

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2282/92.

Date of decision 24-3-93

(W)

SMT. SUKSHAM BALA ... Applicant

v/s

UNION OF INDIA ... Respondents
AND ORS.

CORAM:

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. C.J. Roy, Member (Judicial)

For the Applicant ... Shri D.C. Vohra, counsel.

For the Respondents ... Shri M.L. Verma, counsel.
& Shri Rajan, Counsel for
Respondent No.6

(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 C.J. Roy, Member (Judicial)]

The Applicant joined as Librarian on casual basis
with HQ Technical Group EME, Delhi Cantt for the period
from 22.9.1969 to 21.1.1970. Thereafter, she was absorbed
against a regular cadre/^{post} of Librarian Grade III with all
India service liabilities in the same office. The
applicant was offered promotion to the post of Librarian

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Grade II and was transferred from Delhi to Bhopal with effect from 16th March 1984 as the post of Librarian Grade II was at the strength of 3 EME Centre, Bhopal.

2. The applicant made a request for SITU promotion at Delhi and expressed her inability to move out of Delhi due to family circumstances. Her husband is also stated to be working in Delhi Administration and hence she was not willing to go to Bhopal.

3. The respondent No. 3 acceded to the request of the applicant and ordered that the applicant will be proforma posted to the EME, Bhopal with an insertion in the order that the applicant will remain attached to the Technical Group, EME till such time the post of Librarian Grade II is authorised in the PE of HQ Technical Group, EME Delhi Cannt. However, for her pay and allowances, leave and maintenance of service documents etc. she remained on the strength of 3 EME Centre, Bhopal. Likewise, Shri A.P. Tyagi was also kept at 3 EME Centre, Bhopal for duties on proforma posting and for pay and allowances, leave and maintenance of service documents etc. he remained attached with HQ

Technical Group EME Delhi Cantt. accordingly under instructions from higher authorities, EME, Records.

4. It has also been averred that the grades of Librarian i.e. grade IV/III/II in different pay scales were amalgamated into the single pay scale of Rs.1400-2600 w.e.f. 1.1.1986 and the post was redesignated as Library Information Assistant. The applicant is stated to have fallen sick and remained confined to bed during August, 1992 and she alleged that she was being physically transferred to Bhopal in supersession of her earlier proforma posting notwithstanding the merger of the grades IV/III/II of Librarians without any justification whatsoever she alleges malafides against Respondent No.5 as he wanted to favour respondent No.6 with posting at Delhi. Hence, the applicant has claimed the following reliefs:-

- (1) To quash the impugned order of rescinding proforma posting No.3535/15/CA/3 dated 6.7.1992 issued by the Commandant, EME Records, Secunderabad, as arbitrary, illegal malafide, breach of pledge and ultravires the Constitution of India;
- (2) In view of relief at (1) above, direct the respondents to post the applicant at HQ Technical Group, EME, Delhi Cantt. Delhi on permanent basis because the grades have since been amalgamated and a new cadre of Library Information Assistant has been created;
- (3) Direct the respondents to release the difference of emoluments between the rates she was paid (i.e. Bhopal rates) and actually she was entitled (i.e. the Delhi rates) with 18% interest;
- (4) Award exemplary cost for this petition with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case;
- (5) To restrain the respondents from issuing any movement order/relieving order in respect of the applicant, though no such order has

been received by the applicant till date and release her salary withheld w.e.f. July, 1992.

5. During the arguments, the learned counsel for the petitioner submitted that he is pressing only claims (1) and (2) above and the rest are given up.

6. The respondents have submitted their counter affidavit. They have averred that the applicant holds a transferable post. They have cited the case of Mrs. Shilpi Bose Vs. State of Bihar (AIR 1991 SC 582) wherein it is held that the Court should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory Statutory Rules. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to other. Transfer orders issued by the competent authorities do not violate any of their legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead the affected party should approach the higher authorities in the Department.

