

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

0.4. No. 845/91

DATE OF DECISION 4.10.1991

SHRI KAUSHIK D.PATHAK -- APPLICANT
VS
DIRECTOR OF ESTATES & ORS. -- RESPONDENTS
CORAM

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

FOR THE APPLICANT -- IN PERSON

FOR THE RESPONDENTS -- SHRI P.P. KHURANA, COUNSEL

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

2. To be referred to the Reporter or not?

JUDGEMENT

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

The applicant, a J.D.C. in the office of Director of Estates filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 5-3-1991 by which he was shifted from his original place of posting vide order dated 10-12-1990. He has sought the following reliefs:-

(i) That orders may be issued to the respondent to treat the leave periods w.e.f. 4-3-1991 as on duty;

(ii) That orders may also be issued to the respondents to allow the applicant to attend to duty in GE Section as per the posting order dated 10-12-1990 (Ann. I).

(iii) That the costs of the application be awarded.

2. The facts of the case are :- that the applicant by order dated 10-12-1990 was posted to GE Section vice Smt. Usha Rani. Smt. Usha Rani, however, did not move out and was retained there. After two months i.e. on 18-2-1991 the applicant was posted on transfer to G.C. Section by merely writing in the attendance register "Transferred to GC Section". The applicant made representations on 25-2-1991 and 26-2-1991 (Annexure IV & VI) but to no effect. As a result the applicant was forced to go on leave from 4-3-1991. The applicant also requested the respondents to surrender the applicant out right to the Ministry of Urban Development on grounds of uncertain and chaotic affairs prevailing in that office. The request of the applicant was not forwarded to the Ministry of Urban Development despite his reminder on 18-3-1991 (Annexure IX).

3. Contesting the application, the respondents submitted that the order dated 10-12-1990 was issued by Dy. Director of Estates with the approval of the Director of Estates in which there is a chain of postings and transfers concerning U.D.Cs & L.D.Cs in the office of Directorate of Estates. The office of

Directorate of Estates is divided various Sub-sections in accordance with work requirements like registration, rent parliament, under posting, type A, type B, Admn.A,CDN, DE II, Market II, Waiting list etc. By the order dated 5-3-1991 (Annexure II) the applicant was transferred to G.C. Section. This order was passed by Assistant Director of Estates. The respondents stated that Shri Chob Singh was not surrendered but was transferred to Adm.'A' in place of Smt.Usha Rani. The decision to post the applicant was taken on 13-2-1991 and Smt. Usha Rani was retained on original seat to G.E. Section. The applicant refused to note the order on file and wanted that formal order be issued. The same were issued on 5-3-91 with the approval of Director of Estates-II. The nature of work of GC Section and GE Section is almost the same. The applicant did not attend the office from 20-2-1991. The attendance register of GE Section was lost on 25-2-1991 and a new register was opened on 26-2-1991. The applicant thereafter has not marked his attendance in the new register. As regards the request of the applicant to surrender him to the Ministry, the applicant cannot force his will on the Administration for his surrender to the Ministry. It is further stated that there is no illegality involved in transferring the applicant from one Section to other Section within the same wing i.e. Rent Wing. In-charge of the division i.e. Assistant Director is fully competent to shift/transfer the person from one Section to another Section taking into account the Volume/situation of work being handled in a particular Section. It is prayed by the respondents that the applicant is not entitled to any relief.

4. We have heard the applicant in person and have gone through the record of the case. We feel that the applicant has not made out any case that he should be retained in GE Section as per the order of 10-12-1990. Though the order dated 10-12-1990 was passed by Dy. Director-II and he was posted vice Smt. Usha Rani but Smt. Usha Rani was not relieved from her seat and the applicant by the order dated 5-3-1991 was posted in GC Section vice Shri Chob Singh. In fact the respondents have stated that the decision to post the applicant to the GC Section was taken on 13-2-1991 but the applicant requested for a formal order, so the order was issued on 5-3-1991. Interse Section transfer can be made by the person In-charge of these Sections. The order dated 5-3-1991 was issued by Assistant Director of Estates (A/cs). However, even on transfer, he was in the same grade of U.D.C. and remained in the same wing. In the circumstance we do not find any basis that the order of transfers has been issued in malafide manner. It has been issued to a number of employees working in the same wing and only the seat of working in the Section has been changed.

5. The prayer that the order be issued to the respondents to treat the leave period from 20-2-1991 as on duty the same cannot be granted to the applicant, as the applicant can only be treated on duty when he actually attended and worked in the office. If he did not attend the office, the period of absence from the duty to be regularised by competent authority in accordance with rules as LAP, LHAP, LWP/leave not due as the case may be. For this purpose, the applicant will have to make a suitable

representation to the competent authorities to enable it to pass an appropriate order for treatment of the period of absence. We, therefore, find no merit in the application which is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA)

MEMBER (J)

I. K. Rasgotra
(I. K. RASGOTRA)

MEMBER (A)