

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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✓ *(Signature)*

O.A. No.1941/92

08.01.1993

Shri Surinder Kumar

...Applicant

Vs.

Union Territory of Pondicherry ... Respondents  
& Ors.

CORAM :

Hon'ble Shri P.C. Jain, Member (A)  
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ... Shri A.K. Gupta

For the Respondents ... Shri P.K. Manohar

1. Whether Reporters of local papers may be  
allowed to see the Judgment? *YK*

2. To be referred to the Reporter or not? *YK*

*J.P. SHARMA*  
(J.P. SHARMA)  
MEMBER (J)

*P.C. JAIN*  
(P.C. JAIN)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No.1941/92

18.01.1993

Shri Surinder Kumar ...Applicant

Vs.

Union Territory of Pondicherry ...Respondents  
and Others

CORAM :

Hon'ble Shri P.C. Jain, Member (A)  
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri A.K. Gupta

For the Respondents ...Shri P.K. Manohar

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant, Driver, LMV, Pondicherry Guest House, New Delhi has assailed the order of transfer dt. May 21, 1992/July 1, 1992 transferring him from Pondicherry Guest House, New Delhi to Pondicherry Guest House, Madras.

In this application, the applicant has prayed for the following reliefs and interim relief :-

RELIEFS:-

- (i) stay the operation of the order No.4954/Tourism/Estt/A2/91/305 dated May 21, 1992 of respondent no.2 and order No.1866/PGGH/LC/Estt./92/302 dated July 1, 1992 of respondent No.3;
- (ii) Direct the respondents to immediately take on duty the applicant at Pondicherry Government Guest House, Delhi.

INTERIM RELIEF:-

- (a) quash the order no.4954/Tourism/Estt/A2/91/305 dated May 21, 1992 of respondent No.2 transferring the applicant to Madras, and order No.1866/PGGH/LC/Estt./92/302 dated July 1, 1992;
- (b) Issue a command to the respondents that applicant is not transferable from Delhi;

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(c) Issue a command to the respondents to immediately take back the applicant on duty at Delhi;

The applicant earlier joined as Peon in 1983 and in 1984, he was appointed as Driver, LMV on daily wages. Since 1984, the applicant is continuously working as Driver. By the order dt.14.12.1989, the applicant was appointed as Driver on regular basis on a vacant post. The applicant in the application has averred that in his appointment letter, there is no condition of his transfer outside Delhi; that he had been served with a memo in September, 1990 and only a preliminary hearing was held in April, 1991 and no further proceedings have taken place and since the staff of the Pondicherry Guest House, New Delhi along with the applicant were dissatisfied with the behaviour of the Assistant Director, Protocol, Shri K.Emli Ranjit and they passed a resolution and made a complaint against him. So the applicant happened to be signatory No.1 at the top of the aforesaid complaint, he has been picked up for transfer in a malafide and arbitrary manner and in colourable exercise of power. The transfer order is vitiated by abuse of power by the respondents. The precedent prevalent in the Guest House has been that those, who are locally recruited and do not belong to the Southern State were never transferred to the Southern State either in Pondicherry or Madras and only those who belong to the Southern State and recruited here after passing certain period were transferred to Pondicherry or Madras in the vicinity of their home state.

The respondents contested the application and stated

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that the service of the applicant is transferable. The applicant was appointed in a Tourist Department of Pondicherry on a post, which is transferable. That by the G.O. dtt.19.12.1991, the Lieutenant Governor of Pondicherry has accorded his his approval for transfer of one post with the incumbent from. Pondicherry Guest House, New Delhi to Pondicherry Guest House, Madras. In accordance with the aforesaid Government Order, the applicant along with the post  
*21.5.92*  
was transferred by the order dt. ~~20.5.1990~~ to Pondicherry Guest House, Madras. The transfer order has been passed in the interest of administration. The application has also accepted the transfer and has moved for grant of leave to the Manager, Pondicherry Guest House, Madras. The application is, therfore, devoid of merit.

We have heard the learned counsel for the parties at length and have gone through the record of the case. During the course of the arguments, the learned counsel for the respondents has furnished the extract of chapter 24 to the Manual of Office Procedure, Personnel and Administrative Reforms Wing, Chief Secretariat, Pondicherry in which it is laid down in para 224-1 that conditions of service under the Pondicherry administration shall be the same as the conditions of service of persons appointed to any other corresponding Central Civil Services and posts and shall be governed by the same rules and order as are for the time being applicable to

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the latter category of persons. The learned counsel for the respondents has also filed the Ministry of Home Affairs Notification dt.9.11.1966 whereby under Article 309 of the Constitution of India, the Pondicherry administration Conditions of Employees Rules, 1966 have been notified. All these rules have been placed on record.

