

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2905 of 1991  
T.A. No.

199

DATE OF DECISION 20.11.91

S.K. Bajaj

Petitioner

B.B. Srivastava

Advocate for the Petitioner(s)

Versus

U.O.I

Respondent

A.K. Behera

Advocate for the Respondent(s)

### CORAM

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 has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'), containing the prayer for quashing and setting aside the impugned order dated 3.12.91 by which he was directed to be transferred from New Delhi to Chandigarh.

2. The respondents on notice appeared and orally opposed this O.A. as well as the ex-parte ad interim order which was passed by this Tribunal on 6.12.91 by which the respondents were directed to maintain the status quo as of that date with regard to the transfer of the applicant from Delhi to Chandigarh.

3. We have heard both the counsel on the merits of the O.A. The preliminary objection raised by the respondents is that after the

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impugned order at Annexure-A1 dated 3.12.91 was passed, the applicant has not availed of the departmental remedy as provided in Section 20 of the Act. Section 20 of the Act provides that an application under Section 19 of the Act shall not ordinarily be admitted unless the applicant has availed of all the remedies available to him under the relevant service rules as to the redressal of his grievance.

4. To this objection, the learned counsel for the applicant contended that the transfer order was passed on 3.12.91 and immediately filed the O.A. on 6.12.91 and hence there was no time for filing any representation before the superior authority. He further contended that the word 'ordinarily' indicates that in such extraordinary circumstances, the provisions of Section 20 shall not be attracted. Section 20 was subject to consideration by the Apex Court of India in the case of *S.S. Rathore v. State of Madhya Pradesh* (AIR 1990 SC 10) in which it was held that provisions contained in Section 20 are mandatory and unless extraordinary circumstances appear, this statutory provision should be followed.

5. 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 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."

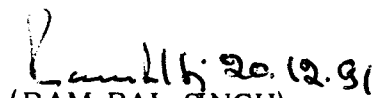
6. Thus, if the applicant was aggrieved by the transfer order dated 3.12.91, he should have first complied with the provisions of

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Section 20 of the Act and should have filed a representation before his superior authorities who may apply their mind to the fact that his wife is posted at Delhi and he is being transferred to Chandigarh while the Department's policy is to post husband and wife together at one place, as far as possible, but without availing of the departmental remedy, the applicant has prematurely rushed to this court for redressal. We are constrained to observe that this O.A. is premature and bereft of any merit. We, therefore, dismiss it. The applicant shall be free to file a representation before his superior authority putting up all his grievances and it should be considered properly by the employer. After the period of representation, if he is still aggrieved, he may file an O.A. We, therefore, dismiss this O.A. as premature.

Parties to bear their own costs.

  
(I.K. RASGOTRA)  
MEMBER (A) 20/12/91

  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)