

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(6)

O.A. No. 2915 of 1991
T.A. No. .

199

DATE OF DECISION 6.2.92

Zakir Husain	Petitioner
Ms. Rita Kumar	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
Shri T.K. Sinha	Advocate for the Respondent(s)

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

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

J U D G M E N T

By this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing the order of his transfer passed on 17.9.91 by the respondents transferring him from New Delhi to Bhopal. The applicant contended that false departmental enquiry was initiated against him and it took quite a long time for the respondents to conclude it. The applicant also contended at the Bar that it took respondents three long years to decide his appeal and thus was being harassed by the respondents. According to the applicant, he sustained a fracture in his leg and the transfer order at such a juncture amounts to punishment.

2. The respondents on notice appeared and opposed the contentions made in the O.A. Inter alia, they maintained, that the applicant is working at New Delhi for the last 10 years and is not obeying the orders of his transfer. The respondents also contended that

Santh the applicant took T.A. advance etc. as back as 24.9.91 but did not

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proceed on transfer and went on medical leave. The respondents also contended that the transfer order is not malafide because the said punishment awarded to the applicant has become stale and is of 1986.

3. Be that as it may, by now, the law on the subject of transfer of an employee has been settled by the apex court. 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 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."

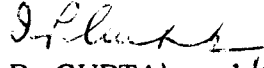
The applicant submitted a representation which was rejected by the respondents. The applicant has alleged malafide on the part of the superior officers, but could not point out any infringement of the statutory rules. The allegation of mala fide concerns the period of 1986 and cannot be accepted.


4. Transfer is an incidence of service and in the public interest it is for the employer to see as to whether ^{ye}~~the~~ the employee's services are required. Unless there are strong and pressing grounds or unless there is a strong case of mala fide and breach of statutory rules calling for judicial review, the transfer orders cannot be interfered with. We are, therefore, of the view that this O.A. is bereft of any merit and, therefore, we dismiss it.

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5. By an interim order, the transfer order was directed to be stayed as an interim measure. The same order stands vacated.

4. The parties shall bear their own costs.


(L.P. GUPTA) 6/2/92
MEMBER (A)


(RAM PAL SINGH) 6.2.92
VICE-CHAIRMAN (J)