

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 220/91.

DATE OF DECISION: 4.6.91.

SHRI PURAN LAL

APPLICANT

VERSUS

U.O.I. & ANOTHER

RESPONDENTS

CORAM:-

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

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANT

SHRI P.K. JAIN, COUNSEL.

FOR THE RESPONDENTS

MS. SUNITA RAO, COUNSEL

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 serving as a Chief Booking Clerk, New Delhi Railway Station, before his transfer to Bareta, in the same capacity, vide transfer order dt. 4.4.1990 (Annexure-A), has prayed for the following reliefs:-

- (a) Set aside the order of transfer dt. 4.4.90;
- (b) Direct the respondent not to transfer the applicant outside Delhi area till his retirement in the peculiar circumstances of the case;

and

- (c) Pass such other order as may be deemed fit.

2. Some of the main grounds urged for the cancellation of his transfer order to Bareta are that he is a member of Scheduled Caste Community and that, according to the circulars issued by the Railway Board, he could be transferred to his native district or to a place where residential quarters are available, and that, too, for

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very strong reasons calling for such transfer; that being a founder member of All India Railway Men's Scheduled Caste & Tribes Association, and in that capacity, ^{while} looking after the interests and welfare of the poor and the down trodden, he incurred wrath and displeasure of the higher authorities, who, as a measure of vindictiveness, ordered his transfer out of Delhi, inspite of his good work and earning a certificate of appreciation for his service and also a reward of Rs.200/- in cash; he had several personal reasons such as school and college-going children, whose education curricula would be disturbed, because of the transfer; and his wife being a heart patient for the last 6-7 years, as per a certificate issued by the Railway Doctor (Annexure-D), etc. His case further is that there are still vacancies in Delhi and New Delhi, for the post which he was holding and also that there were certain juniors to him who could, if at all necessary, be transferred to Bareta, in his place; though all others transferred vide order Annexure-A, had been accommodated to stations of their choice, or transferred back to Delhi, with his only exception, thereby pointing out the vindictive attitude of the high-ups, for the reasons stated earlier, and inspite of a representation dt. 16.4.90 (Annexure-B), no favourable response having been received, the present application has been moved, for the aforesaid reliefs.

3. After filing of the application, a notice to the respondents on admission and interim relief was issued vide order dt. 25.1.91. Though the respondents had put up their appearance through their counsel Ms. Sunita Rao, no counter was filed on their behalf, on 27.2.91

and again on 3.4.91, though directions were given in the order dt. 3.4.91 that in the event of no counter being filed by the respondents, they shall be forfeiting their right to do so. Accordingly, as no counter was filed, arguments were heard on behalf of the applicant as well as the respondents, and in the circumstances, the application is being disposed of finally, at the stage of admission, itself.

4. The learned counsel for the applicant had broadly urged the same grounds, as briefly mentioned above, and as put forth in the O.A. He also filed copies of certain documents, such as copies of orders transferring back/accommodating some of the other employees, who were also transferred alongwith the applicant, vide order dt. 4.4.90 (Annexure-A), Circular No.E(NG)-1/87/TR/34/NFTRC/JCM/DC dt. 27.9.89, and No.940E/C-III(Eiv) dated 29.10.1965, regarding policy of transfers in case of sensitive posts, including the one held by the applicant in this case.

5. We have also heard the learned counsel for the respondents whose main plea was that transfer is a matter primarily within the domain of the Administrative Authorities to be concerned with, and the courts/Tribunal should not, ordinarily, interfere in the matter, unless there are very strong and compelling reasons, for the same.

6. We have given our careful consideration to the rival contentions and have also carefully perused the contents of the OA, especially the grounds urging cancellation of the transfer order. The law of transfer is, by now, sufficiently clear. Hon'ble Supreme

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Court in their judgement in Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani (Judgements Today(3) S.C. Page 20) had inter-alia, in para-4 thereof, held as under;—

"Transfer of a Government servant appointed to a 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."

8. From the above, it is clear that the applicant had, vide his representation dated 16.4.90 (Annexure-B), requested the Administrative Authorities concerned, to stay his transfer, and the very fact that the same has not been acceded to, while in some other cases this has been granted, goes to show that the authorities concerned were not satisfied with the grounds seeking stay of his transfer or his posting back to the same place, or some other place in Delhi. The applicant, therefore, has no option, but to join his new place of posting. This is also not a case of any hostile discrimination, as alleged by the applicant, nor, for that matter, any violation of the provisions of Article 14 and 16 of the Constitution, is attracted. As a result, the application is dismissed, without any order as to costs. This shall, however, not preclude the respondents from reconsidering applicant's case for his posting back to Delhi, or nearabout, on some suitable/equivalent post, at any future appropriate time, in accordance with the rules on the subject.

(P.C. JAIN) 4/6/91
MEMBER(A)

(T.S. OBEROI) 4.6.91
MEMBER(J)