

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 16TH DAY OF FEBRUARY 1999

CORAM : HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO. 588 OF 1998

Chandan Singh aged about 52 years
son of late Shri Gokul Singh, R/o
490, Ambedkar Colony, Cantt, Aligarh.

.... Applicant

C/A Shri R. Verma, Adv.

Versus

1. Union of India through Secretary,
Ministry of Telecommunication,
New Delhi.
2. The Chief General Manager,
Telephone, U.P. (West) Circle,
Dehradun,

.... Respondents

C/R Shri N.B.Singh, Adv.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the
Administrative Tribunal Act 1985 for issue of a writ,
order or direct, in the nature of certiorari quashing the
order dated 5.3.98 passed vide respondent no.2 and order
dated 8.5.98 passed by respondent no.2 along with writ of

S.L.JAIN

mandamus directing the respondent no.2 to post the applicant at Aligarh in pursuance of order dated 2.3.98 ~~xxxxxxxx~~ passed by respondent no.2, to treat the applicant as on duty for all practical purposes from 22.4.98 till the applicant is permitted to join at Aligarh and to pay salary of the aforesaid period along with cost of the petition.

2. There is no dispute between the parties in/^{respect of} the following facts:-

- (i) The applicant was working as Accounts Officer at Moradabad under the immediate control of Telecom District Manager, Moradabad.
- (ii) On the representation of the applicant respondent no.2 vide order dated 2.3.98 transferred the applicant from Moradabad to Aligarh.
- (iii) The applicant was relieved from Moradabad on 21.4.91 in pursuance of the aforesaid transfer order dated 2.3.98.
- (iv) He was not permitted to resume his duties at Aligarh by the Telecom District Manager, Aligarh.
- (v) The applicant was transferred vide transfer order dated 5.3.98 from U.P. Division to Maharashtra Telecom Circle.
- (vi) The cause for not permitting to resume the duty at Aligarh is that the transfer order of the applicant from Moradabad to Aligarh was cancelled.
- (vii) The applicant submitted representation dated 27.4.98 to respondent no.2 but no orders have been passed on the same.

3. The applicant's case in brief is that due to some family trouble and the policy of the Government to post an

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employee who is to retire in near future at his home town. He was posted at Aligarh. He suffers from Arthritis, has to attend by the doctors at Aligarh. His family resides at Aligarh. The transfer order dated 5.3.98 was not served on the applicant till he reaches at Aligarh, the said transfer order ~~dated 2.3.98~~ is ante dated for the reason that he was relieved on 24.4.98 in pursuance of the transfer order dated 2.3.98, the order being illegal, arbitrary, unjust and a case of frequent transfer, hence this O.A. for the above said reliefs.

4. The respondent's defence is that transfer order dated 2.3.98 was passed by Dehradun Division while transfer order dated 5.3.98 is passed by Department of Telecommunication, New Delhi by the Director. The applicant, any how, managed to be relieved for Aligarh and he was rightly refused to resume his duties at Aligarh as his transfer order for Aligarh was cancelled. They further alleged that transfer orders are passed by competent authority, the applicant's performance at Moradabad was ~~poor~~ one hence he is transferred to another division. The applicant has even 8 years to retire, hence prayed for dismissal of O.A. along with cost.

5. In R.A. the applicant admits that there is yet 8 years to retire and rest of the allegations are denied and allegations contained in O.A. are reiterated.

6. The learned counsel for the applicant relied on (1989) 9 Administrative Tribunal's cases 763 Major A.A. Aphraim v. Director General, National Cadet Corporation, New Delhi and others and submitted that in a case of transfer on request on account of personal exigencies when there is no misrepresentation of facts transferee getting

SPW/

advance T.A. being relieved from old station reaching new station getting children admitted there, cancellation of the transfer without affording opportunity on the ground of alleged earlier posting and vested property in interest in the new place held arbitrary as ^{in theory of} they are all promissory Estoppel applies.

7. C.A. has been filed by Shri Bhim Singh posted as Divisional Engineer (Legal) in the office of Chief General Manager, Telecom (West) U.P. Circle Dehradun. On perusal of the same I find that no where it is specifically stated that before the applicant was relieved for Aligarh, transfer order dated 5.3.98 was served on him. No such document to the said effect has been filed along with the C.A. In the circumstances there can be only one inference, i.e. the transfer order dated 5.3.98 was not served on the applicant before he was relieved for Aligarh, in compliance of the order dated 2.3.98.

8. ^{Do not} I agree with the contention of the learned counsel for the applicant that transfer order dated 5.3.98 is ante dated for the reason that the applicant has no knowledge or no facts within his knowledge to state the same. Both the transfer orders are passed not by the same authority but by different authorities to be more specific transfer order dated 2.3.98 is passed by Director C.G.M.T. (U) Dehradun while transfer order dated 5.3.98 was passed by Department of Telecommunication, New Delhi.

9. I agree with the learned counsel for the ^{in applicant} respondent that the transfer order dated 2.3.98 was passed, the applicant moved the respondent no.2 vide representation dated 22.5.96 for his transfer to Aligarh. Thus the said order is passed after a lapse of quarter to two years

S. J. M.

after considering the said representation. There is no allegation from the side of the respondents that the applicant misled the respondent no.2 in passing the transfer order dated 2.3.98.

10. There is nothing on record to come to a finding that the applicant's performance was poor at Moradabad Division for the reason that he was never communicated the said facts and hence it cannot be said to be a transfer order on administrative exigencies. If the applicant is transferred on the said counter he was not afforded any opportunity of hearing and it is by way of punishment.

11. The judgment cited by the learned counsel for the applicant is based on the principles laid down in Moti Lal Padampat Sugar Mills Co. Ltd. v. State of U.P. and Indo Afgan Agencies case reported in (1979) 2 SCC 409 and A.I.R. 1968 SC 718 respectively.

12. In the present case due to administrative lapses on the part of respondents the applicant was not served with the transfer order dated 5.3.98 before he could be relieved for Aligarh, this is an act of respondent, in furtherance of the transfer order dated 2.3.98, he was transferred on consideration of his representation after a lapse of quarter to three years, he reached Aligarh. Transfer order dated 5.3.98 is a case of frequent transfer. The applicant was not afforded any opportunity of showing cause in respect of his poor performance, hence it is punitive. In the above circumstances, the transfer order dated 5.3.98 deserves to be cancelled, I cancel it accordingly. Consequently order dated 8.5.98 passed by respondent no.2 transferring the applicant from U.P. West Circle to Maharashtra Telecom Circle also stands cancelled.

B.C.D.

13. Order dated 2.3.98 survives. The applicant be treated on duty for all practical purposes for the period for which he has worked at Aligarh and entitled to the salary thereon.

14. In the result, O.A. deserves to be allowed and is allowed, order dated 5.3.98, consequent to the order dated 8.5.98 stands cancelled, order dated 2.3.98 survives and the applicant shall be treated on duty for all practical purposes for the period for which he has worked and entitled to the salary thereof along with cost of the petition amounting to Rs.650/- (Legal practitioner fee Rs.500/- plus other expenses Rs.150/-) payable by the respondents within one month from the service of the order.

S.L.JAIN
(S.L.JAIN)
Judicial Member

Qc