

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 959 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

SHYAMAL KRISHNA MONDAL

VS.

TELECOM

For Applicant : Mr. S.N. Paul, Counsel leading  
Mr. R. Mondal, Counsel.

For Respondents: Mrs. K. Banerjee, Counsel.

Heard on : 17.9.1996.

Date of Order : 17.9.1996.

O R D E R

1. The dispute raised in this application is about the transfer of the applicant from the post of S.D.O.T, ~~Bongaon~~ to the post of S.D.E. (Computer), ~~Calcutta~~.
2. The applicant was functioning at Bongaon as S.D.O.T. which was created as per bifurcation of Habra T.E. Sub-Division into two. But while the Bongaon Telephone Sub-Division was created, no new post of S.D.O.T. ( Sub-Divisional Officer Telephones) was created and the existing S.D.O.T. in Bongaon T.E. Sub-Division was to be utilised for the newly created sub-division. By an Order dated 12.3.1996, the applicant was transferred from the post of S.D.O.T, Bongaon to the post of S.D.E along with some others. Against the said Order the applicant had represented and ultimately, the respondents have revised the said Order of transfer and, by the impugned Order dated 26.6.1996, the applicant since been transferred to Calcutta as S.D.E. The applicant is aggrieved by the fact that as S.D.O.T. he <sup>was</sup> to enjoy certain

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perquisites and according to his service condition he is to control other S.D.Es in his Sub-Division. According to him the S.D.E is not equivalent in status or rank or responsibility to the post of S.D.O.T, and, therefore, the impugned transfer Order is illegal. Being aggrieved thereby, the instant application has been filed with the prayer that the Order dated 26.6.1996 transferring him from Bongaon to Calcutta as S.D.E( Computer) be quashed and set aside.

3. The case has been resisted by the respondents by filing a reply. The respondents state categorically that the post of S.D.O.T. and S.D.E. are equivalent posts and, in fact, all the posts of S.D.O (Telephones), S.D.E and Asstt. Director are all Asstt. Engineers. The respondents also contend that by virtue of the Order passed on 20.12.1993, which is at Annexure-R-1 to the reply, the designation of the post of Asstt. Engineer has been changed as - Sub-Divisional Engineer and all those officers including the S.D.O.P. <sup>who</sup> are the members of same cadre which is known as ' TES Group B ' ~~and the bank of~~ Asstt. Engineer. It is the averment of the respondents that the transfer order was passed in public interest and there is no question of demoting the applicant ~~from~~ transferring from the post of S.D.O.T. to the post of S.D.E (Computer). The respondents also contend that the post of S.D.O.T and S.D.E are inter-changeable. They have, therefore, prayed for dismissal of the application since it is devoid of merit.

4. The applicant has also filed a Rejoinder to the reply, which I have perused.

5. During hearing, Mr. Paul, 1d. Counsel appearing for the applicant leading <sup>relevant</sup> Mr. Mondal cited ~~the~~ paragraphs from the Posts & Telegraphs Manual, Vol-X, particularly, the paragraphs



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34 and 39(a). Mr. Paul submitted that a perusal of these two paragraphs from the said Manual will show that the post of S.D.O.T. is superior to the post of S.D.E and, therefore, according to Mr. Paul, the transfer order, which is involved the demotion of the applicant, is illegal. Mr. Paul also submitted that these two posts are not at all equivalent posts and, as such, the impugned transfer order is not sustainable. Mr. Paul in support of his argument has cited a decision rendered by the Hon'ble Apex Court in the case of - Vice-Chancellor, Lalit Narain Mithila University Vs. Dayanand Jha, reported in AIR 1986 SC 1200, wherein it was held by the Hon'ble Court that the Transfer of a Principal to post of Reader in another college is illegal. He therefore, submitted that on the basis of the said decision of the Hon'ble Apex Court the instant case should be allowed since the post of S.D.O.T. cannot be deemed to be equivalent to the post of S.D.E.

6. However, Mrs. Banerjee, 1d. Counsel for the respondents produced before me a hand-written organisational chart which shows that below the Telecom. Dist. Engineer (T.D.E), who is in-Charge of a Telecom. District of less than 10,000 lines, there are the posts of S.D.O(T), S.D.O(P), S.D.E and Asstt. Director who are under the same T.E.S. Gr 'B' cadre in the rank of Asstt. Engineer (A.E). Mrs. Banerjee also cited a decision of the Hon'ble Apex Court in the case of - E.P. Royappa Vs. State of Tamil Nadu & Ors. (reported in 1974 (1) S.L.R 497 ) wherein it was held by the Hon'ble Apex Court that the Govt. has power to transfer an Officer from one post to another which may not give him same amplitude of powers and it does not make the transfer arbitrary and not open to attack under Arts 14 and 16 of the Constitution. Mrs. Banerjee, therefore, submits that on the basis of the ratio of the said decision of the Hon'ble Apex Court, the application is liable to be dismissed.



