

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 172/1991
T.A. No.

199

DATE OF DECISION 26.4.91

<u>Shri V.M.Thareja</u>	<u>Petitioner</u> Applicant
<u>Shri S.C.Luthra</u>	<u>Advocate for the Petitioner(s)</u> Applicant
Versus	
<u>Union of India & another</u>	<u>Respondents</u>
<u>Shri M.L.Verma</u>	<u>Advocate for the Respondent(s)</u>

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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. Whether it needs to be circulated to other Benches of the Tribunal? */No*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.D.K.CHAKRAVORTY, MEMBER)

The grievance of the applicant, who is working as Senior Scientific Assistant in Food Inspector Organisation of the Ministry of Defence, pertains to his transfer from Guwahati to Chandigarh by the impugned order dated 8.12.90. The application was filed in the Tribunal on 15.1.91. On 22.1.91, the Tribunal passed an interim order to the effect that status quo as of that date as regards the continuance of the applicant be maintained. The interim order has thereafter been continued until the case was finally heard on 8.4.91 and orders were reserved thereon.

2. The facts of the case in brief are as follows. The applicant, who is a Senior Scientific Assistant(SBA for short), was posted on 1.5.87 to Guwahati(a hard tenure station in North East Region) in the Food Inspection Unit(Army Supply Corps) and that the tenure in the case of the applicant was 2 years. After completing the tenure, he was not posted at one of the two choice stations indicated by him at Delhi. He filed OA 72/90 in the Guwahati Bench of the Tribunal in which he sought directions for posting him at either of the two choice stations and also to quash the reply received from Army Headquarters dated 29.1.90 (Annexure 'A' to OA No.72/90) which has now been marked as Annexure-2 vide which he was informed that it would not be possible to post him back to Delhi in view of the disciplinary case pending against him.

3. The above OA 72/90 was disposed of on 31.10.90. The relevant portion of the judgement from the operative para 5 is reproduced below:

"But at the same time we are of the opinion that it does not behove the superior controlling officer to take an inflexible stand on a subordinate officer's prayer. Even if the petitioner cannot be posted back to Delhi immediately the controlling authority should examine his prayer in a human and sympathetic manner. For that purpose if clearances are to be obtained from the C.B.I or the Central Vigilance Commission, this should be done by the authorities in order to objectively assess whether the balance convenience will lie if the petitioner is allowed to be at the same station where the disciplinary proceedings are being conducted. The petitioner is already 51 years of age and if he has genuine family problems, those problems should also be taken into account

in coming to a decision about his posting. But in view of our findings we do not propose to interfere in this matter beyond hoping that in deciding the petitioner's place of next posting the opposite parties will approach the question with sympathy."

4. The applicant had also filed OA No.110/90 in the Guwahati Bench in which he had sought the direction of the Hon'ble Tribunal to quash the inquiry proceedings. The Tribunal directed the concerned authority to complete the enquiry by 17.12.90, failing which the proceedings pending against the applicant would be deemed to have been quashed. The respondents thereafter got extension of time till 7.12.91 from the Tribunal.

5. The applicant has stated that though he made a representation to the respondents, it was not considered sympathetically and that they passed the impugned order transferring him from Guwahati to Chandigarh. He was relieved from Guwahati on 21.12.90 and was also struck off strength on the same day. He was not paid TA/DA or salary advance. In the meanwhile, as the inquiry had already started, he reported to the Inquiry Officer at Delhi, under whose orders he has been temporarily attached to CFL.ASC, Delhi till 7.2.91. This implied /required that he was not to report for duty at Chandigarh till the completion of the enquiry.

6. The applicant has alleged that the respondents are guilty of discrimination inasmuch as one Smt.Suman Lata, JSA who too is involved in the disciplinary case and has been served with [redacted] similar type of chargesheet as the applicant some time in January/February, 1989 has been continuing in Delhi even though an inquiry is pending against her. There are 4 others SAs, namely, S/Shri P.D.Kaushik, Qumurddin, Ajit Singh, Ramesh Chander ✓ against whom the inquiry is likely to be held in disciplinary

case of similar type but were allowed to serve the normal tenure of three years in Delhi before being posted out of Delhi and that too by 30th June, 1990 even though during their posting at Delhi, a court of inquiry was being held during this period.

7. The applicant has stated that according to the transfer policy, officers on the completion of the fixed tenure "may" be considered for posting to a station of their choice "as far as possible". This has not been done. He has alleged that by posting him to Chandigarh, the respondents are compelling him to work under an officer who is not qualified as per Prevention of Food Adulteration Act and that it will be highly embarrassing and humiliating for him who is a fully and highly qualified analyst qualified as per PFA&A.O.172/67 with an experience of 30 years in the analysis of Food.

8. The respondents have issued a movement order on 9.4.91 according to which he is required to leave Delhi on 9.4.91 and on arrival at destination, he should report to Chandigarh.

9. The respondents have stated in their counter-affidavit that the application is barred by the doctrine of res judicata in view of the decision of the Guwahati Bench of the Tribunal, mentioned above. On the merits they have contended that the applicant holds a transferable post, that his temporary duty at Delhi is over and that he has been posted to Chandigarh which is nearer to Delhi after taking into account all the facts and circumstances. According to them, the applicant was asked time and again to indicate two stations of his choice which he deliberately avoided and insisted for

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only one station i.e. Delhi to which he was previously posted for his next posting also. Since no second choice station was forthcoming from the applicant, despite repeated requests, the department, considering his age, service and family background, decided to bring him as close to Delhi (his family is residing in a Government accommodation in Delhi) as possible and posted him in Chandigarh.

10. We have gone through the records of the case and have considered the rival contentions. In our view, the plea of res judicata raised by the respondents is devoid of any substance as the Guwahati Bench of the Tribunal had directed the respondents to deal with the case of the applicant sympathetically. Admittedly, the applicant holds a transferable post. In view of this, he cannot insist that he should be posted at the particular station or place. The transfer policy relied upon by him clearly indicates that the posting at the choice station is to be considered "as far as possible". As the applicant has not substantiated any malafides on the part of the respondents or violation of any statutory rules, we are of the opinion that the Tribunal should not interfere with the decision of the respondents in the instant case (vide Gujarat State Electricity Board v. Atma Ram, AIR 1989 SC 1433; and Union of India v. H.N. Kirtania, AIR 1989 SC 1774). We, however, feel that the applicant should be given a reasonable time to prepare himself for joining the post at Chandigarh. He should also be given a reasonable amount by way of advance towards salary and TA/DA in accordance with the relevant rules. We, therefore, dispose of the present application at the admission.

stage itself with the direction to the respondents not to give effect to the impugned order of transfer till 31st July 1991. The applicant may also apply for a reasonable amount of advance towards salary and TA/DA and the respondents shall release the same promptly to him. The L.P.C. and other documents should also be given to him for presentation at the office at Chandigarh.

There will be no order as to costs.

(Signature 26/4/89)
(D.K.CHAKRAVORTY)
MEMBER

(Signature 26/4/89)
(P.K.KARTHA)
VICE CHAIRMAN