

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 300/92
T.A. No.

199

7

DATE OF DECISION: 14.02.1992.

SH. J.C. BIJANIA

~~Petitioner~~ APPLICANT

SH. R. VENKATRAMNI

Advocate for the ~~Petitioner(s)~~ ^{XXXXXXXXXX} APPLICANT

Versus

DELHI

ADMINISTRATION & ORS.

U.O.I.

Respondent

MRS. AVNISH AHLAWAT

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

The Hon'ble Mr. I.K. RASGOTRA, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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APPLICANT

VERSUS

DELHI ADMINISTRATION & ORS.

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RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

COUNSEL FOR THE APPLICANT : SH. R.VENKATRAMNI

COUNSEL FOR THE RESPONDENTS : MRS. AVNISH AHLAWAT

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)).

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is serving as a Social Welfare Officer in the office of Respondent No.2, under Delhi Administration, had agitated his being deputed for election duty, in Punjab, vide order dt. 27.1.1992 (Annexure 9 of the paperbook). He has prayed for setting aside of the said order, on various ground.

2. The main ground urged by the applicant is that as per the terms of his appointment, as contained in Annexure A-3 (Pages 18 to 20 of the paperbook), the sphere of his duties was to be within the territorial limits of Delhi, and as such, he is not bound to serve on election duty in Punjab under the Election Authorities of that state. He has also pressed for setting aside of the said order, on the grounds

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of his own ill-health, as well as, that of his wife, in support of which he has adduced photo copies of medical record pertaining to the period 1983 to May, 1991, adding that, because of the ailments mentioned therein, his health does not permit him to undertake the onerous job of performing the election duty, and that too in Punjab, where the conditions are very much disturbed. He has also stated that the order of his being detailed for election duty has caused a lot of worry not only to himself, but also to the other members of his family, who are all upset, on account of the same. He also took up the plea that being a excadre officer in the respondents' department, and not belonging to any civil service, as such, he is not supposed to be detailed for duty, as in the present case, outside the territorial limits of Delhi. On account of the disturbed conditions in Punjab, he has also expressed apprehension with regard to his safety and security, and has also alledged being exposed to hazards and risks, not warranted by his service conditions, resulting in the violation of the provisions contained in Article 14 & 21 of the Constitution of India, with the issue of the impugned order to him.

3. The case was listed on 6.2.1992 before a Single Member Bench, when the learned Member, vide his order of that date, directed that it be listed before a Divisional Bench. On 7.2.1992, when the case came up before us, keeping in view the urgency involved, we asked Mrs. Avnish Ahlawat, learned counsel for the respondents, to seek

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instructions from the respondents and file counter/reply to the O.A. In the counter, filed on behalf of the respondents, the applicant's case was vehemently opposed, stating that on a request received from the Governor of Punjab and also by the Chief Secretary, Punjab, by their counterparts in Delhi, in terms of Article 324(6) of the Constitution of India. Delhin Administration prepared a list of the officers/officials, who could be detailed in the election duty. In this connection, reference was also drawn to Section 26 of the Representation of the People Act, 1951, whereby it was averred that the authorities in Delhi Administration, were within their powers to set out the names of such officers/officials, who could be detailed for election duty, elsewhere. As regards the grounds of ill-health, mentioned by the applicant, in his application, it was stated that all that has so far been done is that a list of all the officer/officials, who could be detailed for election duty in Punjab, has been prepared and the concerned informed about it. However, it was open to the applicant to point out any specific difficulty, such as, reasons of health, to the authorities concerned, which could be considered by them, and instead, coming by way of the present O.A, without resorting to that via media, makes the present O.A. as not maintainable, in terms of the provisions contained in Section 20 of the Administrative Tribunals Act, 1985. By referring to other provisions contained in Section 159 and Section 134 of the Representation of People Act,

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1951, it was averred on behalf of the respondents that the Chief Electoral Officer, Delhi was empowered to nominate such officer/officials, who could be detailed for such election duty, and in the event of any breach on the part of any one, it would entail legal consequences, to the tune of punishment, as provided for, in Section 134 of the Act, ibid. It was also urged that the election process in Punjab having set on, the urgency in this regard can hardly be over-emphasised.

4. We have also heard the learned counsel for the parties.

5. The learned counsel for the applicant pleaded that, as urged in the O.A., the place of duty being outside the territorial jurisdiction of Delhi, the applicant is not expected to be drafted for the same, and even if, by stretching the provisions of law, it may be assumed that he could be done so, in the prevailing conditions in Punjab, which are well-known and of which judicial notice should be taken, sending the applicant to election duty there, would be exposing him to risks and dangers, which are not warranted by the sphere of his duties on the present job, nor the same could be varied to his disadvantage or detriment. The learned counsel for the respondents on the other hand questioned the maintainability of the O.A. as Union of India has not been made a party in the case, nor even the Chief Election Commissioner has

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been made a respondent, and therefore, whatever position has been submitted in the counter, is only on behalf of the Delhi Administration and Respondent No.2, as per their instructions. The learned counsel for the respondents also pleaded that the departmental remedy having not been availed of, on the basis of the alledged medical ground, which too, as per the document in this regard, pertain to April-May, 1991, and do not indicate the upto-date condition of the patient concerned, and therefore, the present O.A. as it is, is not maintainable. The learned counsel for the respondents further pleaded that all possible and reasonable steps have been taken by the concerned authorities to provide adequate safety and security, including insurance cover, and thus, no violation of any constitutional provision, as alledged, is involved in this case. It was also submitted that the apprehensions expressed on behalf of the applicant are ~~exaggerated~~ ^{imaginary} and exaggerated. The learned counsel further pointed out that orders of the District Election Officer concerned have also been started, being received by the respondents in this case, and thus, the election process has not only set in motion, rather it has made substantial headway, and, therefore, it would be too late in the day to ask for any deviation from the duty assigned to the applicant, in accordance with the provisions of law.

6. After addressing the arguments, the learned counsel

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for the applicant expressed that he would like to file rejoinder in the case, upon which time to file the same till forenoon on 14.2.92, was allowed. The same has been filed and has been perused carefully. Besides, urging the earlier points, it was submitted in the rejoinder that Union of India and the Chief Election Commissioner be allowed to be arrayed as respondents in the case.

7. We have given our careful consideration to the facts and circumstances involved, together with the rival contentions, made out during arguments, and also the relevant provisions of law, as urged. As regards the prayer in the rejoinder to make Union of India and the Chief Election Commissioner as the respondents in the case, the fact remains that they were not arrayed as respondents, in the main O.A. and keeping in view the urgency involved, we are not inclined to allow the prayer in this respect, at this stage. With the provisions contained in Article 324 (6) of the Constitution of India, coupled with those contained in Section 26 of the Representation of People Act, 1951, We are of the view that detailing the applicant for election duty, in Punjab, by the respondents in this case, is within the framework of the provisions of law. Besides, the applicant had not brought his difficulties regarding health, first to the ^{notice of the} concerned authorities, rather has chosen to come by way of the present O.A.

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8. In result, we are not inclined to interfere in the present O.A. or grant any prayers, as asked for therein, and dismiss the same, at this stage itself. There is also no order, as to costs.

[Signature]
(I.K. RASGOTRA)
MEMBER(A)

[Signature] 14.2.92
(T.S. OBEROI)
MEMBER(J)

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