

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 71/91

Date of decision: 29.1.1991.

Shri V.R. Tyagi

...Applicant

Vs.

Union of India through the
Secretary, Ministry of Defence
and Others

...Respondents

For the Applicant

...Shri M.K. Gupta,
Counsel

For the Respondents

...Mrs. Raj Kumari
Chopra, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? No

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K.
Kartha, Vice Chairman(J))

The applicant, who is working as Assistant
Engineer in the office of the Assistant Garrison
Engineer, Raiwala, under the Ministry of Defence,
filed this application under Section 19 of the
Administrative Tribunals Act, 1985, praying for quashing the
impugned posting order dated 8.10.1990, whereby the
applicant has been transferred from Clementtown to the
Army Headquarters at New Delhi. He has sought for a
direction not to transfer him or post him out from
Clementtown to any other station for the remaining period
of his tenure.

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2. The application was filed in the Tribunal on 8.1.1991. On 9.1.1991, the Tribunal passed an interim order to the effect that the respondents be directed not to give effect to the posting order dated 8.10.1990.

3. The case was heard on 25.1.1991 when Mrs. Raj Kumari Chopra, Counsel appeared for the respondents and opposed the admission of the application and the continuance of the interim relief granted to the applicant.

4. We have gone through the records of the case and have considered the rival contentions. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

5. The applicant joined Military Engineering Service (MES) as Superintendent Grade-II in 1962. He has thereafter worked at Allahabad, Bihar, Clementtown Roorkee and Maharaj Pur. He was transferred from Maharaj Pur to Raipur Factory, Dehradun in February, 1988. He worked there till June, 1989. On 5.10.1989, he was posted at Clementtown. On 29.12.1989, he was posted at Raipur. In January, 1990, he was directed to join at Raiwala and he joined there on 16.1.1990. On 8.10.1990, the respondents issued to him the impugned posting order whereby he has been posted from Clementtown to Army Headquarters against an existing vacancy.

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6. The applicant has contended that the impugned transfer order is violative of the transfer policy issued by the respondents in December, 1987. Para 21 of the transfer policy provides that the normal tenure of an executive employee is 2½ years to 3 years, whereas the applicant has hardly served for a period of 9 months at his present place of posting.

7. The applicant has also relied upon the recommendation made by the Chief Engineer, Central Command, Lucknow, in his telegram dated 28.11.1990 to wherein he had recommended the respondents to cancel the impugned posting order. The applicant made a representation on 9.11.1990 to the respondents which was forwarded by the Chief Engineer (Project) Dehradun Cantonment on 10.11.1990 requesting that he should be accommodated at his present place of posting. On 27.12.1990, the Chief Engineer, Dehradun has intimated to the applicant that his representation has been received back "unactioned". The applicant again made a representation on 20.12.1990, wherein he referred to the transfer policy under which the normal tenure at the place of posting is 2½ years to 3 years. He had also brought out some personal difficulties which he would have to face in the event of his transfer.

8. The learned counsel for the respondents stated that the applicant had handed over charge on 3.1.1991 and filed the present application on 8.1.1991. She further stated that the applicant belonged to Ghaziabad and that he is due to retire in 1994. She relied upon para 27 of the transfer policy, according to which, it will be the endeavour of the respondents to post each officer to a station of his choice near his selected place of residence during the last three years of service. In view of this, it was argued that the posting of applicant to Delhi which is nearer to his home town at the fag end of his career, is well within the transfer policy.

9. The applicant has not alleged any mala fides on the part of the respondents. There is no doubt that the applicant is holding a transferable post. That being so, in the absence of any mala fides or violation of any statutory rules, the order of transfer cannot be called in question. It is for the respondents and not for the Tribunal to consider the genuine difficulties of the applicant and to take a decision. The legal position has been clearly laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board and Another Vs. Atma Ram Saugomal

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Poshani, 1989(3) JT 20 and Union of India & Others

Vs. H.N. Kirtania, 1989(3) SCG 455.

10. In the case of Gujarat Electricity Board, the Supreme Court observed that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other, is an incident of service. No Government servant has a legal right for being posted at any particular place. Transfer from one place to another, is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and efficiency in public administration. The following observations made by the Supreme Court are pertinent:-

"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 a 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.....

There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular place".

11. In Kirtania's case, the Supreme Court observed as under:-

"The respondent being a Central Government employee, held a transferable post and he was liable to be transferred from one place to the other in the country. He has no legal right to insist for his posting at Calcutta or any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of public servant made on administrative grounds or in public interest, should 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. There was no good ground for interfering with respondent's transfer".

12. In the light of the aforesaid pronouncements of the Supreme Court, we see no justification to interfere with the action taken by the respondents. There is no merit in the present application and the same is dismissed at the admission stage itself.

13. The interim order passed on 9.1.1991 and continued thereafter, is hereby vacated.

There will be no order as to costs.

Dechbaran
(D.K. CHAKRAVORTY)

MEMBER (A) 28/1/91

Partha
28/1/91
(P.K. KARTHA)
VICE CHAIRMAN (J)