

(22)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.133/2004

This the 4th day of October, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

H.R.Meena S/O Nanak Ram,
R/O House No.584, Sector-V,
Pushp Vihar, M.B.Road,
New Delhi. ... Applicant

(By Shri A.K.Trivedi, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. The Registrar General of India,
Government of India,
Ministry of Home Affairs,
24, Man Singh Road,
New Delhi-110011.
3. The Joint Director
(Directorate of Census Operations),
Room No.207, Old Secretariat,
Delhi-110054. ... Respondents

(By Shri R. N. Singh, Advocate)

ORDER

Applicant has challenged Annexure A-1 orders dated 14.11.2003
whereby he has been transferred to DCO, Andaman & Nicobar Islands,
along with post. He has also challenged respondents' memorandum dated
6.1.2003 (Annexure A-2) whereby his representation against his transfer
has been rejected.

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2. The learned counsel of applicant stated that applicant was appointed as LDC in the Directorate of Census Operations, Delhi on a regional basis for a period of one year vide appointment order dated 28.1.1980 (Annexure A-3). Later on, applicant was regularised on the post of LDC on the basis of examination held by the Staff Selection Commission. He was promoted as UDC and as per Annexure A-5 dated 22.9.1999, which is the final seniority list of UDCs in the Directorate of Census Operations, Delhi as on 31.7.1990, out of a total of two UDCs, applicant is at Sl. No. 1. The learned counsel of the applicant contended as follows :

- (1) Having been recruited on a regional basis, applicant does not have an all India transfer liability.
- (2) Respondents have violated Government of India, DOP&T circular dated 1.4.1989 in transferring the applicant instead of transferring the juniormost temporary person, while the applicant had not made any request in writing for such transfer.
- (3) Applicant belongs to a Scheduled Tribe and as such he could not have been transferred out in violation of instructions contained in DOP&T OM dated 20.6.1989 (Annexure A-12).
- (4) No public interest or administrative exigencies are involved in the transfer of applicant in question, as such interest or exigencies have not been disclosed to the applicant. In this regard applicant has relied on 1994 (1) ATJ 71 (CAT, Ernakulam) : **Y.Kurikesu v. Sr. Superintendent of Telegraph Traffic, Trivandrum Div. & Ors.**
- (5) By virtue of the transfer in question, applicant's seniority would be affected adversely.



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3. The learned counsel of the applicant has relied upon 2003 (1) ATJ 267 (CAT, Principal Bench) : **Jasbir Singh v. Union of India & Ors.**, stating that it was held therein that transfer along with the post, as in the present case, means that there was no administrative exigency to transfer the applicant along with the post.

4. On the other hand, the learned counsel of the respondents relying on 1994 SCC (L&S) 230 : **Union of India & Ors. v. S.L.Abbas**, contended that the Tribunal can interfere with the transfer orders only where it is passed *mala fide* or it is made in violation of statutory provisions.

5. The learned counsel stated that applicant has an all India transfer liability. As such, his transfer is not only an incident but is a condition of service. The present transfer orders would not adversely affect applicant's seniority in any manner.

6. I have considered the rival contentions made on behalf of the parties. Annexures A-3 and A-4 dated 28.1.1980 and 17.3.1980 relate to applicant's appointment by Director, Census Operations, Delhi. These orders do not indicate that applicant had been appointed on an all India basis and that he has any all India transfer liability. Similarly, Annexure A-5 is the final seniority list of UDCs in the office of the Director of Census, Delhi as on 31.7.1999. Applicant has been working as UDC in this office. As per this document, there are only two persons working as UDCs in this office. Obviously, this is not an all India seniority list of UDCs working in various offices of Directors of Census Operations in the country. Seniority of the UDCs as such is being maintained by the respondents only on regional basis. Transfer to another region would

certainly affect the seniority of the person sent on transfer to another region and shall have civil consequences. Basically, although the transfer under consideration may not be coming under the revised scheme for disposal of personnel rendered surplus, the principles of the scheme Annexure A-8 would be applicable to the present case. Instruction 4.4(a) of these instructions reads as follows :

