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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.733 of 1986

Mrs. Devinder Bawa Applicant

Versus

Union of India & Others Respondents

Hon. Ajay Johri, A.M.
Hon. G.S. Sharma, J.M.

(By Hon. Ajay Johri, A.M.)

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Smt. Devinder Bawa, Telephone Supervisor Signal Regiment Bareilly has filed this petition under Section 19 of the Administrative Tribunals Act 13 of 1985. The petitioner's case is that she was promoted on adhoc basis as Telephone Supervisor at Bareilly in the year 1984. On 24th February, 1986 promotion orders on regular basis were issued by the respondents. The petitioner was transferred on promotion to Lucknow while another lady Smt. Ahluwalia was ordered to be promoted and posted to the post at Bareilly. Smt. Ahluwalia did not join at Bareilly. The petitioner represented for being continued at Bareilly on account of her health problems and on account of the fact that her husband was posted on the North Eastern Railway at Izatnagar. Instead of ³² ~~according~~ ^{acceding} to her request the respondents have been insisting on her to give her unwillingness to move to Lucknow in

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terms of the orders on the subject. According to the petitioner there was no necessity for the respondents to ask for the refusal because Smt. Ahluwalia was not coming to join at Bareilly and she could be allowed to continue there and be regularised in due course. if Mrs. Ahluwalia did not come at all. The petitioner being aggrieved by the above has prayed for a direction being issued to the respondents to allow her to continue as Telephone Supervisor without forcing her to give her willingness to forego the promotion till such time as Smt. Ahluwalia does not join at Bareilly.

2. The respondents' case is that the petitioner was promoted on adhoc basis on 4.8.84. It was made clear in the promotion order that the adhoc promotion will not confer any right for claiming seniority or regular promotion to the incumbent. On 24.2.86 a selection was finalised and postings were ordered. Those who were posted to other units were to get promoted in the new units only. Those who were unwilling to go on transfer were required to tender unwillingness and were to be debarred for promotion for a period of one year. As a result of this selection Smt. Ahluwalia was posted to Bareilly and the petitioner to Lucknow. The petitioner has not moved on transfer and on 19.6.86 she has given a letter saying that on medical grounds she is not willing to go to Lucknow but she has not given the unwillingness on the proforma on which it

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is required. Refusal affects seniority as well. Earlier Smt. Ahluwalia had refused to move on transfer on adhoc basis to Bareilly in August, 1984 and hence the petitioner who was to move to Lucknow was promoted adhoc at Bareilly. Since the petitioner did not move out to Lucknow on her regular promotion her promotion orders have been cancelled and she has been retained at Bareilly as CSBO grade I. The posts can be transferred by the Army Headquarters to any sub unit ²² and. ²² On consideration of various factors like service, seniority and problems of Smt. Ahluwalia it was decided to promote her at Meerut by transferring the Bareilly post to Meerut. According to the respondents keeping in view the Govt. policy of keeping husband wife at one station the case for absorbing the petitioner at Bareilly was taken up with the authorities but due to constraint it was not possible. The petitioner had at no stage been pressurised or forced to act against her wishes.

3. In her rejoinder the petitioner has said that another post has since fallen vacant at Meerut and Smt. Ahluwalia has been promoted at Meerut against that post and the Bareilly post has not been transferred but to man it her junior has been promoted adhoc and she has not been given the chance. No unwillingness certificate

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was taken from Smt. Ahluwalia when she did not move on transfer and she has also been accommodated at Meerut. The petitioners contention is that as long as Mrs. Ahluwalia did not report at Bareilly the petitioner may be allowed to continue on adhoc basis as she was not claiming to be regularised at Bareilly unless Mrs. Ahluwalia finally refused to come on transfer. The petitioner says that she is not challenging the authority of the respondents to transfer the posts.