The respondents have also denied the averment made in the OA that the Assistant Director had arbitrarily dealt or misbehaved with the employees. It is also denied that the impugned transfer order is based on the fact that the applicant had put his signature to a representation submitted against the said officer.

The applicant has filed the rejoinder reiterating the averments made in the application. The first ground taken by the learned counsel for the applicant is that the post of a Driver, LMV in Pondicherry Guest House is not transferrable. This contention of the learned counsel is not substantiated and rather rebutted by the relevant service rules regarding service conditions of the employees of Pondicherry administration filed by the respondents. The appointment letter of the applicant dt.14.12.1989 by which his services were regularised on a vacant post refers to a note dt.5.12.1989 of Industrial Development (Tourism Department) Chief Secretariat, Pondicherry. It is in pursuance of that the post of the applicant was regularised by the Liason Commissioner, Government of Pondicherry, New Delhi.

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The next contention of the learned counsel for the applicant is that in the appointment letter, there is no mention of the fact that the post to which the applicant has been appointed is a transferable post. It is not disputed that earlier to regularisation of service, the applicant was a daily wagaer and it was only by the order dt.14.12.1989 that his services have been regularised and he has been placed on a probation period of two years. When the applicant has been regularised on a vacant post controlled by the administration (Tourism) of Pondicherry in the Industrial Development Department, then the applicant shall be governed by the service conditions applicable to other similarly situated employees. In view of this, this contention of the learned counsel has no force.

The learned counsel for the applicant also contended that upto now, no staff of Pondicherry Guest House in New Delhi has been transferred; but this fact has been disputed in the counter filed by the respondents. In fact, the New Delhi Guest House is a part and parcel of the Tourism Department of the Government of Pondicherry and the staff working there particularly Class III cannot claim for all time to come to remain posted at New Delhi Guest House. In para 8 of the counter, names of certain employees of the Delhi Guest House have been mentioned, who have been transferred out of Delhi and in the Southern states. The learned counsel for the applicant has referred to the rejoinder where it is stated that those who have been transferred, belong to the Southern

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state, but that will not substantiate the argument of the learned counsel for the applicant that the staff of the New Delhi Guest House of Pondicherry was not transferred.

The learned counsel for the applicant has also stated that the present order of transfer is *mala fide* because the applicant had submitted a representation against the Assistant Director on 13.5.1992 and the applicant has been signatory at the top of the same representation. Firstly, this reepresentation goes to show that Shri Bhagwan Singh, Up Prtdahan has signed it and like other employees, the applicant has also signed it and it matters little who signs at the top, in between or at the bottom. In fact the post itself has been transferred to Madras Guest House and along with that post, the applicant has also been transferred. The allegations made in the representation are of general nature and that does not confine to the applicant only regarding misbehaviour or arbitrary act on the part of the Assistant Director. Thus it cannot be said that because of this representation having been made and signed by the applicant, the transfer order has been passed in a vindictive manner. There is no other allegation of *mala fide* against the respondents and the Assistant Director has not been impleaded by name to explain his conduct on the various averments made against him.

Argument of the learned counsel may carry some weight that a person, who gets employment in Pondicherry Guest H0use

at New Delhi may not have thought of his transfer to Southern State far away from his home. But transfer is a part of the service condition, which the applicant has joined. He has joined the Industrial Development Department of Tourism) of Government of Pondicherry. So his services can be utilised at any place in the Guest House maintained by the Pondicherry administration. He cannot have any grudge on that account. The learned counsel for the applicant has also referred to certain authorities, but in view of the latest decision in the case of Ms. Shilpa Bose Vs. State of Bihar, reported in AIR 1991 SC p-532, wherein the Lordships of the Hon'ble Supreme Court held that the transfer should be least interfered with unless it is arbitrary or mala fide, we do not find any merit in this OA. The applicant, is the junior most among the driver staff posted in the Pondicherry Guest House, New Delhi. Thus it cannot be said that he has been purposely picked up for transfer along with the post. The same view has been taken by the Hon'ble Supreme Court in an earlier decision in the case of Union of India Vs. H.N. Kritania, Judgment Today 1989 (3) SC p-131.

In view of the above facts and circumstances, the applicant could not make out a case for interference in the impugned order of transfer.

However, it shall be open to the applicant to make

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another representation as because of the death of his father, who was also employed in the same guest house as a driver a post has fallen vacant and the respondents may consider his request sympathetically on the basis of the extant Rules and administrative exigency.

In view of the above discussion, the application is devoid of merit and is dismissed leaving the parties to bear the own costs.

*J. P. Sharma.*  
(J.P. SHARMA) 8.1.93

MEMBER (J)

*(C.W. 81/113)*  
(P.C. JAIN)  
MEMBER (A)