“4.4(a) Immediately after the surplus posts requiring abolition are determined, action shall be taken in hand to determine whether there is any surplus staff, and, if so, to identify them. Ordinarily, the juniormost temporary persons should be surrendered against the reduced cadre strength, followed, if necessary, by the juniormost quasi-permanent and then permanent staff. The rule of ‘juniormost’ should be insisted upon and the Central Cells in the Department of Personnel and Training and the Directorate General of Employment and Training would have authority to see to the strict and prompt observance of this rule. There shall, however, be no bar to the persons higher in the seniority ladder volunteering for the purpose, particularly if they wish to avail of the voluntary retirement benefits available to the surplus employees.”

7. It implies that the rule of ‘juniormost’ should be insisted upon for transferring a person out of the region, but there would be no bar if the person higher in the seniority volunteers for such transfer. In the present case, admittedly, no option had been called from the UDCs for transfer to Andaman and Nicobar Islands. Respondents have also violated instructions contained in Annexure A-12 relating to SC/ST candidates recruited for Group ‘C’ and ‘D’ posts who are required to be kept near their native places. This instruction reads as follows :

“2. The recommendation has been examined carefully. It may not be possible or desirable to lay down that holders (belonging to SC/ST) of Group ‘A’ and Group ‘B’ posts who have All India transfer liability should be posted near their native places. It has, however, been decided that in the case of holders of Group ‘C’ and Group ‘D’ posts who have been recruited on regional basis and who belong to Scheduled Tribes may be given posting as far as possible, subject to administrative constraints near their native places within the region.”



8. Applicant belongs to a Scheduled Tribe and is holder of a Group 'C' post. Under these instructions he has to be kept in the Delhi Region in which he was recruited initially. However, if there were administrative constraints, he could be posted out away from his native place but had to be kept within the region as far as possible subject to administrative constraints. Such administrative constraints have not been explained by the respondents. The observations in the case of **Jasbir Singh** (supra) are certainly applicable to the facts of the present case. In that case Railway Board's circular dated 13.4.1967 which creates an embargo for transfer of those non-gazetted employees who are facing departmental proceedings and the result is still awaited, was considered. That circular had been discussed in the case of **Bhupender Kumar v. Union of India** and the transfer order passed in violation of circular dated 13.4.1967 was quashed and set aside. The Tribunal's order was challenged before the Hon'ble High Court of Delhi. It was upheld by the High Court. Transfer therein had been made along with the post. It was held that transfer along with the post means that there were no such administrative reasons that the applicant along with the post should have been transferred. No explanation was given by the respondents regarding transfer of post nor any reasons were stated that there was any demand from other region for an additional post. Yet the applicant was chosen to be transferred along with the post for that purpose. The ratio of the aforesaid case applies to the facts of the present case where applicant has been transferred along with the post and junior of the applicant has been retained in Delhi. The present orders have the trappings of *mala fide* orders inasmuch as while a junior has been retained by the respondents in Delhi, applicant has been transferred out along with the post, particularly





when no option had been called from the applicant for such transfer and he had not expressed his willingness for such transfer. Respondents have violated the spirit of Annexure A-8, principles whereof would be applicable to the present case as well. They have also not followed instructions contained in Annexure A-12 where applicant who is an ST and is holder of a Group 'C' post, has not been retained within the region in which he was recruited and continued, and public interest or administrative constraints involved in the case have not been disclosed.

9. Having regard to the above discussion, it is certainly a case of *mala fide* exercise of executive powers and where applicant's civil rights will also get affected as his seniority shall also be adversely affected by this transfer made outside Delhi Region.

10. In result, in view of the discussion made above, there is substantial merit in the present OA, which is allowed quashing and setting aside Annexures A-1 and A-2 with consequential benefits.

V. K. Majotra
 (V. K. Majotra) 4.10.04
 Vice-Chairman (A)

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