

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 70/91
T.A. No.

199

DATE OF DECISION 12.4.1991.

<u>Shri P.S. Ahuja</u>	Petitioner Applicant
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Secy., Miny. of Defence & Others</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Administrative Member)

The grievance of the applicant, who is working as Assistant Naval Stores Officer in the Ministry of Defence, relates to the impugned order of transfer dated 12.11.1990, whereby he has been transferred from Delhi to Bombay. The pleadings in the case are complete. The application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so.

2. There is no doubt that the applicant holds a transferable post. His last posting at Delhi has been for a duration of more than five years and six months.

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Earlier, he has served in various other stations. Before he was transferred to Bombay by the impugned order, the respondents had sought to transfer him in June, 1989 to Vizag., but that order of transfer was cancelled at his request.

3. The applicant has alleged that the impugned order of transfer to Bombay is vitiated by mala fides and that it is not in conformity with the transfer policy. This has been denied by the respondents in the counter-affidavit filed by them. On going through the records of the case carefully and after considering the rival contentions, we are of the view that the applicant has not substantiated the allegation of mala fides brought against the respondents.

4. The learned counsel for both the parties have cited numerous authorities^{*} in support of their contentions and we have duly considered them.

5. The applicant has represented to the respondents against the impugned order of transfer which did not receive any favourable response.

* Decisions relied upon by the learned counsel for the Applicant:

1987 (4) A.T.C. 473; 1987 (4) A.T.C. 521; 1979 SLR(1)309; 1980 (1) SLR 309; AIR 1971 S.C. 1447; and 1982 (3) SLR 145.

Decisions cited by the learned counsel for the Respondent: 1989 (2) S.C.C. 602; and 1989 (3) SCC 455.

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6. On 13.3.1989, the respondents issued to the applicant a memorandum proposing to hold an inquiry against him under Rule 14 of the C.C.S. (CCA) Rules, 1965. The articles of charge accompanying the said memorandum are as follows:-

"Article - I

That the said Shri P.S. Ahuja, while functioning as Assistant Naval Store Officer/ Assistant Controller Procurement, G3G4 section at Controller Procurement, Bombay, during the period Aug 84 to Jan 85 wilfully suppressed the receipt of analysis report of Chief Inspectorate of Naval Store Laboratory, Bombay, regarding sub-standard quality of soap toilet supplied by M/s Stevens Soap Manufacturing Company Limited, Madras, resulting in avoidable delay in freezing the sub-standard stock of soap toilet supplied by the said firm. He has, thus, exhibited lack of devotion to duty, violating thereby, the Rule 3(i) (ii) of the CCS (Conduct) Rules, 1964.

Article - II

That the said Shri P.S. Ahuja, while functioning as Assistant Naval Store Officer/ Assistant Controller Procurement, G3G4 section, at CPRO, Bombay, during the period of Aug 84 to Jan 85, having known about the supply of sub-standard toilet soap to the Navy by M/s Stevens Soap Manufacturing Company Limited, Madras, failed to take steps to withhold the payment for the same to the said firm and also failed to apprise this position to his successor Shri VD Dhyani, Civilian Technical Assistant (Electrical), thereby causing a loss to the Government to the tune of Rs.1,89,221.76 in the form of payment to the firm. He has, thus, exhibited conduct unbecoming of a Government servant, violating thereby, Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964."

7. The alleged misconduct was committed while the applicant had earlier worked at the Bombay office of

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the respondents during August, 1984 to January, 1985. The respondents have appointed Shri K.S. Dhingra, C.S.O., Ministry of Defence, as the Inquiring Authority and Shri M.K. Vikram, N.S.O., as the Presenting Officer. The disciplinary proceedings initiated against the applicant have not been finalised. The relief sought in the present application is that till the final disposal of the departmental inquiry and its findings are completed in Delhi and the charges are cleared, the applicant be not transferred. He has also prayed that the departmental proceedings be ordered to be expedited within a time-bound period of three months as it has already been delayed and pending at the initial stage of supplying of documents.

8. The learned counsel for the respondents stated that three of the four witnesses on behalf of the Prosecution in the departmental inquiry, are officers working at Bombay, and that the relevant documents are also at the Bombay office of the respondents. According to him, the transfer of the applicant to Bombay would facilitate the expeditious finalisation of the departmental inquiry initiated against the applicant.

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9. As against this, the learned counsel for the applicant argued that the applicant has a genuine apprehension that the departmental inquiry itself will be transferred to Bombay, and that a new Inquiry Officer may be appointed to conduct the inquiry.

10. In our view, the mere pendency of a departmental inquiry is not a bar to the transfer of an official from one station to another. The legal position in regard to transfer is well settled. No Government servant appointed to a cadre of transferable posts, can contend that he has a legal right for being posted at any particular place and for a particular period (vide Gujarat Electricity Board and Another Vs. Atma Ram Sugomal Poshani, 1989 (2) S.C.C. 602, and Union of India & Others Vs. H.N. Kritania, 1989 (3) S.C.C. 445).

11. According to the well settled legal position, the applicant cannot resist the order of transfer merely on the ground that the departmental inquiry initiated against him at Delhi has not been concluded. At the same time, the respondents will have to consider whether it will be expedient to transfer the applicant to Bombay during the pendency of the inquiry initiated at Delhi,

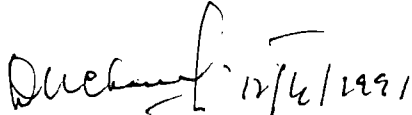
having regard to the fact that the applicant himself had worked at Bombay, where the alleged misconduct is stated to have been committed. During the hearing of the case, the learned counsel for the applicant fairly stated on instructions that the applicant is prepared to accept the posting at Bombay or anywhere else, after the inquiry initiated against him is completed at Delhi itself. This, in our view, is a suggestion which the respondents may consider having regard to the fact that if the impugned order of transfer is given effect to immediately, it might cause hardship to the applicant as he will have to uproot his family from Delhi and will take time to settle down at Bombay which, in turn, might also hamper the progress of the departmental inquiry initiated against him.

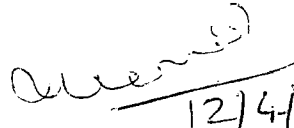
12. The alleged misconduct relates to the period 1984-85. The disciplinary inquiry was initiated in 1989. There is no explanation for the delay involved. It is also not known as to when the inquiry will be completed. Taking into account all the facts and circumstances of the case, we remit the case to the

respondents with the following orders and directions:-

- (i) The applicant may make a fresh representation on or before 30.4.1991 to the respondents, wherein he should undertake to cooperate with the expeditious conduct and finalisation of the departmental inquiry initiated against him. After the conclusion of the inquiry, the respondents may either post the applicant to Bombay or to any other place by issuing a fresh order in this regard;
- (ii) we direct that the period of absence from duty of the applicant from the date of the issue of the movement order dated 4.1.1991 till 12.4.1991, i.e., the date of pronouncement of the present order, shall be regulated by the grant of any kind of leave due and admissible to the applicant; and
- (iii) the respondents will be at liberty to post the applicant in any of their offices at Delhi till the finalisation of the departmental inquiry.

13. The application is disposed of accordingly. There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member


(P.K. Kartha)
Vice-Chairman(Judl.)