

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI



1. OA NO.2214/91

DATE OF DECISION: 12.02.1992.

SHRI O.P. OBERAI

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

2. OA NO.2215/91

SHRI PATTI RAM

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

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

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT(S) SHRI O.P. SOOD, COUNSEL

FOR THE RESPONDENTS MRS. RAJ KUMARI CHOPRA, COUNSEL

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Heard the learned counsel for both the parties.

2. OA No.2214/91 filed by Shri O.P. Oberai and OA No.2215/91, filed by Shri Patti Ram are based on identical set of facts and raise common issues of law. We, therefore, propose to deal with them through this common judgement. For facility of disposal, we are discussing the facts of the case of applicant Shri O.P. Oberai in OA No.2214/91 in detail, hereunder.

3. The applicant who is working as Senior Chargeman w.e.f. 14.3.1987 in Equipment Depot Workshop, Agra, is aggrieved by his transfer on being rendered surplus to 510 Army Base Workshop, Meerut Cantt. vide order dated 22.4.1991. The case of the applicant is anchored on his understanding that there are three vacancies available at Agra itself in the sister installation viz. 509 Army Base Workshop and therefore the applicant should be accommodated in 509 Army Base Workshop.



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dated in that workshop. At the same time, the applicant has conceded in paragraph 5 of the O.A. that the authorisation of Senior Chargemen is centrally controlled on all India basis and that the appointing, disciplinary and cadre controlling authority in respect of Senior Chargemen is the Director of Electrical and Mechanical Engineering, Army Headquarters. Another ground for retention at Agra agitated by the applicant is that he has social obligations and is patient of "disturbed back bone" and, therefore, in the interest of his health and family obligations, he would like to continue at Agra. Further he has also given his willingness to revert to a lower post in case he is accommodated at Agra.

4. The stand of the respondents is that the employee carries all India transfer liability and that transfer is an administrative matter and that the employer alone is the best judge to decide as to where to utilise best his services. It is further brought out that the applicant has been working at Agra since the date of his first appointment viz. 31st May, 1957 and has never moved out. He filed a representation against his transfer on 10.9.1991.

5. The learned counsel for the respondents further supplemented the stand taken by the respondents in their counter by submitting that the applicant on record has conceded that he carries all India transfer liability. Transfer is a normal incidence of service, and, therefore, he should have no grievance on that score. Further, law on transfer is well settled by the Hon'ble Supreme Court in the case of **H.N. Kirtania v. UOI JT 1989 (3) SC 131** and in the case of **Gujrat State Electricity Board v. Atma ram Sungomal Poshani 1989 (3) JT SC 20.**

6. Our attention was drawn by the learned counsel for the applicant to the representation made by the applicant to the competent authority on 10.9.1991 wherein he has

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requested that "he may kindly be reverted to the post of Trademan as MCM/Telecom Mechanical in the present unit or 509 Army Base Workshop."

7. The learned counsel for the applicant referred us to Annexure A-8 annexed to his rejoinder (Daily Orders Part-1) which indicates that some persons holding the posts of Senior Chargeman are due to retire from 509 Army Base Workshop, Agra some time in February/March, 1992 and submitted that the respondents can easily accommodate the applicant against one of the vacancies likely to arise shortly.

8. After hearing the learned counsel for both the parties and considering the record very carefully, we observe that transfer is a normal incidence of service and when such an eventuality takes place, the law on the subject is that the concerned government servant should make a representation to the competent authority. If the representation is rejected, he should proceed to the place of posting. Unless the transfer order is motivated by a coloured exercise of power and malafides are alleged the judicial interference is not called for. As observed earlier, the applicant came to the Tribunal within a fortnight of lodging his representation with the competent authority. He should have waited for a reasonable period of time to enable the competent authority to take a decision on his representation before rushing to the Tribunal.

9. In the circumstances, we do not find any merit in the O.A. which is dismissed. No costs.

10. This, however, shall not preclude the competent authority to consider the request made by the applicant vide his representation dated 10.9.1991 for being retained at Agra in a lower post, if possible.

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10. The conclusion reached above shall equally apply to OA No.2215/91 Shri Patti Ram for the reasons adduced in the preceding paragraphs.

(I.K. RASGOTRA)
MEMBER(A)

12/2/92

(T.S. OBEROI)
MEMBER(J)

February 12, 1992.

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