

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 604 of 1992

Bhagwati Prasad Applicants.

Versus

Union of India & ors. Respondents.

Hon'ble Mr. A.K.Sinha, Member-J

The applicant Bhagwati Prasad who is a Telegraph Assistant under the respondents has prayed for quashing the order of his transfer dated 20.3.1992 contained in Annexure-1, whereby, the applicant has been transferred from Allahabad Telecommunication centre to Soraon.

2. It is stated that initially the applicant was appointed as Time Scale clerk in the department of Telecommunication Rajasthan circle in the year 1967 and was posted at Jodhpur and in the year 1974 at his own request, he was transferred to U.P. circle and was posted in Bareilly Telegraph Traffic Division and in the year 1975 he was transferred and posted at Sultanpur in Allahabad Telegraph Traffic Division and from there he was transferred at his own request to the Central Telegraph Office Allahabad in 1981.

3. Admittedly, from + one unit to the another unit is desired by an official for his own convenience and request, he ranks junior most in the gradation list of the new unit to all officials in that unit on the date on which the transfer order is issued and in this regard, there are provisions in the Rules of the Telegraph Manual. Accordingly, although the applicant was appointed in the department of Telecommunication in the year 1967 but, on his

transfer to U.P. circle he was placed in the gradation list of the U.P. circle junior to all the officials of his circle on the date when his transfer order was issued.

4. Due to computerisation of other technological developments in the department at various stations, the staff has become surplus and therefore, the department has issued orders for transfer of such surplus officials from one station/unit to another and in pursuance thereof, the Senior Superintendent of Telegraph Traffic Allahabad Division by his order dated 30.3.1992 (Annexure-1) transferred the applicant from Telecommunication Centre Kydganj, Allahabad to Telecommunication Centre Seraon in Allahabad Division and this order has been challenged on the ground that the applicant had to lose his seniority for the purpose of securing his transfer from Rajasthan to U.P. circle and therefore, that cannot be a ground for his transfer from one unit to another because such a course is violative of justice and fairplay, it was submitted that in the matter of transfer of surplus staff in the division, staff which has come on transfer under Rule 38 of the P&T Manual Vol. IV should not be treated as junior most and transferred out of their unit/station and that, such transfer should be done on the basis of total length of service and not on the basis of their position in the gradation list of the Division.

5. The respondents have appeared on notices and filed their Counter Reply wherein on amongst other grounds they have clearly stated that as per Rule for transfer of surplus staff whether from one recruitment to another or within the same recruitment

unit, seniority should be the only criteria that his transfer will be effected starting from the junior-most officials in the gradation list and in this connection, they have annexed the true copy of the circular which is marked Annexure CA-3. It was submitted by the learned counsel for the respondents that impur-suance of the order dated 30.3.92, the petitioner had already joined his duties at Soraon and it is further submitted that the petitioner had requested that he was within the list of transfer, he may be posted to Telecommunicati-on centre Ghiya Nagar, Allahabad which was yet to be opened and and in this connection, the learned counsel drew my attention towards Annexure CA-1 which on perusal would show that the applicant had already requested to the authorities concerned with reference to their letter dated 31.1.92 that in case, he is within the list of transfer, he may be posted within the radius of Allahabad Nagar Mahapalika i.e. Ghiya Nagar Telecommunication centre. The learned counsel for the respondents submitted that the applicant had already completed 11 years of his posting at Allahabad and that his posting at Soraon is at a nearer distance from Allahabad than to Ghiya Nagar which he wanted and therefore, the department has at the utmost accommodated him and that the transfer being an incidence of service and the applicant had already joined there on 30.11.92 and there being no question of malafide and that the transfer being in the exigencies of administration, the application has got no merit and it is fit to be dismissed. The applicant has also filed Rejoinder, wherein, he has reiterated his stand and stated that the applicant cannot be considered to be junior-most in the unit for the purpose of transfer from the unit of the surplus staff and he has placed reliance on

on the Bench decision of C.A.T, Patna Bench passed in OA. No. 272/1989 dated 9.1.1991 and on the basis of that, it has been submitted that when the applicant had to lose his seniority for the purpose of securing his transfer to his choice place, to transfer him out of that place on the ground that he is junior in the gradation list of that unit is violative of justice and fairplay.

6. The only question that arises for consideration is that whether the impugned order of transfer is violative of justice, fairplay and arbitrary!

7. It cannot be gainsaid that transfer is part of the condition of the service of the employee and it is not normally open to judicial review. But, if however, the order of transfer is tainted with malafidies or is violation of well accepted norms or it is penal in nature, the Court, of course, can examine it to find out as to whether such an order of transfer is malafide and punitive in character. In the present case, it is an admitted position that applicant is posted in the Allahabad Unit for the last 11 years and he himself had given in writing to the authorities concerned that in case, he is within the range of transfer list, he may be posted to Ghiya Nagar. The applicant had been posted to Soraon, it is nearer to Ghiya Nagar from Allahabad and therefore, the transfer in the case of the applicant is in the interest of administration because of the department declaring surplus staff and the applicant being the junior-most, he has been transferred in pursuance of the circular issued by the department in this regard. Therefore, the question of any malafide or arbitrariness

or violation of Article 14 & 16 of the constitution is not involved in this case.

8. That apart, the applicant has already joined the place of his posting and therefore, taking into consideration all these material facts, I do not find any merit in this application and the same is accordingly dismissed.

9. So far the observation of the Patna Bench in OA. No. 604/92 is concerned, that observation is confined to the facts of that case and cannot be made applicable in the facts of the present case.

10. So, in that view of the matter, I do not find any merit in this application and this application is, therefore, accordingly dismissed. In the circumstances, there will be no order as to cost.

W
Allahabad Dated: 10.8.1993

/ju/

Ashok Kumar Jha
Member-J
10/8/93