

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO. 701/1991

DATE OF DECISION 29.6.92

SHRI P.S. CHOCHAN

...APPLICANT

VS.

UNION OF INDIA & ANR.

...RESPONDENTS

COGRAM

SHRI S.P. MUKERJI, HON'BLE VICE-CHAIRMAN

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.B. RAVAL

FOR THE RESPONDENTS

...SHRI Inderjit Sharma

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant working in the Junior Administrative Grade of Indian Railway Traffic Service (IRTS) filed this application under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved of not being posted in Delhi on an equivalent post after he had served a tenure posting in NF Railways in violation of OM dt. 2.6.1986 (Annexure A-3). The applicant also threatens eviction from the Government accommodation. The applicant has prayed that the respondents

↓

(18)

be directed to give applicant regular posting in the cadre at Delhi and his case for promotion be reviewed in terms of Government directive.

2. The facts of the case are that the applicant joined the IRTS on 29.6.1984. The services of the applicant were placed at the disposal of Ministry of Railways, Railway Board, by the Ministry of Home Affairs. The Railway Board exercises ^{Railway} administrative control over the members of the Indian Traffic Service. The applicant was posted to NF Railway on 29.5.1986 and was relieved of the post of Deputy CCS/Claims vide wireless message dt. 16.5.1986. The applicant joined NF Railways at Malgaon on 30.9.1986. On 28.4.1989, the applicant represented for transfer back to cadre and for choice posting as per rules. The applicant was informed in May, 1989 that the choice posting of the applicant has been noted down. In July, 1990, the applicant was transferred back to Northern Railway and was relieved from NF Railway on 6.8.1990. On 14.8.1990, the applicant applied for 32 days' LAP through NF Railway. The applicant had been representing time and again for posting at Delhi, but the representation did not find favour with the authorities, so the applicant has filed this Application. The applicant assails his posting at Bikaner by the order dt. 3.9.1990 on the ground that the said order was never communicated to him and he learnt about the same on 25.2.91

Le

19

The applicant joined at Bikaner in pursuance of the order of transfer dt. 3.9.1990 on 24.5.1991 (Annexure MP-2). The applicant further assails the order of transfer on the ground that he belonged to the cadre of Northern Railway and any transfer to NF Railway done in 1986 was without obtaining option from the applicant and as such against the statutory rules. The applicant should have been given choice posting station as he had served on NF Railways on the basis of the notification of February, 1980 incorporating the Board's letter dt. 7.11.1979 which lays down that the tenure of officer posted on Northern Frontier Railway shall not ordinarily exceed 3 years and on completion of this period, officer would be posted back as far as possible, in case they so desire, to the place of their choice.

3. The Bench by the order dt. 10.9.1991 ordered that MPs 1711 and 2183/91 will also be disposed of along with the final orders. Mp No.1711/91 has been filed on 6.6.1991 narrating brief facts and praying that status-quo status before 14.3.1991 regarding Quarter No.23-B, S.P. Marg, New Delhi be maintained. However, this MP has become infructuous as already in the MP 1755/91, the Bench on 8.7.1991 directed the respondents that the applicant shall be allowed to retain the quarter at Delhi for a period of 6 weeks from the date after the allotment of quarter at Bikaner on payment of licence fee according to the rules.

20

4. MP 2183/91 was moved on 7.8.1991 for the prayer to promote the applicant to continue to occupy his quarter at No.23-B, Sardar Patel Marg, New Delhi till such time the respondents allot him a type of quarter of his entitlement at Bikaner. The decision on merit of the points raised in the application will also dispose of this MP. The respondents have filed allotment order dt. August, 1991 allotting the applicant Bungalow 12-B, Type-V, Civil Lines, Bikaner.

