

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 234/95
T.A. No.

199

DATE OF DECISION 8.5.1996

S.K. Mishra

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. N.K. Khandelwal for
Mr. M.S. Singhvi, Counsel Advocate for the Respondent (s)
for respondents No. 1&2.

Mr. N.K. Khandelwal for all other respondents.

CORAM :

The Hon'ble Mr. S.P. Biswas, Administrative Member.

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 ? Yes

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 ? Yes


(S.P. Biswas)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
JODHPUR BENCH, JODHPUR

OA No. 234/95

Date of Order : 8.5.96.

S.K. Mishra ... Applicant.

versus

Union of India & Ors. ... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. N.K. Khandelwal, Brief holder for Mr. M.S. Singhvi,
counsel for the respondents No. 1 & 2.

Mr. N.K. Khandelwal for all other respondents.

CORAM :

Hon'ble Mr. S.P. Biswas, Member Administrative.

BY THE COURT:


The applicant, a telephone Operator in the office of J.T.O., Fatehnagar, is highly aggrieved because of Annexure A/1 order dated 20.1.95 by which he has been transferred from Fatehnagar to Udaipur. Consequently, he has prayed for quashing the above order and grant him all consequential reliefs.

2. Learned counsel for the applicant argued the case at length to say that the applicant is a surplus official arising out of the cadre adjustment following modernisation of Telecom Department. Transfers of such officials - rendered surplus - are to be effected in terms of principles laid by the respondents as in A/6 Circular. Depending upon the options of the employees, it is the juniormost person (based on total length of service) who is to be transferred in case of non-availability of volunteers, the counsel for applicant contended. In this respect, the applicant is senior to respondent Nos 4,5,6 & 7 and thus he has been picked up wrongly for transfer favouring the juniors.

(3)

3. The learned counsel for applicant drew support for his case from the decisions reported in SLJ 1991 (3) CAT 375 in the case of Purushottam Mishra vs. U.O.I. & Ors. wherein it has been mentioned that in the matter of transfer of surplus staff it should be done on the basis of total length of service of the officials and not on the basis of their position in the gradation list of the Division and that those who have come on transfer under rule 38 should not be treated as junior-most and transferred out. This claim is based on the provisions under Rule 38, para (3) of the P&T Manual Volume IV (for short, the Manual).

4. The counsel for applicant sought to establish the applicant's seniority on the basis of the fact that the applicant was promoted in the grade of Rs. 1600-2660 (HSG II) with effect from 1.10.91. Whereas the respondents No. 4,5,6 and 7 have not yet been promoted to that grade. The applicant's claim to remain at Fatehnagar is also based on grounds of his wife serving near a place close to Fatehnagar. The Government of India has also framed policy for keeping husband and wife together as far as possible. There were no unusual circumstances/reasons for deviating from the said policy, but the same has been given a goodbye due to some extraneous reasons best known to the authority, the counsel argued.

5. After having heard the learned counsel for respondents, the counsel for the applicant submitted that the present case was filed in the Tribunal on 23.5.95 and the delay of more than a year in finalisation of the case should not be taken against the interest of the applicant based on provisions in paras 3 & 4 of the circular at A/6. He also contended that none of the citations of the learned counsel for respondents would govern the present case of transfer of employees declared surplus.

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6. Learned counsel for the respondents argued the case vehemently and brought out certain factual incorrectness in the statements made by the applicant in the OA. These relate to the fact that the applicant came to Fatehnagar on the mutual exchange basis vice K.R. Manaria and not through a normal transfer order and that the applicant is not the seniormost man as has been claimed in para 6 of the OA.

7. Learned counsel for the respondents drew my attention to Annexure A/6 order dated 5.9.90. As per instructions underlined therein, the juniormost official in the cadre at the stations from where the staff could be spared on administrative convenience, shall be posted to the new establishments normally for a period of one year. It also stipulates that in case of shortages in such volunteers, the procedure as mentioned in para (3) of the order may be followed to facilitate transfer of the requestees back to their parents station of posting on completion of their stay of one year. In other words, as per counsel for respondents, the applicant could have very well availed all benefits under this order had carried out Annexure A/1 and A/2 orders in time.

8. Learned counsel for the respondents submitted that as per orders of this Tribunal in OA No. 121/95 decided on 24.3.95, the respondents were directed to consider the representation made by the applicant in regard to his grievance in the light of relevant rules, instructions and guidelines on the subject and take a decision thereon through a speaking order within a period of one month from the date of receipt of a copy of the order. This has since been complied with fully.

