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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 364/1993.

DATE OF DECISION: 26-3-1993.

Shri R.C. Tiwari

Applicant.

v/s.

Union of India & Ors.

Respondents.

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

Shri P.P. Khurana, counsel for the Applicant.
Shri J.C. Madan along with Shri P.H. Ramchandani, counsel
for the Respondents.

JUDGMENT

The applicant joined Solar Energy Centre, Ministry of Non-Conventional Energy Sources, as Senior Scientific Officer Grade I and has since been posted at Solar Energy Centre, Gwal Pahari, Gurgaon. By the order dated 10th Feb., 1993, the applicant, from the present place of his posting, has been transferred to Regional Office, Chandigarh (Annexure A-I). The applicant has assailed this transfer order and has prayed that a writ of certiorari be issued quashing the said order, in the present application under Section 19 of the Administrative Tribunals Act, 1985, filed by the applicant on 15.2.1993.

2. The respondents contested the application and filed a counter stating that the transfer order has been effected in the interest of Administration and the applicant, without exhausting the departmental remedies available under Section 20 of the A.T. Act, has filed this application, though he was relieved from the present posting on 15.2.1993.

3. We have heard the learned counsel for both the parties at length. The Ministry of Non-Conventional Sources

is one of the Scientific Ministries of the Government of India. There are three offices under the Ministry of Non-Conventional Energy Sources. One is the Ministry proper where the Group 'A' Scientific Officers are posted, the other is Solar Energy Centre (SEC) and the third is the Regional Offices. Recruitment to the posts of Scientific Officer is made under a common set of Recruitment Rules by the Government of India and the recruited officers are posted in the aforesaid Ministry proper, SEC or the Regional Offices, as per the job requirement and also depending upon the qualifications and experience of the officers concerned. The officers who are posted are liable to be interchanged or transferred to any other office in the public interest.

The copy of the appointment order (Annexure R-I) dated the 29th September, 1988 in the case of the applicant, gives a condition of service at Sl.No. (iii) "The appointment carries with it the liability to serve anywhere in India or Outside". So far, there is no controversy between the parties. The case of the applicant is that there is no uniform policy, specific or declared with regard to the transfer of the Scientific Officers serving under them. It is the case of the applicant that the Scientific Officers had never been transferred from SEC to any other Regional Office. The exemplar filed by the respondents along with the counter (Annexure R-2 collectively) showing the transfer of Scientific Officers from SEC to Regional Offices, according to the applicant, relates to initial posting of Scientific Officers after the recruitment work, re-allocation and inter-divisional changes in the Ministry. Learned counsel for the applicant

referred to the order dated 14.12.92 (Annexure A-4) on the subject of setting up of additional Regional Offices and abolition of Monitoring Cells. The contention of the learned counsel for the applicant is that these transfers have been effected because of the abolition of 12 Monitoring Cells.

He stated that there is not a single case of transfer from the Ministry to any of the Regional Offices.

4. The contention of the learned counsel for the applicant cannot be accepted on its face value, because the letter of appointment issued to the applicant aforesaid clearly indicates that as a part of his service conditions, the applicant has the liability to serve anywhere in India or outside. The applicant, therefore, cannot have a case that the post on which he had been appointed is, for all purposes, a non-transferable post.

5. The contention of the learned counsel for the applicant that SEC is an integral part like any Division of the Ministry is not correct. The averments in the counter and the arguments advanced by the learned counsel for the respondents clearly state that there are three offices under the Ministry of Non-Conventional Energy Sources and that there is a common set up recruitment rules as well as seniority and that the postings are effected as per job requirements and also depending on the qualifications and experience of the officer concerned. In the rejoinder filed by the applicant, these facts are not denied. In view of this clear non-denial by the applicant, it cannot be said that the postings under the three aforesaid offices are not interchangeable.

6. As regards the non-existence of policy, there is a practice prevalent in the aforesaid Ministry of Non-Conventional

Energy Sources according to which transfers have been effected and this position has not been denied in the rejoinder. On the other hand, it has been admitted that most of the postings/transfers relate to initial posting of Scientific Officers after the recruitment work, reallocation and inter-divisional changes in the Ministry further on account of the decision of abolition of 12 Monitoring Cells. The fact, therefore, is clear that there is a practice of transfer of Scientific Officers in any of the three offices from one place to another and these postings are interchangeable among the three offices.

7. The contention of the learned counsel for the applicant further is that there was some incident in the afternoon of 3rd February, 1993 when the applicant was directed by respondent No.3, Shri Ajit K. Gupta, Director, Solar Energy Centre, to shift his belongings from the room allotted to him to another one. Since the applicant was on that day busy with the Group Leader of the Solar Simulator Project, which is underway at the Solar Energy Centre and was being visited by German scientists with the assistance of their Indian counterparts, the applicant could not shift and on that respondent No.3 had taken ill of the same and next day, respondent No.3 shouted at the applicant as to why he had not shifted from that room to the other room. The belongings of the applicant from that allotted room were, therefore, removed and as a result of that happening, the present order of transfer has come into being. The departmental file was also summoned in

