

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 2290/92

DATE OF DECISION : 15.09.92

Shri Sucha Singh Jaswal

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM

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

For the Applicant

...Shri S.L. Kohli

For the Respondents

...Mrs. Raj Kumari Chopra

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

The applicant in this OA has assailed his transfer by the impugned order dt. 3.4.1992 in the same capacity as UDC from CRO, Delhi to Hissar. He has prayed that the impugned order of transfer be quashed and the respondents be directed to allow him to continue at Delhi in the same capacity. The notices were issued to the respondents and Mrs. Raj Kumari Chopra, counsel appeared on behalf of the respondents. The matter is listed for hearing on admission and interim relief, but the learned

counsel for the respondents has waived the filing of a reply and desired that the matter be heard finally as she has nothing to add and will take support to her arguments from the pleadings preferred by the applicant himself. The learned counsel for the applicant also argued that the matter be finally disposed of at the admission stage itself. This is also because in a transfer matter, the decision on interim relief also to some extent projects the merit of the case and so the application is disposed of finally on merits.

2. The ground taken by the learned counsel for the applicant is that firstly, the respondents have the posting transfer policy, which is in vogue by the order of the Headquarters dt. 20.12.1991. The learned counsel has highlighted sub clause (f) of Clause-3 of the instructions/guidelines regarding turnover tenure stations. The same is reproduced below :-

"(f) The normal age limit for tenure posting is 50 years. Subordinates over 50 years also be posted for a lesser tenure but none will be retained at a tenure station beyond the age of 53 years. Subordinates above 50 years of age will not be posted to show bound areas and tenure stations where the tenure i.e. two years. The age for such postings will be ordered as on date of issue of posting by G2 Command."

According to the learned counsel for the applicant, the

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applicant was born sometimes in May, 1942 and the impugned order of April, 1992 was to be effected sometimes in May, 1992. By the time, the applicant crossed the age of 50 years and so by virtue of sub clause (f) aforesaid, he cannot be posted out to a tenure stations which are mentioned in Annexure A to the aforesaid guidelines and instructions.

3. Hissar, to which the applicant is posted is a tenure station. By the tenure station, it is meant a station where a person posted has to be stayed for a specific period and upto a particular attainment of age. If he attains the age of 53 years, he has to be posted out of that station or if he stays for two years, then also he has to be posted out to some other peace station.

Firstly, I find that this contention of the learned counsel cannot be supported by the recent judgements given in the case of UOI Vs. H.N. Kritania, 1983 SC and Kamlesh Trivedi Vs. UOI, Full Bench Bahri Bros. CAT 1989 Volume-II p-80. There is another recent decision of the Hon'ble Supreme Court in the case of Gujarat Electricity Board Vs. Atma Ram Sangomal Poshani, AIR 1989 SC 1433.

In all these cases, the Hon'ble Supreme Court has stressed that the guidelines in vogue in the department or policies being followed by various departments are only directory in nature and they have no statutory force. It is for the administration itself to find out as to which person is best suited for a particular posting at a particular place. However, keeping these instructions in the case of the applicant, sub clause (f) does not help him at all because it leaves a scope wide open to the respondents to consider even a posting of a person beyond the age of 50 years to a tenure station, but in no case he can be posted after he attains the age of 53 years, and the list appended to these guidelines by the applicant ^{it} himself goes to show that certain persons, who had attained the age of 53 years at the tenure station have been posted out. When such persons are posted out to peace stations, then in normal course others have to be posted in their place and the best judge in that regard is the administration itself. It is not pointed out that the list appended along with the guidelines does not reveal the correct picture as of today. The transfer order dt. 3.4.1992 at Sl. No. 22

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shows that one Satya Prakash Gupta, who was posted at Suratgarh has been posted out on attaining the age of 53 years. Thus the contentions raised by the learned counsel regarding the age does not by itself ~~disbar~~ ^{debar} the respondents from posting the applicant to a tenure station. From another angle also, when the transfer order dt. 3.4.1992 was passed, it should have been followed by an earlier preparation of list for such transfers and at that time when the list would have been in contemplation, the applicant could not have been ~~among~~ ^{among} classified ~~among~~ ^{among} those who have crossed the age of 50 years. It matters little that the implementation of the order has to be given effect sometimes in May, 1992 when the applicant by lapse of time may attain the age of 50 years. Thus at the time when the process of preparation of list of contemplated transfer was going on, the applicant was ~~less~~ than 50 years of age.

4. The other contention raised by the learned counsel is that those persons who are listed in the tenure list are above the applicant at Sl. No. 74 and 157- Arora and Harish Chand have not been recalled from their

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peace station for posting to tenure station. It appears that Arora has been posted in August, 1990 and Harish Chand has been posted in June, 1991 and they have not yet completed their normal stay as is provided under the administrative instructions. So calling them in order to accommodate the applicant at Delhi would not be fair. Even if these persons were (named as respondent Nos. 3 and 4) and even if the policy which is to be implemented in cases of transfer, if the ~~proposition~~ opposition given by the learned counsel is accepted, then every time ^{if any} such person is to be accommodated ~~and~~ ^{then} earlier all the ^{-ed} postings at various places have naturally to be disturbed creating abnormal situations and difficult administrative problems. I do not find any case of discrimination or an arbitrary exercise of power in not recalling those persons from outstation postings and diverting them to the tenure station postings. This contention of the learned counsel, therefore, also has no force.

5. The learned counsel has also argued that the representation made by the applicant has not been disposed of by a speaking order. I have gone through the

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representation preferred by the applicant and that only highlights the grievance of age; the grievance of seniority and the disturbance of the family of the applicant. For this no specific reasoning is required, if at all, because the representation has been considered and it was not found fit to be allowed. In any case if there is no speaking order, then the matter has been judicially reviewed as per the law and the guidelines referred to by the learned counsel for the applicant. Every transfer in itself enjoins certain hardships as movement itself gives extra burden which every Government servant has to share when he opts for a service with All India transfer liability. The family problems, illness or education of the children are the normal features. No such medical certificate of an ailing member of the family which requires a special treatment at the expert hands where such ailment has already been treated, has been filed to necessitate consideration of this matter on humanitarian grounds.

6. The law laid down in a recent decision of the Hon'ble Supreme Court in M.S. Shilpa Bose Vs. State

of Bihar, 1992 (February) Labour and Service Cases

is to the effect that the orders of transfer should be

least interfered with unless and until they are based on

malafide grounds. The applicant, of course, has urged

malafide in the grounds, but merely mentioning the

word 'malafide' will not give the true impact of that

word. Malafide means to accommodate a person by

to arbitrary action or ~~dislodge~~ ^{pre-} a person by a judicial act.

None is apparent on the face of the record as well

as in the annexures filed by the applicant. Thus I do

not find that there is a case of malafide or arbitrary

action on the part of the respondents.

7. In view of the above discussion, I find no merit in this application and the same is dismissed on merits at the admission stage itself with cost on parties.

J. P. Sharma
15.9.92
(J.P. SHARMA)
MEMBER (J)
15.09.1992