7. The respondents have further stated that only one Librarian Grade III is authorised to HQ Technical

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Group EME, Delhi Cantt. The applicant was approved for promotion to Librarian Grade II by the DPC. She was ordered for posting to 3 EME Centre, Bhopal vide EME Records letter No. 3494/14/10/CA-III dated 27th August 1983 (Ann.R-4) to assume the appointment of Librarian Gr.II as there was no post of Librarian Gr. II existing at HQ Technical Group EME Delhi Cannt for her promotion. However, on her request the Head of Deptt. Army HQ issued instructions to EME Records for her proforma posting to 3 EME Centre Bhopal as Librarian Gr.II and attached her to HQ Technical Group EME Delhi Cantt. till such time a Librarian Gr. II is authorised in the PE of HQ Technical EME which was under the process of revision. EME Records issued necessary order to this effect and on receipt of the said order, revised posting -cum-promotion order from EME Records, HQ Technical Group EME issued necessary movement order No. 2090/Pers. dated 24th March 1984. The casualty to this effect is also stated to be published in HQ Technical Group EME DO Pt II No. 28/Civ/1/84 dated 4th April 1984 as under :

P.2843 Smt. Suksham Bala, - On promotion as Librarian Gd. III
Librarian, Gd. III - On promotion as Librarian Gd. II proforma posted to 3 EME Centre, Bhopal and SOS wef 16 March 84 (FN)
- Will remain attached to HQ Technical Group EME Delhi Cantt for duties .

8. The applicant had accepted the promotion of Librarian Grade II and had never submitted any refusal to accept the promotion. The PE of HQ Technical Group EME Delhi Cantt. was in the process of revision and it was recommended to competent authority i.e. Govt. to upgrade the post of Librarian in Dec. 1991 but the post of Librarian Grade III was not upgraded to Librarian Gr.II. In the meantime, the audit authorities also objected the irregular stay of Librarian Gr.II. Order No.3535/15/CA-3 dated 6.7.92(Ann.7) was issued for physical movement of the applicant to 3 EME Centre Bhopal. The applicant was also directed on 23.7.92 to hand over charge to Shri A.P.Tyagi and report to Administrative Wing (Pers.Sec) on 25.7.92 with clearance certificate to collect movement order for physical movement but the applicant was reluctant to hand over charge and to collect movement order for her to move to 3 EME Centre Bhopal. Shri Rajan, learned counsel representing Shri Tyagi submitted that Shri Tyagi has since joined in the same post.

9. The applicant has not accepted the telegrams sent to her through the postal authorities. When movement orders was got posted at the door of the residence of the applicant, her husband lodged a complaint with the police station stating that his wife was not residing with him.

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10. We have heard the learned counsel for the applicant Shri D.C.Vohra and the learned counsel for the respondents Shri M.L.Verma and Shri Rajan for respondent No.5 and perused the records.

11. After going through the records we found that the post of Librarian Grade II being not available at Delhi Cantt HQ Technical Group EME, the applicant was given Grade II post of Librarian on the basis of proforma posting at Delhi while Respondent No.6 was relieved at Bhopal. Since there was an audit objection, the respondents were exercising their mind to set right the matter from March, 1992.

12. In the process the respondents allowed the applicant to continue at Delhi for more than eight years in this post. Further the petitioner has been continuing at Delhi even prior to February 1992 in one capacity or another. Since 21.2.84, the applicant is positioned in HQ Technical Group EME Delhi Cantt. on promotion as Librarian Grade II till such time the post of Librarian Grade II is authorised at Delhi.

13. The post of Librarian Grade III was existing in the HQ Technical Group EME Delhi Cantt. at the time of promotion of the applicant to the post of Librarian Grade II. The applicant was approved for proforma promotion to the post of Librarian Grade II

at HQ Technical Group EME, Delhi Cantt and attached to Delhi Cantt. office till the post of Librarian Gr.III is upgraded. This upgradation of the though proposed did not take place for want of approval.

14. The applicant's proforma posting at Bhopal and retention at Delhi, drawing salary against the post at Bhopal and respondent No.6 proforma posting to Delhi but retention at Bhopal and drawing his salary against the post at Delhi has been objected to by the audit Department.

