

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

NEW DELHI.

O.A. No. 1872 of 1993

New Delhi this 15 th April, 1994.

Hon'ble Mr. S.R. Adige, Member(A)

Dr. Pranvir Singh,
s/o Shri Man Singh,
Divisional Medical Officer,
Delhi-Shahdara Health Unit,
Northern Railway,
Shahdara,
Delhi

By Advocate Shri K.P. Dohare

.....Applicant.

Versus

Union of India through:

1. General Manager,
Northern Railway,
Baroda House,
New Delhi -1.
2. Dr. B.N. Sinha,
Chief Medical Officer,
Northern Railway,
Baroda House,
New Delhi.
3. Shri G.K. Kanchan,
Divisional Railway Manager,
Delhi Division, Northern Rly.,
New Delhi-1.
4. Dr. O.P. Sharma,
Senior Medical Superintendent,
Delhi Division, Northern Rly.,
Divisional Hospital, Delhi.
5. Dr. (Mrs) M. Sibal,
Sr. Divisional Medical Officer,
Northern Railway, Health Union,
Tuglakabad, New Delhi-44.
6. Dr. J.P. Agarwal,
Asstt. Divisional Medical Officer,
Northern Rly., Health Unit,
Tuglakabad,
New Delhi -44

....Respondents.

Shri R.L. Dhawan, Learned counsel for
the respondents appeared later.

JUDGMENT

(19)

In this application, Dr. Pranvir Singh, Divisional Medical Officer, Northern Railway has prayed that the respondents be directed to report him back to the Health Unit in Tughlakabad from his present temporary posting at Shahdara and to allow him to retain Quarter No. 48, Railway Colony, Tuglakabad, New Delhi.

2. Shortly stated, after being relieved from the Central Railway Gwalior, the applicant joined the Northern Railway, Baroda House on 15.6.92. This transfer was made on the applicant's personal request as his wife was working as Asstt. Commandant in the CRPF, New Delhi. The applicant reported for duty at Baroda House, New Delhi on 15.6.92 and on 30.6.92 he was posted at Northern Railway Health Unit, Kishanganj where he joined on 3.7.92. He applied for allotment of railway accommodation near Kishanganj, Delhi but was informed that no railway accommodation was available for allotment and was advised to take a private house on rent and claim permissible H RA. The applicant accordingly hired a private accommodation. On 4.9.92, the applicant was transferred from Kishanganj, Delhi to Tuglakabad, Delhi, where he assumed charge on 10.9.92. On 8.10.92, the applicant was allotted Quarter No. 29, Punjab Bagh, Railway Colony, New Delhi which he occupied on 16.10.92. The applicant claims he was asked to discharge duties at two places from 9 a.m. to 4 p.m. at Tuglakabad and then emergency duty at Punjab Bagh from 8 p.m. to 7-30 a.m. which apart from involving 24 hours' duties round the clock required to travel 70 kms. each day.

AN

20

3. Meanwhile, according to the applicant, consequent to Quarter No.48, Railway Colony, Tuglakabad falling vacant, the same was allotted to him which actually should have been allotted to one Dr. (Mrs. M.Sibal), Senior DMO, Tuglakabad who was, however, allowed to retain the railway quarter at Punchkuan Road, New Delhi at a distance of 22 Kms. from her place of posting. The applicant was asked to occupy this quarter at Tuglakabad immediately, which he did on 4.5.93 after his request for retaining Quarter No.29, Punjabi Bagh, Railway Colony had been turned down. He alleges thereafter that to teach him a lesson for protesting against the injustice done in not compelling Dr. (Mrs.) M.Sibal to occupy the quarter at Tuglakabad and allowing her to occupy the quarter at Punchkuan Road, he was transferred by way of punishment to Shahdra vide order dated 18.6.93 ^(Annexure-R3) and one Dr. J.P. Agarwal, respondent no.6 was posted in his place. He alleged that a further injustice ^{was} perpetrated upon him by compelling him to shift his residence from Tuglakabad and cancelling the allotment of Quarter No.48 Railway Colony, Tuglakabad vide impugned order dated 26.7.93 ^(Annexure-A1). He further states that his representations have also been rejected vide order dated 5.8.93 ^(Annexure-A2) and order dated 27.8.93 ^(Annexure-A3).