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7. The matter has been examined by me carefully after hearing the submissions of the learned Counsel for both the parties, perusing the records and considering the facts and circumstances of the case. I find that the impugned order of Transfer has not been assailed by the applicant on the ground of malafide or on the ground of infraction of any transfer rule, instruction or guideline. The only point which has been taken before me by the applicant is that he has been transferred to an inferior post and, therefore, the impugned transfer order involves an ~~decreed~~ account of demotion and, accordingly, the transfer order is not sustainable. I have seen that in the Order dated 12.3.1996, which has been appended to the application and also to the reply, it is not only the applicant was transferred but other persons were also transferred and among them there is one by the name of P.R. Saha, who has been transferred from the post of S.D.O.T to the <sup>post of</sup> S.D.O.P. The 1d. Counsel for the applicant, however, could not enlighten me about the procedure for appointment to the post of S.D.O.T. However, it is clear from the averments made by both the sides and also in the organisational chart (handwritten) produced before me that the post of S.D.O.P. and S.D.E are of in the same cadre of T.E.S. Group 'B' and the next promotional post is the Divisional Engineer (D.E.) and for such promotion not only the S.D.O(P) but also the S.D.E. ~~are~~ eligible. I have also perused the contents of paragraph 34 of the Posts & Telegraphs Manual (Vol-X) under head-line "Sub-Divisional Officers" and the said para runs as follows :-

" Directly subordinate to the Divisional Engineers, Telegraphs/Telephones are Sub-divisions each representing an executive charge held by an officer of the rank of Assistant Divisional Engineer or Assistant Engineer. The list of the Sub-Divisions, Division by Division is given in the Appendix XIV (does not include attached officers in the Circle or R.Ds. T.) "

It is, therefore, quite clear that both the S.D.O.T and S.D.E. are directly subordinate to the Divisional Engineer <sup>and</sup> amongst them

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the perquisites enjoyed by the S.D.O.T. The 1d. Counsel for the applicant could only mention about the availability of vehicle at the disposal of the S.D.O.T. while the S.D.Es have to share other vehicles. There is, however, no doubt, that the S.D.O.T. is in the administrative charge of the Sub-Divisions and by virtue of such charge, perhaps, he enjoys the exclusive use of a vehicle either under the Rules or the Guidelines or under practice. There is a combined seniority list of S.D.O.Ts, S.D.Es etc. and, as I have already stated, they belong to the same cadre. There is no averment before me made by the applicant that appointment to the post of S.D.O.T. is the appointment on promotion from the post of S.D.E and, therefore, it is clear that the S.D.O.T and S.D.E hold the same pay and rank but since S.D.O.T. is in the administrative charge of the Sub-Divisions, perhaps, it carries little more prestige to the job.

8. The question now to be decided is, whether the prestige attached to the post of S.D.O.T itself is adequate for the purpose of declaring the impugned transfer Order illegal. In this connection, I would like to say that the Judgement in - Vice-Chancellor Lalit Narain Mithila University case was in a different context since it was a dispute about the transfer of a Principal to the post of Reader in another College and the Hon'ble Apex Court itself has observed that -

".. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as :-

- (i) He is the ex officio member of the Senate.
- (ii) He has the right to be nominated as the member of the Syndicate.
- (iii) As head of the Institution, he has administrative control over the College Professors, Readers, Lecturers and other teaching and non-teaching staff.
- (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the University, And
- (v) He has the right to act as Centre Superintendent in the University examinations."

When I compare the rights as well as the privileges between the posts of S.D.O.T. and S.D.E, I find that except the enjoyment of the facility of exclusive use of vehicle for the purpose of certain administrative works, there is no other privilege enjoyed by the Officer in the rank/post of S.D.O.T. I am, therefore, of the view that the ratio of the said Judgement of the Hon'ble Apex Court is not applicable in the instant case since it is distinct and different from the facts of the instant case.

9. The Hon'ble Apex Court in a catena of decisions passed recently has laid down the law regarding the transfer. From all these decisions it is clear that a transfer is an incident of service and the executive has the right to transfer an Officer from one place to another to utilise his services in a manner the executive thinks fit and necessary. In a recent case of - N.K. Singh Vs. Union of India & Ors. (reported in 1994 (5) SLR 153 ) the Hon'ble Apex Court held that - "Courts to interfere only if the Order is vitiated by mala fides or there was infraction of any professed norm or principle governing the transfer - in other cases the matter must be left to the departmental heads in the public interest." In the instant case I have already discussed that the applicant has not taken the ground of mala fide nature of transfer and he has also not averred that there was any infraction of any professed norm or principle governing the his transfer. I have been given to understand by the 1st. Counsel for the respondents that it is the practice of the department to transfer an Officer between the posts of S.D.O.T. and S.D.E etc. since they are all of the same rank of Assistant Engineers. As I have already stated, the impugned Order of Transfer dated 12.3.1996 itself shows that some other Officers were also transferred from the post of S.D.O.T to the post of S.D.E. This being the position and in view of the analysis made by me and on the basis of the law laid down by the Hon'ble Apex Court in N.K. Singh case, I am led

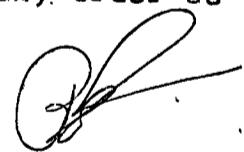
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to the conclusion that there is no justifiable ground for me to interfere with the impugned Transfer Order and, hence, the application cannot succeed.

10. However, I find from the Annexure A-IV to the reply which is a letter written by the Telecom. District Engineer, Calcutta to the A.G.M. (S&A), Office of the Chief G.M. Telecom. written on 21.6.1996 that the applicant had a sincere-most involvement in the developmental works and, that is why, the author of the said letter had requested the Chief General Manager to retain the applicant in the post of S.D.O.T, Bongaon. The Chief General Manager did not agree and advised to release him from Bongaon. While it was open to the administration to utilize the services of the Officers under their control in any suitable manner in public interest, transfer of an officer, who had shown sincere-most involvement in developmental works in a post to another in which there is no such scope, can dishearten him. Therefore, this matter may be looked into by the Respondents provided there is no administrative difficulty in giving consideration to his transfer to another development oriented post.

11. The application is disposed of in the light of the above observations without passing any Order as to costs.



( B.C. Sarma )  
Member (A)