

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

CA 1826/2004

New Delhi this the 20 th day of August, 2004

Hon'ble Shri S.A. Singh, Member (A)

Shri K.S.Bhatia,  
Assistant Accounts Officer,  
S/O late Shri Des Raj Bhatia,  
H.No.D-67, Prashant Vihar,  
Rohini, Delhi-85

...Applicant

(By Advocate Shri V.S. R.Krishna )

VERSUS

1. Union of India through  
The Secretary, Ministry of  
Finance, North Block, N/Delhi
2. The Controller General of Accounts,  
O/O Controller General of Accounts,  
Ministry of Finance, Deptt.of  
Expenditure, 7th Floor, Lok Nayak  
Bhawan, Khan Market, New Delhi.
3. The Sr. Accounts Officer,  
Principal Accounts Office,  
Ministry of Urban Development,  
F Wing, Second Floor, Nirman Bhawan,  
New Delhi.
4. The Accounts Officer,  
Principal Accounts Office,  
Ministry of Law and Justice,  
Department of Company Affairs,  
3rd Floor C Wing, Lok Nayak Bhawan,  
Khan Market, New Delhi.

...Respondents

(By Advocate Shri M.M.Sudan )

O R D E R

(Hon'ble Shri S.A.Singh, Member (A)

The applicant, who is an officer of the Controller of Defence Accounts (CDA), was sent on deputation to the Govt.of NCT of Delhi and was posted in New Delhi. The applicant was considered for regular absorption in Delhi Administration Accounts Service (DAAS). The issue went to various Courts a number of times. The Hon'ble Supreme Court gave its judgement on 3.10.2001 in Civil

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Appeal No. 2971-73 of 1997 directing the respondent No.8 to take appropriate steps to give effect to the proposal made by appellants or to take steps for absorption in Delhi Administration Accounts Service as indicated by the Tribunal to which we have adverted to above. Principal Bench of Central Administrative Tribunal in its judgement dated 2.4.2003 in OA 705/2002 has ordered that two Governments i.e. Central and the Delhi Government to convene a meeting for implementing the orders of the Hon'ble Supreme Court and the Tribunal in letter and spirit. Accordingly, it was decided that 49 deputationists with the Delhi Government would be repatriated in a phased manner spread over five years. In pursuance of this decision, the applicant had been repatriated to his parent cadre i.e. Controller General of Defence Accounts and thereafter he was considered for promotion to the post of Pay and Accounts Officer and on promotion posted to Mumbai vide the impugned order dated 29.4.2004.

2 It is the grievance of the applicant that this transfer order passed by the respondents is totally illegal and biased as the respondents have not sought option from the applicant in terms of the transfer policy and also not affording an opportunity to give option by him, which is against the principles of natural justice.

3. Applicant prays that he should be retained in Delhi on promotion vis-a-vis the option exercised with

reference to his juniors and others. The respondents have retained juniors in Delhi. In support of his case, the applicant referred to seniority list in which his name appears at Sl.No.204. He also places on record the transfer order of one Shri Alok Moti Lal, AAO, who has been posted in New Delhi vide office order no. 46/2004 dated 31.5.2004 and whose name appears in the said seniority list at serial No. 238. Similarly, he gave some other examples. He also relied upon the judgement of the Tribunal in the case of D.P.Sharma vs. UOI & Ors. in which the applicant had challenged his transfer order outside Delhi on promotion as Pay and Accounts Officer. This was disposed of vide order dated 4.6.2004 directing the respondents as under:

"..... in the circumstances, without putting the official respondents in embarrassing situation, it is desirable that they should reconsider their decision of posting of the applicant to Bhopal and consider his request for being retained at Delhi in terms of the option given by him and also in terms of transfer policy of the official respondents. The impugned order of transfer is, therefore, quashed and set aside. The respondents may accommodate the applicant at Delhi either immediately or in any case at the earliest when the next vacancy arise or as they deem, it appropriate in the exigency of administration. But while taking a decision on this account, they must follow their own policy and guide-lines".

4. Needless to say that the case has been contested by the respondents. They put forward that the transfer policy dated 20.3.2003 is for normal circumstances and provides for calling of options of officials when empanelled. In the present case this is

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an abnormal condition as the applicant has been repatriated after being on deputation for a long period of time. At the time when the applicant was considered for promotion along with several other candidates, vacancies were available at Bhilwara, Kandla, Jamnagar, Valsad, Delhi, Mumbai and Valodra stations. Seven candidates including the applicant were considered for posting against these vacancies. Shri Shafiq Ahmed who was due to retire very shortly and was thus covered by clause (9) of the transfer policy dated 20.3.2003 was posted to Delhi. In the circumstances, the applicant cannot have any grievance in this regard. Moreover, the transfer of an employee on promotion is not open for interference by Tribunal/Court when post is transferable and transfer order is neither violative of any statutory rule nor mala fide. In support of this, they relied upon the judgement of the Hon'ble Supreme Court in UOI and Anr. vs. N.P.Thomas (1993 (Supp(1) SCC 704) and UOI and Ors. Vs. S.L.Abbas ( 1993(4) SCC 357).

5. The applicant in his rejoinder stated that it was incorrect on the part of the respondents not to take option from him before issuing his posting order as per their own transfer policy as applicable, the last paragraph of which reads:

".....that this may please be given wide publicity by bringing it to the notice of all concerned including those working against encadred posts or on deputation to outside offices".

6. I have heard the counsel and gone through the documents on record. The issue for consideration is that

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the respondents have not asked the option from the applicant for transfer on his promotion and the same has been issued without his option. The Transfer policy lays down as under:

"(1) In respect of vacancies that are projected to arrise during a given period an equal number of empanelled officials will be asked to give preference for posting on promotion to any number of stations of their choice. In the absence of preference(s) an individual's willingness for posting to any station will be presumed. The concerned officials will be accommodated at one of the stations of their choice to the extent that is administratively possible. In case it is not possible to accommodate their preference they will be posted compulsorily at any station as per the administrative convenience under clause of All India Transfer Liability which is a condition of service in the Civil Accounts Organisation.

(2) The promotions/transfers will be done strictly on the basis of seniority in the panel.

7. From the plain reading of the above, it is clear that the respondents were required to ask the applicant to give preferences for posting on promotion to any number of stations of his choice, which as confirmed by the respondents was not done. Even though the transfer policy was used as justification for posting Shri Shafiq Ahmed to Delhi.

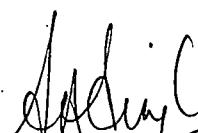
8. It is true, that the post carries All India Transfer Liability and also as per the instructions it is within the competence of the respondents to post the applicant at any station as per administrative exigency, if they are unable to accommodate him immediately as per his preference. However, they should have done this

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after calling for preferences.

9. In the present case ends of justice will be met if the applicant is asked for his preference for posting and he be accommodated in his order of preference against vacancies that are available or likely to arise in the next six months from the date of issue of this order as per rules and law.

  
( S.A. Singh )  
Member (A)

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