

Reserve

CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH

O.A. No. 326 of 1990(L)

S.K. Saxena

Applicant

versus

1. Union of India through Secretary
Ministry of Water Resources, New Delhi
and 4 others.

Respondents.

Hon. Mr. S.N. Prasad, Member Judicial.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer to quash the transfer order dated 28.7.88 (Annexure 2) and the order dated 18.9.90 whereby the representation of the applicant against the aforesaid transfer order was rejected (Annexure 12) and also to quash the order dated 31.8.90 (Annexure 8) whereby Shri Shree Ram J.E., to M.G. Division, Lucknow has been posted in place of the applicant, arbitrarily, and contrary to the guidelines issued by C.W.C., New Delhi.

2. The facts of this case, in a nut-shell are, inter alia, that the applicant was appointed and posted with effect from 27.10.78 as Junior Engineer (hereinafter short J.E.) from 27.10.78 to 1.4.80 in Lakawar Discharge site (Johnsar Bhawar Area—an Adivasi inhabited area in the Hills) under the Dehradun Division of CWC.

(R6)

and from 2.4.80 to 14.10.80 the applicant was posted at Dhaneta Discharge site of Agra Division of CWC, and from 15.10.80 to 16.5.81, the applicant was posted at Zira Rahimpur Discharge site, District Shahjahanpur under Bareilly Sub-Division of CWC ; and from 17.5.81 to 2.4.87 the applicant was posted at Ghatiaghata, District Farrukhabad under Bareilly Sub-Division. For the first time the applicant was posted to M.G. Division II, Lucknow on 3.4.87 and at present the applicant is working in the same Division. From the above, it would be obvious that from the date of posting i.e. 27.10.78 to 2.4.87, the applicant had been posted in far flung and remote areas and only for the first time he was posted to Lucknow City on 3.4.87 and while he was discharging his duties satisfactorily, since the date of his appointment and hardly the applicant had worked for 15 months, he was arbitrarily and whimsically transferred to NEIC, CWC, Shillong vide impugned order dated 28.7.88 (Annexure 2). Against the aforesaid impugned order, the applicant made representation to the Under Secretary (T.S.) Central Water Commission, New Delhi on 8.8.88 (Annexure 5) requesting for cancellation of his aforesaid transfer order which was against the policy guidelines and against the rules and regulations, but that representation was arbitrarily rejected vide C.W.C. letter dated 18.9.90 which was intimated to the applicant on 22.9.90 (Annexure No. 12), besides

guidelines the impugned transfer order being against the policy / ~~and~~ and principles regarding transfer, the impugned transfer order ^{is} required to be set aside on medical grounds as well as on compassionate grounds owing to the ailments and domestic and family affairs of the applicant, as detailed in para 4 of the application.

3. The respondents have resisted the claim of the applicant in their counter affidavit filed by them with the contentions, interalia, that there has not been any deviation from the guidelines and the policy regarding transfer, and there has not been any violation of any rule. It has further been contended that the administrative guidelines have got no statutory force and as such even if there is any deviation from the guidelines due to administrative ^{that is immaterial} reasons; it has further been contended that the stay of the applicant in Middle Ganga Division II Lucknow has been for about 8 years at the time of issue of the impugned transfer order and as such the transfer order of the applicant does not suffer from any legal infirmity. It has further been contended that as regards the notification of transfer order of the applicant to Middle Ganga Division II, Lucknow, the same was made due to administrative reasons and it is wrong to allege that the transfer order of Shri Shree Ram was modified

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to accommodate him at Lucknow. In view of the above circumstances the application of the applicant is liable to be dismissed.

4. Rejoinder Affidavit has been filed by the applicant wherein the applicant has reiterated almost all those facts as mentioned in the Application. In the Rejoinder Affidavit it has been further stated that at present the position is that even after accommodating the aforesaid Shri Shree Ram ^{as well} and the applicant at Lucknow, there was one vacancy remaining unfilled since November, 1991 vide Annexure-1 to R.A. which is photo stat copy of the present vacancy position, existing as on 1.4.92

5. A perusal of the Supplementary Affidavit of the applicant dated 17.10.1990 read together with the report of Dr. A.K. Mishra which is Annexure-2 to the Supplementary Affidavit of the applicant shows that the applicant has been suffering from some ailments relating to his heart, chest pain and Angina, and according to the report of the aforesaid Doctor A.K. Mishra dated 16.10.90, the disease of the applicant needs continuous treatment life-long and regular medical checkup, and according to his medical report, the applicant should abstain from undertaking hazardous journeys involving long distances and working in hill areas.

