

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1602/92

Date of decision: 20.01.93.

Dr. (Mrs.) Sohinder Kaur

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Applicant

Versus

Union of India & Ors.

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Respondents

Coram:-

The Hon'ble Mr. P.C. Jain, Member(A)

The Hon'ble Mr. J.P. Sharma, Member(J)

For the applicant : Sh. K.L. Bhatia, counsel

For the respondents : Mrs. Raj Kumari Chopra,
counsel.

Judgement(Oral)

(delivered by Hon'ble Sh. P.C. Jain, Member(A).

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, it is common ground between the parties that one post of Assistant Professor of Anatomy, reserved for SC, had been advertised by the Union Public Service Commission on 24.12.1988. It has come on record that the UPSC recommended one Doctor Sh. Dharam Singh belonging to SC community for appointment to the aforesaid post. He was offered the post of Asstt. Professor, Anatomy at JIPMER, (Jawahar Lal Institute of PostGraduate Medical Education & Research, Pondicherry). As he did not join, the

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offer to Sh. Dharma Singh was cancelled and the applicant in this O.A. was offered this post, on recommendation received from the UPSC, by the Minstry of Health & Welfare (Dept. of Health) vide O.M. dt. 27.2.91 (Annexure A-4 to the OA). This offer clearly states that the applicant was offered the post in Pondicherry. The applicant accepted the offer but joined the above post only some time in October, 1991, but in the meantime she had been representing for her posting to the post in Maulana Azad Medical College, Delhi. Her representation dt. 12.3.91 in this regard was rejected by the letter dt. 22.3.91 (Annexure A-5). With reference to her letter dt. 27.9.91 for change of place of posting, she was informed that the same could not be accepted and she was requested to report for duty at Pondicherry by 21.10.91 (Annexure A-7). She again made a request on 13.12.91 as also thereafter as per Annexure A-9 and Annexure A-10. She approached the Tribunal after Respondent No.3 (Mrs.Dr.Kum Kum Rana) was ordered to be posted as Asstt.Professor of Anatomy at Maulana Azad Medical College, New Delhi instead of JIPMER, Pondicherry. A copy of this memorandum has been filed and impugned by the applicant in this O.A. However, the same does not bear any date.

2. It is in the above background that the applicant has prayed for quashing the impugned order regarding appointment of Respondent No.3 and for a direction to the respondents to post her to the said post at Delhi. On the prayer of the applicant for interim directions, by an order passed on

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23.6.1992, the respondents were directed to maintain status quo and not to give effect to the impugned order. This interim direction was modified by the order passed on 7.7.92 and the offer of appointment to Respondent No.3 was made subject to the outcome of this O.A. The modified interim order has been continued since then.

3. None has appeared for Respondent No.3 though served. Official respondents have contested the OA by filing their reply to which rejoinder has also been filed by the applicant. Official respondents have filed additional affidavit to which the applicant chose not to file any additional rejoinder. We have perused the material on record and also heard the learned counsel for the parties. As the pleadings in the case are complete, the case is being finally disposed of, with the consent of the parties present, at the admission stage itself. The main contention of the applicant is that she was denied posting to a post of Asstt. Professor of Anatomy in Delhi on the ground that no such post was available but the offer made to Respondent No.3 by means of the impugned order shows that such a post exists and the request of the applicant was denied arbitrarily. The stand of the respondents is that the post was offered to the applicant after one Sh. Dharam Singh who had been selected and recommended and also offered appointment to the said post at Pondicherry failed to join and it would not have been proper to deny the post in Delhi to Dharam Singh and give it to the applicant who came into the picture only because Sh. Dharam Singh did not join that post in

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Pondicherry. The learned counsel for the applicant has also relied on a judgement of Jodhpur Bench of the CAT delivered on 18.9.92 in O.A.No.532/92 between B.S. Verma Vs. U.O.I. & Ors. A copy of this judgement was made available to us at the time of hearing. The learned counsel for the respondents submitted that this judgement is not at all applicable. Our attention has also been drawn by the learned counsel for the applicant to the Railway Board Circular dt. 14.1.1975 as well as to the Circular dt. 24.6.1985 issued by the Ministry of Personnel, Public Grievances & Pension (Dept. of Personnel & Training), both of which are extracted in B.S. Verma's judgement (supra).

4. We have carefully considered the rival contentions of the parties. It is well settled by now that in case of a government servant appointed to a cadre of transferable posts, employer is the best judge in the matter of deployment of human resources available at his command. It is further settled that such a government servant has no legal right either to continue to remain at a particular post or at a particular place. An order of transfer of a government servant for one place to another and from one post to another can be assailed before courts if there is any serious violation of the rules on that subject or there are allegations of mala fides. In this regard the judgement of the Hon'ble Supreme Court in the case of Gujarat Electricity Board Vs. A.R. Sungomal Poshani reported in AIR 1989 SC 1433, and U.O.I. Vs. H.N. Kirtania reported in Judgement

Today 1989(3) SC 131 are referred. It is not in dispute that the post to which the applicant has been appointed is in a cadre of posts which have all India transfer liability. It may also be noted that applicant joined that post only towards the end of October, 1991 and she cannot be said to have approached anywhere near the normal tenure. In fact, it is pertinent to observe that the applicant's case is not really against her transfer from one place to another but basically a case of posting on selection and appointment. The offer made to her clearly stated that it was for the post at Pondicherry. She is not an illiterate or economically hard pressed person and it cannot be said that she had to accept the offer because of financial constraints or otherwise. Neither the offer nor the appointment as such can be said to be an unconscionable activity on the part of the respondents. Therefore, we see no reason to interfere in the posting of the applicant to the post which was offered to her and which was accepted by her.

