IN THE CENTRL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

(7)

Regn. No.

Date of decision 13.3.92.

1. O.A. No. 2911/91
   N.D. Sharma
2. O.A. No. 2910/91
   Gian Chand
3. O.A. No. 2912/91
   B. Didar Singh
4. O.A. No. 2913/91
   Bhana Ram

Applicants

Shri B.B. Raval with Ms. S. Janani, Counsel for the applicants

vs.

Union of India Respondents

Shri T.K. Sinha, Counsel for the respondents

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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 judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

J U D G M E N T

This judgment shall also govern the disposal of OA Nos. 2910/91, 2912/91 and 2913.

2. All the applicants are the employees of the Central Vehicle Depot (C.V.D.), Delhi Cantt, New Delhi, which is a defence installation under Army Headquarters, Ministry of Defence, Government of India. Respondent No. 2 is the Director General of Ordnance Services

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and Respondent No. 4 is the Commandant of Central Vehicle Depot. All the applicants are under the respondents. The applicants are aggrieved by the transfer order (R-1) dated 19.11.91 by which the four applicants have been transferred from the C.V.D. Delhi Cantt to 222 ABOD, COD Dehu Road, 2 FOD and CAD Pulge respectively. All the applicants pray for quashing this transfer order and restraining the respondents from transferring the applicants outside CVD, Delhi Cantt. The applicants prayed for, as an interim relief, for staying the impugned transfer order and a Bench of this Tribunal, by its order dated 6.12.91, directed that a notice be issued to the respondents and meanwhile the operation of the transfer order dated 19.11.91 shall remain stayed for a period of 14 days. The said interim order was extended from time to time till both the parties were heard finally on 28.2.92.

3. The applicants in their O.As have contended that they are members of the Trade Union Organisations of the C.V.D., that they are civilian personnel, that Respondent No. 4, utterly in disregard to the rules, has harassed them from time to time and tried to undermine the activities of the Union unilaterally without any justification, that the applicants were not permitted to hold a meeting on the death of the late Prime Minister, Shri Rajiv Gandhi, that the respondents have uprooted about one hundred Sheesham trees, endangering the ecology of the nation, that the applicants were suspended and a departmental enquiry started, that subsequently the suspension orders were withdrawn etc. etc. All the O.As have been drafted in a haphazard manner. However, we have strenuously worked to bring out the above noted facts in the OAs.

4. The respondents on notice appeard and filed their return alongwith the documents. The respondents have contended that the applicants have not yet exhausted the departmental remedies and have not filed any representation against the transfer order. They have, thus, raised the preliminary objection that the OAs are liable to be dismissed for not having complied with the provisions of Section 20 of the Administrative Tribunals Act of 1985. They have controverted the above noted facts of the OAs of the applicants and maintain that the impugned transfer order has been passed in

public interest and is not mala fide. They also contend that the transfer order is also not against the statutory rules. They also contended that trees have not been cut or uprooted for preparing furniture of the Army officers. They contend that only small bushes were cleared and that malafides have been alleged without any particulars. They also contend that all the posts of the applicants are transferable, having all-India liability, that the transfer orders were issued on administrative grounds. They also maintain that the departmental enquiry which is pending against the applicants has to be held at Delhi and the applicants when they come to Delhi to participate in the enquiry will get their travelling allowance etc. according to rules. They further maintain that the transfer order can be passed even during the pendency of the enquiry.

5. After going through the bulky and haphazard pleadings of the parties, the only prayer which appears to have been made is for quashing of the impugned transfer order of 19.11.91.

6. Shri B.B. Raval, learned counsel for the applicants, and Shri T.K. Sinha, learned counsel for the respondents, were heard. We have perused the entire bulky record filed by both the parties.

7. The law on the subject of transfer of a public servant now stands finally settled and crystalised in the case of Gujarat Electricity Board and another vs. 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 this case, the Supreme Court has laid down a law that if the applicants have a genuine difficulty, then it is open to them to make a representation to the competent authority for modification or cancellation of the transfer order. If the competent authority does not give them any relief, then the employees should proceed to obey the transfer order. According to the provisions of Section 20 of

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the Administrative Tribunals Act of 1985, an application should not be admitted unless departmental remedies have been exhausted. Assuming that the departmental remedies were not available according to rules, yet the applicants were free to make a representation to the competent authority praying therein for staying or modification or cancellation of the transfer order. They could have also filed a representation after complying with the transfer order according to the principles laid down in Gujarat Electricity Board (supra). The applicants do not appear to have filed any representation before the respondents or the competent authority after passing of the impugned transfer order dated 19.11.91.

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 grounders rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

Thus, strong and pressing grounds must be present and it is only then that the transfer orders can be interfered with. If violation of the statutory rules is alleged or if malafides on the part of the respondents is alleged, then these allegations have to be proved upto a reasonable limit so as to create at least in our minds that the the transfer order was passed in a mala fide manner.

8. Transfer is an incidence of service and in the public interest it is always for the employer to see as to where and in what manner and in what place, the employee's services are required. Unless pressing grounds or a strong case of malafide and breach of statutory rules is made out, then in a judicial review the transfer orders cannot be interfered with.

9. The learned counsel for the applicants has averred in his arguments that there are departmental instructions (Annexture 5) which have been contravened by the respondents in transferring the applicants. It is mentioned therein that an individual should be posted for a period of six years and compulsory posting/transfer before that period is over, cannot be allowed etc. etc. We have perused Annexure 5. They are only departmntal instructions and not statutory

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rules. Statutory rules are framed under Article 309 of the Constitution of India, while departmental instructions are simply for smooth working of the Department in a normal way. Any transfer made in violation of the transfer policy or departmental instructions woud not be a ground for quashing the transfer order. The instructions embodied in the transfer policy are similar in the nature of guidelines to the officers who are vested with the powers to order transfer in the exigencies of administration. In fact, transfer policy enunciated by Government or other authorities often allow a large amount of discretion to officers in whom the transferring authority is vested. As any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made that it is not issued bonfide or is actuated by malafide or is made in colourable exercise of powers, such a complaint is always open to scrutiny by the higher authorities.

10. The next contention of the applicants is that the transfer order creates a double jeopardy to the applicants because disciplinary proceedings have been started and transfer of the applicants is a consequence of these disciplinary proceedings. It is settled that transfer is not a penalty and as such there is no question of any double jeopardy. In the Full Bench judgment of this Tribunal in the case of Kamlesh Trivedi vs. ICAR & others (Full Bench Judgments of C.A.T. (Vol.1) p. 80, law has been laid down again clearly on this subject. In our view, these OAs which have been filed by the 4 applicants are premature. In view of the settled law referred hereinabove, these O.As have no substance and are, therefore, dismissed. However, it is open to the applicants to file a representation against the impugned transfer order before the competent authority against the impugned transfer order dated 19.11.91. With these observations, the OAS are dismissed as premature. Parties are directed to bear their own costs.

Needless to say that the interim order passed on 6.12.91 stands vacated.

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(L.K. RASGOTRA)
MEMBER (A)

(RAM PAL SINGH)
VICE-CHAIRMAN (J)