6. I have heared the learned counsel for the parties and have thoroughly gone through the records of the case.

7. The learned counsel for the applicant while drawing my attention to the contents of the application and papers annexed thereto to the contents of the counter affidavit, Rejoinder Affidavit and Supplementary Affidavit as referred to above, has argued that from the perusal of the record it would be seen that the applicant was posted at Lucknow on 3.4.87, whereas the aforesaid Shri Shree Ram, J.E. joined at Lucknow on 7.3.86 and as such it is clear that the aforesaid Shri Shree Ram J.E.'s stay at Lucknow is longer by one year than the stay of the applicant at Lucknow, and even then the applicant has been transferred against the guidelines and the policy evolved by the C.W.C. in the year 1987 (Annexure-1); and has further argued that the transfer of the aforesaid Shri Shree Ram was made to accommodate him during the pendency of the representation of the applicant as the transfer order of the aforesaid Shri Shree Ram was passed on 31.8.90 (Annexure-8) and the representation of the applicant was rejected on 18.9.90 (Annexure 12); and has further argued that as would be obvious from the report of the Doctor A.K. Mishra dated 16.10.90 (Annexure-2 to the Supplementary Affidavit) of the applicant that the applicant has been suffering from diseases pertaining to heart, chest pain and Angina etc. and

as per Doctor's advice and medical report, the applicant should abstain from ~~undertaking~~ hazardous journey involving long distances and should also abstain from working in hill areas, as such even ~~on~~ compassionate grounds also and keeping in view the present position and availability of vacancy ~~for long applicant worked~~ at Lucknow even after accommodating the applicant and the aforesaid Shri Shree Ram one vacancy of Junior Engineer Civil is still left, as would be obvious from the copy of chart (Annexure -1 to R.A.) and has further argued that under such circumstances the application of the applicant should be allowed and the above impugned order should be set aside and in support of his arguments has placed reliance on the judgments and following rulings:—

1. O.A. No. 637 of 1988
"Nanhey Lal vs. Union of India & others"
(Central Administrative Tribunal, Circuit Bench Lucknow) decided on 12.1.1989 (Annexure A-3 to the application)
2. O.A. No. 1798 of 1987
"Nem Kumar vs. Chairman, Central Water Commission
(Central Administrative Tribunal, Principal Bench, New Delhi) decided on 4.5.1988 (Annexure A-9 to the application)
3. (1991) 17 Administrative Tribunals Cases 151,
"R. Jayaraman versus Union of India & others, wherein it has been enunciated:

"Transfer-Ultra vires" and mala fides-Administrative guidelines-Minimum span of stay-Not adhered to in applicant's case nor any administrative exigency shown-Transfer also found colourable exercise of power because some building contractors were not happy with applicant-Hence held, invalid- Mala fides."

8. The learned counsel for the respondents while drawing my attention to the contents of the application, Counter Affidavit and Rejoinder Affidavit, has argued that there has been no any deviation from the guidelines as specified in Annexure-1; and has further argued that the guidelines have got no statutory force and as such violation of any such guidelines, if any though in this case there has been no any violation or any deviation of any guidelines or there has ~~is~~ ^{been} no violation of any rule, the application of the applicant is without any merit and force; and has further argued that transfer is an incident of service and since the applicant had stayed for about 8 years ^{in Middle} Lucknow, as such the impugned order of transfer is proper and valid one; and has further argued that transfer of the aforesaid Shri Shree Ram is due to ^{and} administrative ~~re~~ reasons; and has further argued that the Medical report of the aforesaid Dr. A.K.Mishra dated

16.10.90 is merely suggestive one and ~~that~~ ^{the} ~~the~~ ^{his}
~~report~~
medical ~~certificate~~ does not confer any right on the
applicant for staying at Lucknow through-out his whole
service career; and has further argued that there
is no malafide and as such the application of the
applicant be dismissed and in support of his ~~contention~~
^{argument}
he has placed reliance on the ruling 1989(3) S.C.C. page
445 "Union of India & others (Appellants) vs. H.N.
Kirtania (Respondent), wherein it has been enunciated:-

"Service Law-Transfer of employee- On
administrative ground or in public interest-
Not open to court's or Tribunal's interference
unless mala fide, illegal or in violation of
statutory rules".