4. The respondents have challenged the O.A. in their counter affidavit. They state that the applicant was transferred to Northern Railway at his request and was temporarily posted at Kishanganj vide notice dated 3.7.92 ^(Annexure-4) and was later given posting at Tuglakabad vide notice dated 4.9.92 ^(Annexure-A7). On 8.9.92,

(2)

the applicant requested for permission to take leased accommodation (Annexure-A5) which was acceded to vide letter dated 8.9.92 (Annexure-A6). Meanwhile, on 6.8.92 itself, that is much before his request for permission to take leased accommodation, he himself sought allotment of non-pooled quarter No. 29, Railway Colony, Punjabi Bagh and undertook to attend emergency calls at Punjabi Bagh Health Unit, and also undertook to vacate the said quarter in Railway Colony, Punjabi Bagh if he was allotted any accommodation at Tuglakabad or anywhere in New Delhi (Annexure-R1). On 1.3.93, the applicant was allotted Quarter No. 48, Railway Colony Tuglakabad which had been vacated by Dr. Srivastava, which the applicant occupied on 9.5.93. A few days earlier, the Punjabi Bagh Railway quarter was allotted to another doctor in the light of the applicant's written undertaking that he would vacate the same when any other accommodation is available to him at Tuglakabad; hence his prayer for retention of the Punjabi Bagh Railway quarter was rightly turned down. It has further been stated that Dr. (Mrs) Sibal was allowed to retain the Punchkuan Road Quarter for security reasons as she was all alone and her husband had ^{been} posted in Eastern region. The respondents further point out that the applicant has been temporarily transferred to Shahdara vide notice dated 18.6.93 (Annexure-R3) where he resumed his duties on 3.7.93. As there is no railway quarter for the medical staff at Shahdara, the applicant has been allotted nearest available quarter, viz. 200B, Motia Bagh Railway Colony, Delhi vide order dated 26.7.93 and the Tughlakabad quarter in his occupation

has been allotted to his successor Dr. J.P.Agrawal who was required to vacate the quarter in his occupation at Ghaziabad.

5. In so far as the transfers of the applicant from one place to the other around Delhi is concerned, while it is true that they have been quite frequent within a short span of time, there are no materials to indicate that they have been actuated by malice or vindictiveness. It has been held in 'Gujarat State Electricity Board Vs. A.R.Sungomal Poshani' (AIR 1989 SC 1433) that :

"Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer."

There is nothing on record to suggest that the applicant had filed any representation ^{specifically} against the transfer to Shahdara. It has further been held in 'U.O.I. Vs. H.N. Kirtania' (JT 1989(3)SC 131) that

"Transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides."

6. It has been alleged that the transfer was malafide but this allegation has been denied by the respondents, and there are no materials on record to indicate that the applicant's transfer to Shahdara

(23)

was actuated by malafide!

7. However, one fact, which is worthy of note is that the transfer notice dated 17.6.93 (Annexure-A13) specifically states that the applicant has been temporarily transferred to Shahdara. In para 8.7 of the Railway Board's Circular dated 19.1.93 (Annexure-P1) it has been stated that during the entire period of 'temporary' transfer an employee may be permitted to retain the quarter at former place of posting on payment of normal rent etc. Temporary transfer should not, however, be ordered for a period of more than four months unless there are pressing circumstances. In the present case, the applicant has been posted at Shahdara since 18.6.93, and has thus remained there for over nine months. The respondents have nowhere indicated what pressing circumstances have necessitated the applicant's retention at Shahdara for more than four months.

8. In the facts and circumstances of the case, therefore, this application is disposed of with a direction to the respondents to decide within two months from the date of receipt of a copy of this order, whether they propose to retain the applicant at Shahdara for the tenure of a normal posting or not. In case, they do decide to retain him there, it is only fair that they give him an opportunity to represent against it, because after all he was transferred to Shahdara only temporarily vide order dated 18.6.93 (Annexure-R.3) and dispose of the representation through a reasoned order under intimation to the applicant. If the representation is rejected and the applicant is not to be reposted to Tughlakabad, it will be open to the respondents to take necessary steps to secure vacant possession of the Tughlakabad

2A

railway quarter, presently in occupation of the applicant, in accordance with law and the extant rules, in case the applicant fails to vacate it voluntarily. In case, the respondents decide to post the applicant back to Tughlakabad within four months of their decision, they shall allow the applicant undisturbed occupation of the Tughlakabad Railway Quarter. Till the respondents take that decision, the status quo will continue.

9. No costs.

Anjolika
(S.R. ADIGE)
MEMBER(A)

/ug/