5. The respondents contested this application and disputed certain facts stated by the applicant and also contended that the applicant is not entitled to any relief. It is stated by the respondents that the applicant is liable to be transferred to any of the Railways in the country. The applicant was transferred by the wireless message dt. 26.7.1990 to Northern Railway along with two other officers. The applicant was relieved from the afternoon of 6.8.1990 (Annexure R-2 to the counter). The applicant reported for duty in Delhi on 31.8.1990. The applicant in his application of even date (Annexure R-3 to the counter) stated that he applied for LAP for 32 days upto 7.9.1990 to JM (P), Northern Railway and that he may be posted on any post at Delhi. On the receipt of this joining report, order regarding the posting of the applicant as Senior DSO, Bikaner was issued vide Notice dt. 3.9.1990 (Annexure R-4). This order was personally served

le

over to him by Deputy CPO (G), Northern Railway. On that date, the applicant made an application for grant of 90 days' leave of whatever nature due also asking his posting at Delhi on any post (Annexure R-5). The applicant was informed by the letter dt. 26.9.1990/8.10.1990 that he should join at Bikaner as per posting order dt. 3.9.1990 and apply for leave, if needed, thereafter (Annexure-R 6). On 25.2.1991, the applicant submitted an application stating that he had been sick and under treatment at Delhi and Chandigarh and again requested for a posting at Delhi in the application dt. 25.2.1991 (Annexure R-7). It was followed by another application dt. 11.4.1991 (Annexure R-8). The applicant continued to submit other applications on 22.4.1991, 30.4.1991 and 3.5.1991 (Annexures R-9, to R-11). On the representation of the applicant, the respondents had already decided as stated in para-4.4 of the counter that the applicant would be accommodated at Delhi as and when suitable post was available, but the applicant was adamant that he would not join elsewhere except Delhi. It is denied that the Railway Board Circular dt. 7.11.1979 has not been followed, as the said circular provides that after tenure posting on NF Railway, the person would be posted back, as far as possible to the place of his choice. Since there was no suitable post for the applicant at Delhi, he was told that he will be posted at Delhi as and when suitable post would be available in Delhi. There is no violation of Articles 14 and 16 of the Constitution.

92

6. We have heard the learned counsel of the parties at length and have gone through the record of the case. The first contention that the applicant did not know of the transfer order cannot be accepted in view of the categorical averment on verification that the transfer order was personally handed over to the applicant by Deputy GPO (G), Northern Railway, New Delhi. In fact, the presence of the applicant at the Railway Headquarters, New Delhi on 3.9.1990 is established from the ~~own~~ document of the applicant which is an application at p-25 of the paper book along with Annexure A-4. The respondents have also filed the copy of this application (Annexure R-5) and there is an endorsement by the GPO. Further there is a letter dt. 26.9.1990 (Annexure R-3) in reply to the letter of 3.9.1990 of the applicant for grant of LAP for 90 days. The applicant was informed to join at Bikaner first as per the posting orders issued vide Order dt. 3.9.1990 and apply for leave, if needed, thereafter. The applicant cannot deny the receipt of all ^{this} ~~these~~ official correspondence and in ordinary course of business, the applicant could have learnt about the orders passed on his leave application for 90 days dt. 3.9.1990 and the applicant was, therefore, not correct in his submission that he was unaware of the posting order given to him to join at Bikaner by Deputy GPO (G), Northern Railway personally

(23)

on 3.9.1990. Thus the applicant was well aware of his order of transfer. The number of representations made by the applicant also go to show that though he had applied for 32 days' LAP on being relieved on 26.7.1990 from NF Railway, but before the full leave could have been utilised by 7.9.1990, the applicant joined on 31.8.1990 at the Railway Headquarters and after three days, i.e., on 3.9.1990, he again moved the application for grant of leave for 90 days w.e.f. 7.8.1990. The representations one after another only make it clear and evident that the applicant only desired a choice posting at Delhi. ~~Rather the applicant was adamant only to join at Delhi.~~ In all these representations, the applicant has taken various grounds for getting choice posting station at Delhi. The applicant was informed that since there is no vacancy available at Delhi, so his case will be considered as and when a vacancy arises. In the Original Application as well as in the various Miscellaneous Petitions moved, the applicant has not specifically mentioned any of the names of the officers of his grade who have been preferred for posting at Delhi denying the claim of the applicant in view of the Railway Board's letter of November, 1979. Thus this contention of the applicant has no force

Le

...8...

