

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

(1)

O.A. No. 2424 of 199¹
T.A. No.

DATE OF DECISION 22-10-91

Swadesh Kumar	Petitioner
Mrs Sarla Chandra	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. I.K. Rasgotra, Member (A).

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

(Judgment of the Bench delivered by Hon'ble Justice
Shri Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant initially joined service in 1965 and was posted in New Delhi in 1977 after his promotion. The applicant joined as Deputy Director (IMT), SIS, New Delhi, on 30.9.91.

On 4.9.91, the impugned order (Annexure-II) was passed by which the applicant was transferred to SIS, Madras, from his post at SIS, New Delhi, while one Dinkara Rao SIS, Madras, was transferred to SIS, New Delhi. The applicant is aggrieved by this order dated 4.9.91 and after challenging this in ^{the} O.A., prays for quashing this impugned transfer order (Annexure-II). He also prays that respondents be directed to allow him to work as Deputy Director (IMT) at SIS, New Delhi. He also prays for

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interim relief of staying this transfer order.

2. We have heard Mrs. Sarla Chandra for the applicant extensively.

3. The applicant on 17.9.91 filed a representation before the respondents. This representation is still pending consideration before the respondents. Section 20 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act') provides that an application under Section 19 of the Act shall not be admitted unless other remedies are exhausted. Section 21(b) provides that if a representation has been filed, then the O.A. can be filed under Section 19 within six months even if the representation is not decided. Undoubtedly, the applicant has availed the remedy under Section 20 of the Act, but the representation has not been decided. Hence, he has come up before this court and filed this O.A. which can be said to be premature.

4. Law, by now, has been settled with regard to transfer of an employee. Undoubtedly, the post of the applicant is a transferable post and by this transfer, the applicant is neither lowered in status nor he suffers any financial loss. In the case of Shanti Kumari vs. Regional Deputy Director, Health Services, Patna (AIR 1981 S.C. 1577), the apex court observed:

"Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The courts cannot interfere in such matters."

It has also been held in this case that if the order of transfer is a breach of Government instructions or statutory rules, then it is the authorities who will look into the matter and redress the grievance of the employee.

In the case of Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani (AIR 1989 S.C. 1433), the apex court observed:

"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, a public servant has no justification


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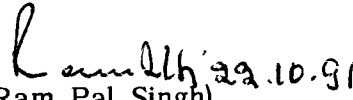
to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules."

In the case of Union of India and others vs. H.N. Kirtania (1989 (3) S.C.C. 445), the apex court has observed:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

5. The essence of these three judgments of the Supreme Court is that unless the transfer order has been passed with malafide intentions or in violation of the statutory rules, the order of transfer should not be interfered with because it is the employer who is the best judge to see which office personnel are fit to carry out their duties at a particular place. This discretion of the employer unless it suffers from the above noted infirmities cannot be interfered with. On persual of the record, we are satisfied that no strong and pressing grounds have been brought out by the applicant on record. We are also satisfied that there is no violation of the statutory rules and the transfer order has not been passed in a mala fide manner. Consequently, we dismiss ^{this} O.A. at the admission stage itself without notice to the other party.


(I.K. Rasgotra)
Member (A) 22/10/91


(Ram Pal Singh)
Vice-Chairman (J)