staff of other units. In view of this, the Principal Director had not seen any reasons for cancellation of the order issued by the ARC. It is further stated that the applicant has admitted that he could be transferred out of Delhi under ARC and that he was transferred in 1988 and again in 1989 to Doon Dooma and was willing to join there but in 1991 he has raised frivolous objections to his transfer. The respondents, therefore, prayed that the

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application be dismissed.

4. We have heard the learned counsel for the parties at length and gone through the records of the case carefully.

5. It is not disputed that the applicant has the longest stay as Steno-II at the station. The applicant has not alleged any mala fide and he has been transferred by the order dated 7.4.1989 to Charbatia(Annexure A-1). On his request, the transfer was changed by the order dated 24.4.89 from Charbatia to Doom Dooma(Annexure A-2). By the order dated 29.5.1989(Annexure A-3) the transfer was kept in abeyance till further orders. The applicant has himself, by letter dated 7.5.91 desired to know whether his transfer order to Doom Dooma is still in force. By the order dated 12.1.90 (Annexure A-6) the transfer of the applicant to Doom Dooma was cancelled and it was informed by order dated 15.4.1991(Annexure A-7) that he has been transferred to ARC, Doom Dooma. The transfer was to take effect from 31.5.1991. The applicant in his rejoinder in para 1 admitted that the transfer is an essential condition of service and also a discretionary matter under the control of the Administrative authorities. He wants/to challenge the said order on the ground of ^{only} behial of natural justice and discrimination in this behalf. However, the respondents

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in their reply have clearly stated that those who were junior-most were chosen for transfer out of station and the applicant being one of them has been transferred. The transfer order was issued in administrative exigencies. Merely not adding the word "exigency" or "public interest" will not take away the very sense of the matter because earlier in 1988 the applicant had been transferred to Charbatia and on his own choice the transfer was made to RRC Doom Dooma instead of Charbatia. On his representation, the order was kept in abeyance. The respondents have clearly explained in their counter that the Transfer Policy of 1988 has been followed in letter and spirit. In view of the above, it is evident that the transfer of the applicant had been effected as a matter of administrative exigency and not against the guidelines or in mala fide manner. The applicant has been given sufficient accommodation and on his own choice from Charbatia he was given the posting at Doom Dooma. The Hon'ble Supreme Court in Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani, (1989) 2 SCC 602 has held that that the transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. It is necessary in public interest and efficiency in public administration. No government servant or employee of public undertaking has legal right for being posted at any particular place. 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. He 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

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other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules. Further, in the case of J.K.Dave Vs. State of Gujarat reported in 1989(3) SLR 596 it has been held:-

"Therefore, even if there is some difficulty or irregularity or lapse in passing orders of transfer the same have got to be ignored. If the correctives are to be applied by the Court the confusion will be worst compounded. In the aforesaid circumstances unless it is ex-facie shown that the order of transfer is passed as measure of penalty and it is by way of victimisation it would not be proper for this court to exercise its power under Article 226 of the Constitution of India and interfere in matter of transfer."

6. The Principal Bench of the Central Administrative Tribunal in the case of Ajit Singh Bhatia Vs. Union of India reported in 1989(3) SLR 597 has held that the transfer of an employee is a matter of adjustment and accommodation to be made by the concerned administrative authority. It is solely within the powers of the executive and it is not to be interfered with by courts unless there is a clear evidence of malafides. In the present case the order of transfer is neither malafide nor it is punitive in nature.

7. In view of the above discussion, we find no merit in the present application and the same is dismissed.

There will be no order as to costs.

Done on
(J.P.SHARMA) 30.1.92
MEMBER(J)

Decided
(D.K.CHAKRAVORTY)
MEMBER(A) 30/1/1992