24

7. The learned counsel for the applicant also contended that on retirement of Shri S.S.Virdi, one Shri Neeraj Sinha was posted in his place and these officers also belong to ^{the} Junior Administrative Grade being of the same level as the applicant. Sometime in September, 1990, another officer Shri Buta Singh was transferred from one Railway and posted as Deputy CPM (PRS) at Delhi. Another officer, Shri H.C. Srivastava was transferred from Chandigarh recently and posted as Deputy CCS (Claims (Spl.)) at Delhi. Smt. Padmakshi Raheja was also posted at Delhi as Deputy CCS and was transferred from Chandigarh. Shri Abdul Khaliq, Dy.CPM (PRS), Northern Railway was transferred to Railway Board about two months back and in his place Smt. Rekha Malhotra has been posted. Even in the transfer order of September, 1990, Shri H.N.Punia, Sr.DOS, Bikaner was transferred to Delhi and posted as Dy.COPS (G)/II Hqrs., vice Shri R.K. Jain. The learned counsel for the respondents replied that none of these officers belong to the service of IRTS, which is a different cadre and the Railway Board only exercises administrative control over the members of that service. There is some substance in the argument of the learned counsel that when there was a clear guideline that a person who has served in NF Railway, should be given a choice posting, then the applicant should have been accommodated at Delhi, particularly in view of the clear

Le

(25)

admission of the respondents in their counter in reply to para 4.4, in which the respondents have already decided that the applicant would be accommodated at Delhi as and when a suitable post was available. The learned counsel for the applicant also contended that on the representation to the Railway Minister (Annexure A5-p 25) and the specific direction issued by the Prime Minister (Annexure A7), "After serving a full tenure in the tribal area, the officer should have choice of posting thereafter", the applicant has not been posted in clear violation of the guidelines at Delhi. All these contentions of the learned counsel need serious consideration, but since the respondents have a right in public interest to transfer on administrative grounds and it has not been shown that at the relevant time, i.e., when the impugned order of transfer in September, 1990 was passed, ^{that} there was a vacancy available to accommodate the applicant, it cannot be said that the order of transfer is in any way discriminatory or arbitrary. The grade to which applicant belongs has ^{an} _^ all-India transfer liability. In the Original Application, the applicant has not alleged any malafide against the respondent. What the applicant contended is that even after serving beyond a period of tenure in NF Railways, the applicant has not been given a choice, posting at Delhi. The guidelines of course are there, but these guidelines are governed by the proviso "as far as possible".

L

25

The discretion of transfer should not be a colourable exercise of power. It should be based on some reason. The respondents in the reply have clearly stated that there was no post of the status of the applicant available at Delhi, so he could not be accommodated at Delhi. In view of this fact, it can not be said that the applicant has either been discriminated or there is any violation of Articles 14 and 16 of the Constitution of India.

3. The relief claimed by the applicant is that the applicant should be given a posting of his cadre at Delhi and the respondents have clearly stated that the case of the applicant of posting at Delhi will be considered at priority basis as soon as a vacancy is available to accommodate the applicant in a befitting post.

9. It has also been contended that the applicant has been occupying the allotted residence at Delhi, though he has been transferred to Bikaner where he has also been allotted a Type-V accommodation. This matter need not be dealt any further in view of the order dt. 1C.9.1991 where it has been ordered as an interim measure that the applicant should be permitted to remain in the occupation of his Bungalow at Delhi till the disposal of the OA. Now since the respondents have given categorically in writing that the applicant shall be accommodated at Delhi as soon as a post of his status is available, this interim order needs to be made absolute.

Le

(24)

10. The Original Application is disposed of in the following manner :-

(a) The respondents are directed to post the applicant by transfer from Bikaner to a post of the status and cadre of the applicant at Delhi on the priority ^{and suitable} basis on the first available vacancy irrespective ^{of} ~~of~~ of the fact that the applicant belongs to IRTS.

(b) The respondents are further directed to allow the applicant to retain the allotted premises 23-B, Northern Railway Colony, Sardar Patel Marg, New Delhi so long as the applicant remains posted at Delhi after transfer from Bikaner on payment of usual premium for use and occupation according to rules provided further that the applicant shall give up his claim for a Type-V house in Bikaner.

The respondents are directed to comply with the above directions within a period of four months and in the circumstance the parties shall bear their own costs.

Done on

(J.P. SHARMA) 25.1.92
MEMBER (J)

S.D.

(S.P. MUNERJI)
VICE CHAIRMAN

Remained by me

Done on
25.1.92