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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 817/91.

Date of decision 25.1.93

Shri Amar Jeet Singh ... Applicant

V/s

Union of India & Ors. ... Respondents

CORAM:

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

The Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant ... Shri A.K. Behra, Counsel.

For the Respondents ... Shri P.H. Ramchandani, Counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

✓ (2) To be referred to the Reporter or not ? *Yes*

J U D G E M E N T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of Annexures XI & XII whereby his representation for repatriation as Stenographer Grade 'D' to the Ministry of Home Affairs has been rejected. The Learned Counsel for the applicant contends that by order dated 29th May, 1985 he was appointed as Stenographer Grade 'D' of the Central Secretariat Stenographer's Service Cadre of the Ministry of

Home Affairs in ^{the} substantive capacity. By an Office Memorandum dated 12th December, 1983 the Ministry of Home Affairs requested all Ministries to send the particulars of officers willing for posting outside Delhi. In this he argued that there was no stipulation for transfer of cadre. On 24th December, 1983 the applicant gave his willingness to be posted outside Delhi, i.e. Chandigarh, Dharamsala, Simla on the understanding that his seniority/promotional prospects were not affected. The applicant was relieved from his duties in the Ministry of Home Affairs by order dated 27th June, 1985 with instructions to report to the Office of Director, Labour Bureau, Chandigarh. Another order dated 27th June, 1985 said that the services of the applicant are placed at the disposal of Ministry of Labour on transfer basis in the same capacity from the forenoon of 1st July, 1985 for his posting at Labour Bureau, Simla. The order also said that his seniority will be governed by the CSSS (Seniority of Transferred Officers) Regulations, 1971. On 25th September, 1987, the applicant made a representation to the Director, Labour Bureau for reverting to his parent cadre i.e. Ministry of Home Affairs. By another representation of the same date addressed to the Deputy Secretary to the Ministry of Labour,

the applicant said that due to prevailing circumstances in the family based at Delhi and his falling health , he would like to revert to his parent office i.e. Ministry of Home Affairs. Other representations followed.

2. The Ministry of Labour by their letter dated 27th March, 1989 informed the Administrative Officer, Labour Bureau that with reference to the representation of the applicant it might be stated that the Department of Personnel and Training have nominated 35 candidates for appointment as Stenographer Grade 'D' and the Ministry of Labour had requested the candidates to give their option for posting at Delhi/Simla but none of them had opted for posting at Simla. It was, therefore, not possible to accede to the request of the applicant for transfer at Simla. By another Memorandum of 6th October, 1989 the Ministry of Labour informed the applicant that his request would be considered in future if a Stenographer Grade 'D' was available for posting at Simla. The Ministry of Home Affairs by their letter dated 11th January, 1990 informed the Ministry of Labour that the records indicated that the applicant had been transferred to the Ministry of Labour on transfer basis and not on deputation basis. The case is thus of inter-cadre transfer and the Ministry of Home Affairs could not take back the

applicant in their cadre when he was brought back to Delhi. The position was reiterated by the Ministry of Home Affairs by their letter of 5th October, 1990 wherein it was said that the applicant had gone to the Ministry of Labour on transfer basis. After the issue of the aforesaid memorandum of 5.10.1990 by the Ministry of Home Affairs the Ministry of Labour also informed the applicant by their letter of 23rd November, 1990 that the Ministry of Home Affairs had intimated that he had gone to the Ministry of Labour on permanent transfer basis on his exercising the option and, therefore, it was not possible to accede to his request.

3. The main thrust of the arguments of the Learned Counsel for the applicant was that the applicant had never opted for transfer. The memorandum of 12th December, 1983 issued by the Ministry of Home Affairs was only for seeking willingness for posting outside. The applicant had not opted for transfer to the Ministry of Labour. On the other hand he had said that he was willing to be posted outside Delhi on the understanding that his seniority/promotional prospects were not affected. The Learned Counsel for the applicant further contended that in terms of the instructions of the Ministry of Home Affairs ^{dated 14/7/67} the applicant could not be

disallowed to revert to his parent cadre of Ministry of Home Affairs where he retained his lien for two years and this period could have been extended to three years in terms of para ¹⁽⁵⁾ of the said office memorandum. He argued that well within the period of three years, he opted for his reversion to the Ministry of Home Affairs by his representation dated 25th September, 1987.

4. The Learned Counsel for the respondents contended that as far back as 18th January, 1985, the applicant was told that his appointment in the Department of Labour was on permanent transfer basis i.e. ^{he} they would be absorbed in the cadre of the Ministry of Labour. Their seniority in the cadre of Ministry of Labour would be governed by the CSSS (Seniority of Transferred Officers) Rules, 1971. The Department of Personnel had also reiterated by their letter of April 1985 that transfer/posting of the applicant on loan basis to the Ministry of Labour could not be agreed to and the transfer could be considered on a permanent basis only. It was after that and in response to the letter of Ministry of Home Affairs dated 18.1.1985 that the applicant gave his clear willingness for transfer to the CSSS cadre of the Ministry of Labour. The willingness of the applicant was conveyed to the Ministry of Home Affairs in

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the following term :-

" With reference to this Ministry's O.M. No. A-22015/4/85-Ad.I(B) dated the 18th January, 1985, I beg to state that I am willing for transfer in the C.S.S.S. cadre of the Ministry of Labour on posting in the Office of Labour Bureau, Simla. I may, therefore, be relieved."

5. The applicant's services were placed at the disposal of Ministry of Labour on transfer basis only thereafter by order dated 27th June, 1985.

6. Thus, it is clear that the applicant has given his unequivocal willingness for transfer to the Ministry of Labour and only thereafter he was appointed under the Ministry of Labour on transfer basis. The lien could also be retained only for a period of two years in the parent department according to the Ministry of Home Affairs' O.M. dated 14th July, 1967. Only in exceptional cases this could be extended to three years with requisite permission. The applicant kept silent on his posting to the Ministry of Labour for over two years and it was only on 25th September, 1987 he said that he wished to revert to the Ministry of Home Affairs. The applicant cannot presume continuance of

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his lien automatically for three years in the Ministry of Home Affairs.

7. In the above view of the matter the reliefs sought for by the applicant cannot be granted when he was clearly told in the order dated 27th June, 1985 that his services were placed at the disposal of Ministry of Labour on transfer basis, ^{the order} after he had conveyed his unequivocal willingness for transfer.

However, we expect of the Ministry of Labour to consider his case for transfer to Delhi under their own organization sympathetically, ^{more so}, when they had informed the applicant as far back as 6th October, 1989 that his request for transfer could be considered in future if a Stenographer Grade 'D' was available for posting at Simla.

8. With the above observations, the case is disposed of with no order as to costs.

I.P. Gupta
I.P. Gupta
Member (A)

25/7/93

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J)