

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

(14)

O.A. NO. 3004/91

20.07.92

Shri V.L. Gulati

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri T.C. Aggarwal

For the Respondents

...None

1. Whether Reporters of local papers may be allowed to see the Judgement? X

2. To be referred to the Reporter or not? X

JUDGEMENT (ORAL)

The applicant, who was working as Station Engineer, Shiv Puri in M.P. was ordered to be transferred by the impugned order dt. 25.10.1991 in the same capacity to Calcutta. The applicant is aggrieved by this order of transfer on the ground that it is not in consonance with the transfer policy which the applicant has filed as Annexure A2. In this application, the applicant has prayed for the reliefs that the order of transfer dt. 25.10.1991 and the order of reliever Gurdev Singh dt. 27.11.1991 be quashed.

2. During the course of the pendency of this application, the applicant has been transferred to Pune instead of Calcutta and he has also joined there and is working in the same capacity as Station Engineer. The learned counsel

(B)

for the applicant, therefore, desired that the orders impugned in this application be declared as illegal as the applicant was not made to work because of these illegal orders. The applicant has also argued that his representation dt. 20.11.1991 annexed with the application has not been disposed of. The learned counsel for the applicant referred to various averments made in the application in para-46 which is a chart showing the posting of the applicant since 1968 to 1991 and that he has been transferred in a gap of two to three years from one station to another. The learned counsel has also referred to the transfer policy that the normal tenure at a station is of 4 years and that 6 months before the expiry of the tenure, the person should be asked about his choice and such transfer should not be made in the mid of the academic session. Thus on the whole, the transfer has been challenged on the ground that it is not in public interest; not in accordance with the Rules, in the midst of academic year; malafide as a result of conspiracy and lastly discriminatory.

3. The respondents contested this application only pointing out that the applicant has given after the impugned transfer order of October, 1991 another choice station Pune, though a number of other stations were also given, and the applicant has since been transferred and posted to Guna in supersession of the earlier order of transfer dt. 25.10.1991. None is present on behalf of the respondents.

J

(16)

4. I have given a careful consideration to the various averments made in the application and the arguments advanced by the learned counsel. The learned counsel argued that the orders be declared illegal. Though it is not the relief claimed in this application, but the word illegal itself shows that when an action is against the law or rules in vogue, then it can be illegal order against an which Irregularity means not confining to the regular procedure prescribed. Though the learned counsel has given out a number of citations in the application itself pointing out the ratio of decisions of certain cases in para-5 of the application, but after the decision of the Hon'ble Supreme Court in Ms. Shilpa Bose Vs. State of Bihar, 1992 (Feb.) Labour and Service Cases; Union of India Vs. H.N. Kritania, AIR 1989 SC p-1774 and Gujarat Electricity Board Vs. Atma Ram reported in AIR 1989 SC 1433, the All India transfer liability of a Central Government employee is a part of service condition. The policies and guidelines issued by the department and ministries are not mandatory in nature. Taking all these points, in the case of Kamlesh Trivedi, Full Bench decision Volume-I, Bihari Brothers, 1989 Edition page-80, it has been held that the guidelines or the policies issued are not mandatory in nature. This Full Bench decision is binding. However, the learned counsel has pointed out certain

(17)

decisions of the Tribunal where the transfers effected in breach of guidelines were held to be not good orders and such transfer orders have been quashed.

5. However, without entering into the controversy on these points, since the applicant has joined at Guna, the order of transfer dt. 25.10.1991 as well as the subsequent order dt. 27.11.1991 stand superseded and become non existent. It is open to the applicant to approach the respondents for treating this period before his joining Guna and after having been dejiuro relieved from the post of Station Engineer, Shiv Puri, though it is alleged that the applicant stayed at Shiv Puri. The respondents shall consider and decide the same if the applicant makes a representation on that behalf and dispose of the same. In the circumstances, the application is disposed of as having become infructuous leaving the parties to bear their own costs.

Sharma

(J.P. SHARMA)
MEMBER (J) 26.7.92

AKS