order to ascertain these facts. In fact, it is difficult to establish malice against the person or to establish malafide as alleged by the applicant. On the other hand, the departmental file produced by the respondents has been thoroughly scrutinised, but there is no mention of any incident between the applicant and respondent No.3, as stated by the applicant. In fact, a proposal to fill up certain posts was in the offing since November, 1992 and earlier it was desired to fill them up by getting fresh recruits either on deputation or on transfer. However, this proposal was later on not considered fit on 2nd February, 1993. The proposal was discussed by JS(M) with the Secretary on 10.2.93 when it was decided that the two vacancies in the Regional Offices at Madras and Bhubaneswar may be filled up. There was also a vacancy at Chandigarh. Shri Dube was transferred to Madras keeping the other vacancy for the SSO I likely to be promoted as PSO under FCS. Shri R.C. Tiwari, SSI (SEC) was proposed to be transferred to Chandigarh as there was acute shortage of scientific personnel in that Regional Office. In view of this, the earlier proposal of filling up the vacancies in the Regional Offices by making recruitment by transfer/deputation was dropped.

8. Learned counsel for the applicant had pointed out that though Shri Ajit K. Gupta, Director, Solar Energy Centre, has been impleaded as a party, but he has not filed any counter to dispute these facts. Reliance has been placed by the learned counsel on the authority of the Supreme Court reported in the case of Partap Singh Vs. State of Punjab (AIR 1964 SC 72. This is a Constitution Bench decision in which it has been held by the Hon'ble

Supreme Court that if there are certain allegations levelled against any person, the same should be countered by the same person. However, in the present case, the incident of 3rd February, 1993 is only regarding the change of the allotted room by the applicant and it cannot be said to be based on any personal grudge against the applicant. The Director, SEC, was within his right to make any alteration in the sitting arrangements or in the matter of allotment of rooms in the best interest of working. Merely because the applicant was asked to change the room according to the administrative convenience, cannot be taken as a ground for effecting transfer of the applicant, as alleged by the applicant, or that the Director had any personal grudge against him. Learned counsel for the applicant has referred to a number of authorities - Gujarat Electricity Board Vs. Atma Ram reported in 1989 (2) SCC 602, Union of India Vs. H.N. Kirtania reported in 1989 (3) SCC 455 and Rajendra Lal Vs. Union of India (Judgment Today 1992 - Volume 6 S.C. 732). in which the Hon'ble Supreme Court has consistently held that transfer is an incidence of service and it can be interfered by the courts only on the ground that it is arbitrary, malafide or discriminatory. In the present case, the allegations of malafide against the Director, respondent No.3, though averred in the application and also argued are not established. It is for the Administration to find out the suitability of the person for a particular job and a particular place. Merely because the applicant has obtained certain special training for working on a Project by itself will not entitle the applicant to be detained

at a particular place and for a particular work only. The services of the applicant can be utilised to the best advantage and it can only be visualised by the Administration. The applicant cannot force his posting because of a particular training. The respondents in the counter have also given instances where other persons who had received certain trainings had been posted at other places. One is the case of Dr. Rajesh Kumar, who had done specialisation in the area of solar photo-voltaic and had been ordered in the public interest in July, 1992 as his services were required in SEC for the National Photovoltaic Test Facility set up under the USAID at the SEC Campus at Gwal Pahari. The Regional Office, Chandigarh has jurisdiction over the States of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and the Union Territory of Delhi. There is great potential for implementation of solar thermal schemes, particularly solar water heating scheme in these States. The applicant, who has long experience of working in the power sector when he was in the Central Electricity Authority and was associated with the Solar Thermal Programme after joining SEC in 1988, will have ample opportunities to utilise his qualifications and experience while posted in the Regional Office, Chandigarh. Thus, it cannot be said that the applicant has been posted to a job where his talent and training will not be best utilised.

9. Learned counsel for the applicant also argued that the present posting of the applicant is not in the public interest. What is in the public interest or is in the best interest of the Administration is to be judged by the Head of Office and it cannot be the subject of an

individual who is desired to discharge his duties at one place or the other. In fact, what constitutes public interest is to be judged from various angles and it is only the Administration which can do so. Thus, the contention of the learned counsel for the applicant that the transfer of the applicant is not in the public interest cannot be accepted.

10. Learned counsel for the applicant also argued that the transfer order is discriminatory inasmuch as the applicant is neither the seniormost Scientific Officer nor he is the juniormost and that he has been picked up for transfer. The applicant has not given any particular instance of stay of such senior or junior Scientific Officer at his place of posting. In any case, it is for the employer to see as to where to utilise the services of an employee so as to get the best satisfaction. The applicant has no right to choose the place of his posting.

11. The respondents have also taken an objection that the applicant has not exhausted the departmental remedies. It, however, appears that the applicant had preferred a representation on 12.2.93. As such, it cannot be said that the applicant had not preferred a representation against the aforesaid transfer order and, therefore, the objection taken by the respondents in this regard cannot be sustained.

12. In view of the above facts and circumstances, I find no ground to interfere in the impugned order of transfer of the applicant. The application is, therefore, dismissed, leaving the parties to bear their own costs. The interim order granted on 16.2.93 is, therefore, vacated.

J.P. SHARMA
(J.P. SHARMA) 26.3.83
MEMBER (J)