5. In B.S. Verma's case (supra) relied upon by the learned counsel for the applicant, the applicant was working as Asstt. Commercial Superintendent II, Western Railways, Jaipur Division, Jaipur and he was transferred vide order dt. 14.8.1992 as Asstt. Commercial Manager, Bombay. He was a member of scheduled tribe community, and he had relied primarily on the instructions issued by the Railway Board on 14.1.1975 which are extracted as below:-

"Subject : Hardships caused to Scheduled Castes/
Scheduled Tribes who are transferred.

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2. It has been represented that the Scheduled Castes and Scheduled Tribes employees are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to Scheduled Castes and Schedules Tribes should be transferred very rarely and for very strong reasons only."

We have taken the above extract from the judgement in B.S. Verma's case (supra) as a copy of this circular has not been placed on record by the applicant.

6. It is clear from the perusal of the above extract that this relate to transfers of SC/ST officers. In the case before us, no order for the transfer of the applicant from Pondicherry has been issued. The applicant wants her posting at place either than Pondicherry. Firstly, the applicant is not a railway employee and as such these instructions are not applicable to her. Secondly, as already stated above even otherwise these are not applicable to the applicant's case before us.

7. In the Department of Personnel & Training circular dt. 24.6.1985 (extracted in B.S. Verma's case (supra),), the thrust is that government servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. It is also stated therein that the main objective for providing reservation for

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scheduled castes and scheduled tribes in appointment to civil posts and services of the government is not just to give jobs to some persons belonging to their communities but also to uplift those people socially and merge them in the mainstream of the nation. There is no instruction or direction or guideline in the above Circular of Deptt. of Personnel & Training that an officer belonging to SC/ST should be posted either on his first appointment or in the later part of his career, only to a place in which he resides or to a place which is the place of his domicile. Even otherwise, any such order would itself defeat the very purpose of having a cadre of transferable posts with all India transfer liability and would defeat the very purpose behind the objective of forming an all India cadre. Any subclassification in the cadre on the basis of caste or community and which has no nexus with the objective sought to be achieved, itself would be arbitrary and thus violative of Article 14 of the Constitution of India.

8. In B.S. Verma's judgement, the bench has not questioned the general policy laid down by the Supreme Court in the matter of judicial review of transfer orders of government servants. However, it states that in the case of Smt. Shilpi Bose & Ors. Vs. State of Bihar & Ors. reported in 1992-1 LLN 7 decided by the Hon'ble Supreme Court and on which the learned counsel for the respondents in B.S. Verma's case relied, the case was not a member of SC/ST community and as such her case has not been considered keeping in view the administrative instructions. Thereafter, the learned

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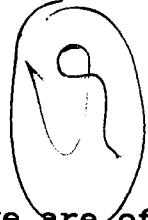
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Vice-Chairman who has delivered the judgement has referred to the provisions of Article 16 of the Constitution as also other provisions "particularly chapter 4 of the Constitution" (probably the reference is to Part IV of the constitution) and on that basis Jodhpur Bench quashed the transfer order of the applicant therein primarily on the ground that he being a member of the scheduled tribe may be posted to a place in Rajasthan in B.S. Verma's case. It may be true that the decision rendered by the Hon'ble Supreme Court in the case of Smt. Shilpi Bose & Ors. (Supra) to the effect that High Court should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory rules, or on the ground of mala fide, does not discuss the circulars referred to in B.S. Verma's case, but it does not cite any authority of the Hon'ble Supreme Court in which the Apex court may have restricted the application of the ratio laid down by it in such matters to the cases of transfers of incumbents of non-reserved posts alone. We have also not been shown any such authority: In this view of the matter, we are of the considered view that the law laid down by the Hon'ble Supreme Court in the judgements referred to earlier by us is binding on us in terms of the provisions of Article 14 of the Constitution and we are not bound to follow the judgement in B.S. Verma's case, apart from the fact that the facts of that case are significantly different from the facts of the case before us, and, as such, the judgement in B.S. Verma's case is not at all relevant.

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9. In the light of the foregoing discussion, we are of the considered view that this O.A. is devoid of merit and the same is accordingly dismissed at the admission stage itself. The parties will bear their own costs. Interim order passed on 7.7.1992 stands automatically vacated.

De Meo
(J.P. Sharma)

Member (J)

C. C. Jain
(P.C. Jain)

Member (A)