9. This is significant to ~~point~~ out that Annexure -1
which is a copy of guidelines/policy in respect of
transfer of employees of C.W.C. contained in Office
Memo, dated 27.5.87, specifies the various conditions
and factors which are to be kept in view while
transferring the employees of group C & D, interalia
shows that transfer becomes essential for adjusting
surplus staff or making deficiencies of staff; on request
of employee, on compassionate ground or mutual transfer
on request basis, at the time of promotion and for
exigency of service on administrative requirements and

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when transfer becomes imperative and inescapable the transfer should be in the following order:

- A) Those who volunteer for transfer
- B) Persons with longest stay at the place.

10. From the perusal of para 4.1 to 4.11 of the application of the applicant and para 1 to 8 of the Counter Affidavit of the respondents, and from the scrutiny of the entire material on record it becomes obvious that the applicant was posted for the first time at Lucknow on 3.4.87 and hardly he had spent one year and 3 months at Lucknow, the aforesaid impugned order was passed transferring him from Lucknow to Shillong. It also becomes obvious that the aforesaid Shri Shreeram had joined at Middle Ganga Division No. 1 Lucknow on 7.3.86. Thus, it is apparent that the aforesaid Shri Shreeram had longer stay at Lucknow by one year more than the stay of the applicant, but the aforesaid Shri Ram was not transferred and the applicant was transferred.

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11. It is also important to point out that the aforesaid Shri Shreeram has been transferred in place of the applicant, as per order dated 31.8.90 (Annexure - 8) with a view to accommodate the

it appears that

[Signature]

the aforesaid Shri Shriram as the representation of the applicant was rejected on 18.9.90 (vide Annexure 12). In this context it is significant to point out that Annexure-1 as referred to above, inter alia, reveals that regarding relaxation/deviations and the guidelines as detailed above, shall require prior approval of the Chairman, C.W.C.; but in the instant case, it ~~is~~ appears that no such prior approval of Chairman was obtained, though there has been deviation in the above guidelines regarding transfer of the applicant, as the aforesaid Shri Shree Ram who was having longer stay at Lucknow that ^{to} the applicant, was not transferred but the applicant was transferred.

12. This is also noteworthy that the report of the aforesaid Dr. A.K. Mishra dated 16.10.90, as referred to above (Annexure-2, to the Supplementary Affidavit of the applicant) shows that the applicant has been suffering from some ailments pertaining to heart, chest pain, Angina etc which require [~] life-long treatment and regular checkup and unless the applicant is considered medically fit, he should abstain from taking hazardous journeys involving long distances and also abstain from working in hill areas and keeping in view the ailments of the applicant/interim order [~] impugned dated 1.10.90 the operation of transfer order was stayed.

13. This fact should also not be lost sight of that Annexure ~~RA~~ to the Rejoinder Affidavit of the applicant shows the present position as on 1.4.92 regarding the vacancy in the post of Junior Engineer at Lucknow and according to this one post of Junior Engineer is still lying vacant even after accommodating the aforesaid Shri Shreeram and the applicant at Lucknow.

14. Thus from the foregoing discussions, after scrutinising entire material on record and keeping in view the above glaring facts and circumstances of the case and all aspects of the matter and keeping in view extenuating and attenuating circumstances, in the light of the aforesaid medical report and the ailments of the applicant and keeping in view the principle of law as enunciated in the above rulings, I find that besides the deviation ~~of~~ the guidelines, as specified in Annexure-1, compassionate grounds also are found to be in favour of the applicant and as such I find that the ends of justice would be met if the applicant's posting at Lucknow remains intact.

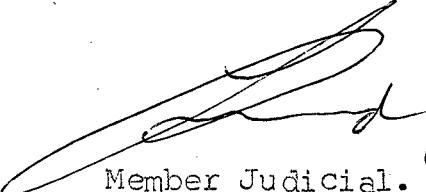
15. Before parting with the case, I would like to make it clear that the aforesaid report dated 16.10.90 of Dr. A.K.Mishra, regarding regular check up and life-long treatment, will in no way confer any

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privilege or right on the applicant for his stay at Lucknow during his entire remaining service career as it may be possible that by regular check up and medical treatment the applicant's condition may improve

considerably and he may be cured of all the ~~diseases~~ in near future.

16. In the result, the impugned transfer order dated 28.7.88 (Annexure -2) and the order dated 31.8.90 (Annexure-8) and the order dated 18.9.90 (Annexure 12) are hereby set aside and the application of the applicant is allowed ~~and~~ accordingly. No order as to costs.


Member Judicial.

14.5.92

Lucknow Dated: 14.5.92