14. In view of this the respondents were compelled to exercise their mind in order to get over this audit objection as stated supra right from February, 1992. But the applicant has been referred to the redesignation of the posts in Grade II and Grade III as Librarian Information Assistant in the pay scale of Rs.1400-2600. In the changed situation, she wants that she should be retained in Delhi as the pay scale of the post in Delhi and in Bhopal is now the same. Accordingly, she requested for retention at HQ Technical Group EME Delhi Cantt, by rescinding proforma arrangements. Her request has however to be considered in the administrative exigencies and public interest. She sought for personal interview with the Head of Department which was not acceded to. On 18th July 1992 itself the Delhi office raised objection and asked the applicant to interview with DG, EME and also asked respondent No.6, Shri A.P. Tyagi, to report for duty at the Headquarters office

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physically on 15th July 1992 in compliance of the order dated 6th July 1992.

15. Therefore, it is a question of pure and simple transfer from Delhi to Bhopal. It is pertinent to mention that respondent No.6 has already joined Delhi office and there is no posts for the petitioner at Delhi. In view of the audit objection even by 23rd July 1992 the protection of proforma posting of the applicant as Librarian Grade-II and in respect of Shri A.P. Tyagi, (R-6) as Librarian Grade-III had been withdrawn by the higher authorities. Therefore, there is no alternative except for the applicant to report for duty to 3 EME Bhopal.

16. On 24th July 1992 the applicant applied for two days medical leave. Subsequently, she had applied for medical leave from 27th July 1992 to 14th August 1992. In view of her medical leave, the respondents were inconvenienced for handing over and taking over charge and verification of the Library records. When the applicant applied for rescinding the proforma posting order, it cannot be denied that she was not aware of the transfer order. Besides, the respondents had also served communication by registered post which could not be served as per the endorsements of the postmen at the registered letters. In spite of clear instructions she did not report for duty at Bhopal. So, there is effective substituted service of transfer order.

17. Besides, she was also given telegrams and registered letters and a notice of transfer was also affixed on the door of her house which was also reported by her husband to the police.

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18. Therefore, we are unable to persuade ourselves that the applicant is not aware of her transfer orders. Her obtaining a status-quo order from this Tribunal dated 3.9.1992 will not give any protection to her because on the same day when the status-quo was ordered by this Tribunal she was actually on medical leave. It may be noted that she stood transferred, movement order was issued and respondent No.6 has already joined here and there is no post vacant in HQ Technical Group, EME Delhi Cantt. The other facts raised in the DA are not germane to reliefs No.(1) and (2).

19. In Gujarat State Electricity Board Vs. Atma Ram Sugomal Poshani (AIR 1989 SC 1433), the Supreme Court has held that on being transferred a person should join the place of duty and then make a representation. Here this applicant has not joined the place of duty but made representations.

20. In Kirti Niyas Case (1989 SC(LS) 471) Vs. UOI the Supreme Court held that a transfer can be interfered by the Tribunal when the facts and circumstances on records clearly indicate discrimination, arbitrariness and unfairness in transferring a public servant from one place to other, transfer orders are liable to be quashed. Their Lordships of the Supreme Court held that transfer is an incident of service.

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21. The transfer orders sent by the respondents to the applicant were not even acknowledged by the applicant and the applicant is reiterated that those were not at all received by her whereas at one place her husband has himself acknowledged that the order is pasted on the house in his police complaint, besides registered letters and telegrams.

22. Since we hold that this is a transfer in public interest, we do not find any justification for our interference in the matter. It is for the respondents to take a decision as per rules as to how to treat the applicant's period of leave and pay the arrears of her salary to her as per rules and further consider her retention in view of her husband and family being stationed at Delhi.

23. The OA is dismissed as above with no orders as to costs.

Shukla
(I.K. Rasgotra) 27/3/93
Member (Admn.)

Dasgupta
(C.J. Roy) 27/3/93
Member (J)