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4. We have heard the learned counsel for both parties. The main contention of the learned counsel for the petitioner was that so long as the post is not transferred out of Bareilly the petitioner may be allowed to continue while the learned counsel for the respondents maintained that there was no post at Bareilly and also that no juniors have been allowed to officiate. Nothing else was pressed before us.

5. There is no dispute regarding the authority of the respondents to transfer, create or abolish a post within the frame work of rules. They are the best judge to decide which post is required where and which post is surplus at which place. The power to transfer a person on promotion or otherwise can also not be challenged unless the same has been exercised dishonestly or unreasonably. It should not have been used for extraneous considerations or

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with oblique motives. We do not find any malafides in the order. The position is plain and simple - two persons were selected and the senior was posted near to her home station while the junior to the other station. The petitioner cannot say that her case should have been considered in preference to her seniority^{is by}. Transfer being an implied condition of service, the^{or controlling} authority is the best judge to decide how to distribute its manpower. A variety of factors may weigh and as long as the power has been exercised honestly, bonafide and reasonably it is not open to attack. Orders of transfer have to be outside the purview of courts of law. Court can interfere if the legal provisions are violated. We do not find any victimization or abuse of power. The respondents have been considerate and their^{or to help the petitioner} attempt^{has} been to be fair and impartial. If one does not move on transfer, one has to refuse and conditional refusals cannot be accepted.

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6. The respondents's statement in para 14 of their reply reads :-

" Since the vacancy had fallen at Bareilly due to Smt. Ahluwalia's unwillingness to move to Bareilly, a case was taken up with the authorities for absorbing the applicant at Bareilly itself....."

We thus see an attempt at a sympathetic approach on the part of respondents to help the petitioner.

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They however found it difficult at that time and the constraints were told to her but she failed to understand them. We, therefore, reject the contention of the petitioner that the respondents attitude was one of harassing her. There was thus nothing wrong in the respondents asking the petitioner to give her unwillingness on the proforma meant for it once the respondents had found it difficult to accommodate her request for retention and promotion at Bareilly. Rules are meant to be followed otherwise administration will face chaotic conditions, and there would be no rule of law.

30 / 7. The position being as it is, we find that Mrs. Ahluwalia who was promoted at Bareilly has since been accommodated at Meerut in a retirement vacancy as stated by the petitioner in her rejoinder. If that be so, the constraint of their being no post at Bareilly against which the petitioner could be ^{as contended by the learned counsel for defendants} considered does not exist any more. The respondents have exhibited reasonableness and sympathy towards the petitioner when they recommended her case for retention at Bareilly after the refusal of Mrs. Ahluwalia. We have no doubt that with these changed circumstances they will now reconsider the representation of the petitioner for her continuing at Bareilly with the same compassion with which they had earlier recommended it. We were advised by the learned counsel for

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respondents that no posts existed at Bareilly and no juniors have been put to officiate. But the position appears otherwise. The statements made in the rejoinder have^{24 abo} not been controverted.

8. The responsibility of good management is that of the Govt. We would not judge the propriety or sufficiency of an opinion by objective standards except where subjective process is violated by malafides etc. This is not the case here. If the respondents wanted they could have transferred the post out of Bareilly without waiting for the refusal and also taken up with the petitioner for not moving on transfer and invoked the rules in this regard, but they have shown compassion and sympathy.

9. We, therefore, feel that under the changed circumstances and the availability of the post at Bareilly and in the background of her medical needs and necessity of ^emeting out similar treatment to Mrs. Ahluwalia and the petitioner, the respondents could again consider the case of the petitioner to see if she can be accommodated at Bareilly if not as a regular measure then atleast on adhoc basis as prayed by her in the petition, with ^{24 same} ~~equal~~ compassion and sympathy, ²⁴ exhibited by ~~them~~ earlier. ²⁴

10. The petition is disposed of accordingly with no orders as to costs.

अविनाश
A.M.

J. M. 20/4/87

Dated the 20th April, 1987

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