

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1002/93
T.A. No.

199

DATE OF DECISION 24.3.93

Shri Likhi Ram

Petitioner

Shri K.L. Bhandula

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(of the Single Bench by Hon'ble Mr. J.P. Sharma, Member)

The applicant is working as Head Clerk in the Central Water Commission and has been transferred to Mahi Division, Central Water Commission, Ahmedabad vide Office Order dated 24.2.1993. He was earlier posted in Bhutan Investigation Division, Central Water Commission, Bhutan. He joined there in March, 1989. The applicant himself and through his wife, made a representation for his posting in Delhi/Faridabad, but the same has not been acceded to by the respondents. Aggrieved by the same,

the applicant has filed the present O.A. for quashing the impugned order of transfer dated 24.2.1993 and if necessary, to transfer him to Delhi/Faridabad.

2. A notice was issued to the respondents, who filed their reply and contested the application by filing the counter stating that the transfer has been effected in public interest. The applicant has since been relieved w.e.f. 15.5.1993 by the order dated 3.5.1993 passed by the Executive Engineer, C.W.C., Bhutan Investigation Division, Bhutan.

3. I have heard the learned counsel for the parties at length and perused the records. It is undisputed that the applicant has been for four years in the Bhutan Investigation Division, C.W.C. and has to be shifted from that place. The applicant was posted in Bhutan at his own request. The respondents have averred that C.W.C. officials transferred from beneficial posting in Bhutan, are to be posted outside Delhi/Faridabad. Though the respondents have not filed any policy, yet there is a clear mention of the same in circular dated 13.4.1993 (Annexure V). The first contention of the learned counsel for the applicant is that the applicant should have been adjusted in Delhi/Faridabad at least for one year, while the other similarly situated employees were allowed to stay for 6-7 years. The action of the respondents is,

therefore, arbitrary. The learned counsel for the applicant also referred to the transfer norms in C.W.C. that as far as possible, Group 'C' should not be frequently transferred. The respondents' counsel argued that the applicant is borne on the service which has as a condition of service of transfer anywhere in India. The applicant has been transferred by Shri Sewa Das who had been transferred from Ahmedabad to Jammu. The contention of the learned counsel is also that certain employees have been staying for more than 6-7 years and they have not been transferred. The applicant has mentioned the names of some of the employees in para 4.10. In reply, the respondents in their counter, have stated that Shri H. Kotriah, Junior Engineer and Shri Bindeshwar Singh, Junior Engineer, had been transferred from B.I.D. in view of the policy of the Commission. Shri R.E. Pande, A.A.O., is not the employee of the C.W.C. The other persons named in para 4.10 of the O.A., had been transferred to the places mentioned against each after taking due care of the transfer policy of the Commission and subject to the availability of vacancies. Thus, no 'pick and choose' method was adopted in transferring the applicant on completion of his tenure at Bhutan to Ahmedabad.

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4. In fact, it is for the Administration to judge and see in the public interest the posting of a particular employee at a specified place. The transfer order should not be mala fide or against the statutory rules. The Supreme Court has, time and again, in a number of decisions, held that the transfer is a matter for the appropriate authority to decide. The order of transfer should not be interfered with unless it is in violation of any statutory provisions or is mala fides. In the case of Union of India & Ors. Vs. S.L. Abbas, Judgement Today, 1993 (3) S.C. 678, the Hon'ble Supreme Court observed as follows:-

"The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgement over the orders of transfer. It cannot substitute its own judgement for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as

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if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)."

5. The learned counsel for the respondents has also referred to the case of Union of India Vs. H.N. Kirtania, AIR 1989 S.C. 1774; Ms. Shilpi Bose Vs. State of Bihar, AIR 1991 SC 532, Rajender Roy Vs. Union of India, A.I.R. 1993 S.C. 1236. The law laid down by the Hon'ble Supreme Court is clear on the point that the transfer cannot be struck down unless it is in violation of statutory rules or is mala fide. A transfer is an incidence of service and appropriate authority can post an employee at a place where he is best suited to discharge his duties. In the present case, the applicant has been on a beneficial posting to Bhutan for four years and he cannot aspire another posting of his choice at Delhi/Faridabad. It is also on record that no vacancy is available at Delhi/Faridabad to adjust the applicant and any request by him to consider him when the vacancy arises in Delhi/Faridabad, is a farsighted one which has rightly been not acceded to by the respondents.

6. The application is, therefore, devoid of merit and is dismissed, leaving the parties to bear their own costs.

J. P. Sharma

(J. P. Sharma) 24.9.95
Member (J)