

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 236/92

Date of Decision: 10-04-92

Mohinder Parkash

.. Applicant(s)

Shri S.K.Gupta

.. Counsel for the applicants

Vs

Secretary, Ministry of Finance
and others

.. Respondents

Shri M.L.Verma

.. Counsel for respondent(s)

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Hon'ble Mr. S.P.Mukerji, Vice Chairman

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1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *No*

J U D G M E N T

(Delivered by Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 29.1.92 the applicant and who has been working as Assistant/then as Office Superintendent in the Directorate of Revenue Intelligence has challenged the impugned order of transfer dated 28.1.92 at Annexure.A.I by which he was transferred as an Assistant from Delhi to Bombay and has prayed that the respondents be directed to post him as Assistant at Delhi itself.

2. The brief facts of the case are as follows.
The applicant is a member of the Scheduled Caste and joined service as a Class IV employee in 1957. In 1971 he was promoted as an L.D.C. in the Directorate of Revenue Intelligence and was ~~after~~ promoted as a U.D.C. in 1976 and joined at

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Ahmedabad. In 1978 he was transferred to Delhi as UDC. He got another promotion in 1981 as an Assistant and vide the order dated 8.12.88 at Annexure.A he was promoted as Office Superintendent in Delhi. On 1st November, 1991 he received a memo (Annexure.A.7) intimating him that his promotion as Office Superintendent given by the order dated 8.12.88 shall be treated as adhoc ^{by} the process of implementation of the judgment of this Tribunal. Within a month of this order on 28.11.91 (Annexure.A.6) he was accommodated as a regular Office Superintendent at Bombay by restoring the post of Office Superintendent from Delhi to Bombay. He was relieved on 29.11.91 from the post of Office Superintendent in Delhi and directed to report for duty ^{at Bombay}. It appears that on 28.11.91 itself one Shri P.S.Chopra an Assistant was promoted as Office Superintendent and kept at New Delhi itself against the vacancy caused ^{by the} on promotion of another Office Superintendent as Administrative Office (Annex.10 attached to the rejoinder). Still, ^{further} however, it appears that on 29.11.91 one ^{Smt.} Harjeet Kaur, UDC was promoted to officiate as Assistant against the vacancy caused by the promotion of Shri P.S.Chopra. Thus it appears that when the applicant was transferred from Delhi to Bombay from the post of adhoc Office Superintendent to that of regular Office Superintendent, there was a post of Office Superintendent available in Delhi against which Shri Chopra was accommodated. In any case, the applicant on his transfer to Bombay could not go to Bombay because of family circumstances and applied for leave and on 18.12.91 he submitted a representation forgoing the regular promotion as Office Superintendent and prayed that he may be reverted back as Assistant and kept in Delhi. (Annexure.A.4). The respondents

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informed him on 8.1.92 at Annexure.A.2 that his representation dated 18.12.91 ^{had been} ~~was~~ accepted and he was directed to join the post of Assistant in Delhi in place of Shri C.P.Singh who had been promoted as Office Superintendent (Annexure.A.2). It appears that neither ^{on} C.P.Singh nor others who were offered the post of Office Superintendent out of Delhi accepted the promotion and were retained in Delhi as Assistant as a result of which the applicant whose representation to be retained in Delhi forgoing his promotion to Bombay had already been accepted, ^{had to be} ~~was~~ transferred from Delhi to Bombay as an Assistant vide the impugned order at Annexure.A.1, as no post of Assistant was available in Delhi. The applicant has challenged his transfer to Bombay and that too in the lower post of Assistant on several grounds. He has argued that as a Scheduled Caste candidate, by the policy of the Government he should have been kept near ^{to} his native place that the post of Office Superintendent in Bombay had been kept in Delhi between 1983-and 1991 and should have been kept in Delhi to accommodate the applicant but was transferred to Bombay. He has also argued that by the principle of promissory and equitable estoppel the respondents are bound to retain the applicant at Delhi as Assistant.

3. In the counter affidavit the respondents have stated that a Government employee has no right to insist on a post at a particular place. They have, however, ^{conceded} ~~admitted~~ that the post of Office Superintendent at Bombay to which the applicant was transferred had actually been restored to Bombay from Delhi. They stated that no post of Assistant was vacant in Delhi and in order to accommodate the applicant Shri C.P.Singh

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an Assistant was transferred to Bombay but when he did not join, the applicant had to be transferred to Bombay as an Assistant. They explained that since in the feeder cadre no other eligible Scheduled Caste candidate was available and all the five eligible general category Assistants refused to accept the post of Office Superintendent in Bombay the applicant ^{could} ~~should~~ not be retained as an Assistant in Delhi.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have conceded that a post of Office Superintendent was transferred from Delhi to Bombay and the applicant was regularly promoted to that post. If that post had not been transferred the applicant ^{could} ~~should~~ have been retained as a regular Office Superintendent in Delhi to which ^{grade} ~~he had~~ been officiating ^{right} / from 8.12.88. He has been working as an adhoc Office Superintendent in Delhi from 1.11.91. His regular appointment as Office Superintendent was unilaterally converted into an adhoc appointment on 1.11.91 in order to accommodate another officer in implementation of the judgment of the Tribunal. Considering the circumstances and also the fact that in accordance with the professed policy of the Government ^{that} ~~a~~ Scheduled Caste officer should be kept as near ~~as to~~ ^{as} his native place as possible, the applicant a Scheduled Caste officer from Delhi should have been retained as an Office Superintendent on a regular basis in Delhi by not restoring the Bombay post to Bombay from Delhi. To make matters worse after accepting the representation of the applicant that he should be

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retained in Delhi even as an Assistant, the applicant was finally ordered to be transferred to Bombay and that too as an Assistant. Thus the applicant has thrice suffered, once by reversion from regular post of Office Superintendent to an adhoc post and then reversion as Assistant in Delhi and finally being transferred from his native place in Delhi to Bombay to the post of Assistant. I find no reason why the applicant should suffer thrice while other Assistants of general category who had been promoted as Office Superintendent in Bombay were retained in Delhi when they gave up their promotion, when they were much junior to the applicant. There is considerable force in the argument of the applicant that the respondents are bound by the principle of promissory estoppel to retain him as an Assistant because the applicant gave up his promotion as Office Superintendent in Bombay and reverted as Assistant on the condition that he will be retained in Delhi. To deprive him of his promotion and to still transfer him from Delhi to Bombay is not only inequitable but a breach of promise. The Government is as much bound by the principle of promissory estoppel as ^{any} ~~in~~ other party. (M/s Motilal Padampet Sugar Mills Co. Vs. State of U.P., AIR 1979 SC 621).

5. In the conspectus of facts and circumstances I allow this application, set aside the impugned order dated 28.1.92 at Annexure.A.1 and direct that the applicant should be accommodated as Assistant in Delhi ~~by~~ either ~~against~~ ⁱⁿ an available vacancy or by reverting the juniormost Assistant or by creating a supernumerary post and the period between 28.1.92 till the date of his joining as Assistant be considered as waiting period. There will be no order as to costs.

Sd/-
10.4.92
(S.P. MUKERJI)
VICE CHAIRMAN
10.4.92