(V)

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9. The counsel cited a catena of judgements to argue that the applicant's case is against the law laid down by the Hon'ble Supreme Court. He relied upon the decisions of the Hon'ble Supreme Court in (i) AIR 1991 SC 532 - Mrs. Shilpi Bose & Ors. vs. State of Bihar, (ii) AIR 1993 SC 2486 - State of Punjab & Ors. vs. Jogendra Singh Bhatt, (iii) WLR (S) RAJ 321 (Service Writ) - Poonam Chand vs State of Rajasthan, (iv). (1995) 30 ATC 629 - Union of India & Ors. vs. Ganesh Dass Singh and (v). (1995) 29 ATC 553 State of M.P. & Anr. vs. S.S. Kaurav & Ors. In all these cases, the Apex Court has laid down that a transfer order should not be interfered with by the Court/Tribunal unless it is vitiated by mala fides or issued against the statutory provisions, the counsel pointed out.

10. I have given anxious thought and consideration to the able arguments advanced on behalf of both the sides and have gone through the records as well as citations relied upon by learned counsel.

11. The applicant's claim that his transfer order is illegal and arbitrary in the light of instructions contained in Annexure A/6 order cannot be sustained in view of the fact that these are only administrative guidelines. In the decision of the Hon'ble Supreme Court in AIR 1993 SC 2444 - Union of India & Ors. vs. S.L. Abbas, it has been laid down that "while transferring the Government employee, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not offer upon the Government employee a legally enforceable right. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or made in violation of statutory provisions, the Court can't interfere with it.

An order of transfer is an incident of Government service. Fundamental Rule 11 says that the whole time of a Government servant



is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority. While ordering the transfer, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with reference to his transfer, the appropriate authority must consider the same having regard to exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline, however, does not confer upon the Government employee any legally enforceable right."

12. During the course of arguments, it was submitted by the learned counsel for applicant that the applicant is a seniormost man whereas the gradation list of T.Os working at Fatehnagar Exchange shows a different position. In fact, the applicant stands at serial No. 11 vis-a-vis the contesting respondents, [redacted] are at different serial numbers above the applicant and the said list has not been controverted by the counsel for applicant. The applicant seeks protection under the instructions in the circular at Annexure A/6 as it intends to provide weightage to seniors in respect of transfer. But in the light of the law laid down by Hon'ble Supreme Court, as aforementioned, the applicant does not have a legal claim, notwithstanding his claim of seniority in the Unit/Division. Even if the present case is a matter of unsettled dispute in respect of seniority, it is not for the Tribunal to adjudicate such matters. Disputed question of facts must be decided by other fora and not by the Tribunal and transfer orders are not to be interferred with even if it violates executive instructions. If any authority is required for these propositions, it is available in 1994 (5) SCC 304 R.K. Panda & Ors. vs. Steel Authority of India Ltd. and 1992 SCC (L&S) 127 - Mrs. Shilpi Bose vs. State of Bihar respectively.

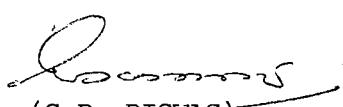
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13. It has also been argued that applicant's wife is working at Rurdera (21 K.M. from Fatehnagar) and hence his transfer would mean maintenance of two establishments which the applicant can ill-afford. Cases of such individual hardships are to be taken up with the appropriate administrative authorities for necessary relief. Such an inconvenience pleaded by the applicant is not a matter which can affect legitimate consideration in respect of transfer (1995) 2 JT SC 498 - State of M.P. vs. S.S. Kaurav & Ors.).

14. The applicant's case mainly centres around his claim of seniority over respondents. This has not been established beyond doubts. No authentic and approved seniority list has been evidenced to support the claim. This is the case where neither malafides nor colourable exercise of powers has been attributed. It has also not been claimed that the transfer order has been issued violating statutory provisions.

15. In view of the discussions aforementioned, the application fails being devoid of merit and is accordingly dismissed. No costs.


(S.P. BISWAS)
Member (A)

cvr.

Chh/
17/5/91

Part II and III destroyed
in my presence on 31/5/91
under the supervision of
section officer (1) as per
order dated 11/3/91

Section officer (Record)

Recd
by
15/5

2nd copy
on 15/5/91
As per