

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 458/89

XXXXXX

198

DATE OF DECISION 10-1-1990

Shri N.V. Salvi

Petitioner

Mr. S.B. Repale

Advocate for the Petitioner(s)

Versus

The Secretary, Min. of Defence & Respondent
Four others.

Mr. R.C. Kotiankar

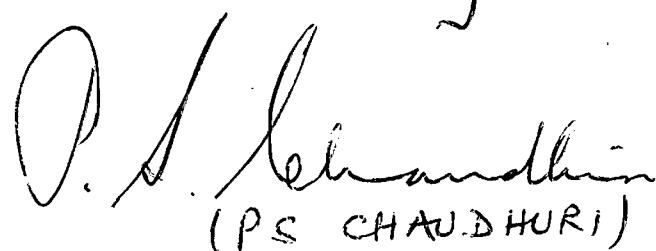
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
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 ?



(P.S. CHAUDHURI)

(P)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.458/89

Shri N.V.Salvi,
Ganga Height 'A' SF/7,
233, Old Bazaar,
Kirkee,
Pune - 411 003.

.. Applicant

vs.

1. The Secretary,
Govt. of India,
Ministry of Defence,
New Delhi.
2. The Director General
Quality Assurance,
Dept. of Defence Production,
New Delhi - 110 011.
3. The Director
Quality Assurance,
Dept. of Defence Production,
Ministry of Defence,
New Delhi - 110 011.
4. The Controller,
Controllerate of Quality
Assurance (amn),
Kirkee,
Pune - 411 003.
5. The Senior Quality Assurance
Officer,
Quality Assurance Estt. (A),
Kirkee,
Pune - 411 003.

.. Respondents

Coram: Hon'ble Member(A) Shri P.S.Chaudhuri

Appearances:

1. Mr.S.B.Repale
Advocate for the
Applicant.
2. Mr.R.C.Kotiankar
Advocate for the
Respondents.

JUDGMENT

(Per P.S.Chaudhuri, Member(A))

Date: 10-1-1990

This application under Section 19 of
the Administrative Tribunals Act, 1985 (for short,
the Act) was filed on 11.7.1989. In it the

applicant prays that the order dated 20.3.1989 by which he is transferred from SQA(A), Kirkee to CPE, Itarsi and movement order dated 10.6.1989 by which he is directed to proceed on permanent transfer to Itarsi from Kirkee be quashed and set aside and for other connected and consequential reliefs.

2. In exercise of the powers conferred by sub-section(6) of Section 5 of the Act, the Chairman, Central Administrative Tribunal(for short, the Tribunal) by his order dated 21.3.1988 has authorised all the Members of the Tribunal to function as a Bench consisting of Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as have been specified in the said order with effect from 1-5-1988. 'Posting/transfers' has been so specified in item (b) of para 1 of the said order and so, keeping in view the challenge mentioned above, I have proceeded to hear and decide the application.

3. The applicant, who was born in 1942, joined service as a Supervisor III under respondent No.4 at Kirkee in 1964. He was transferred

to Bombay in 1968 and was transferred back to Kirkee in 1973. He has been working at Kirkee since then in various capacities. While he was working at Kirkee as Chargeman Gr.II, by an order dated 8.5.1987 he was promoted as Chargeman Gr.I and posted from Kirkee to Varangaon. He was aggrieved by this order and filed OA No.434/87 before the Tribunal on 30-6-1987. This order was amended by a subsequent order dated 3.7.1987 by which the applicant was promoted at Kirkee itself. Thereafter, on 7-7-1987 at the applicant's request OA 434/87 was disposed of as withdrawn with no order as to costs.

4. Subsequently, by the impugned order dated 23.3.1989 the applicant was transferred from Kirkee to Itarsi. By letter dated 1-4-1989 the applicant was informed of this posting and his superior officer was asked to intimate the date on which he could be relieved. In reply on 5.4.1989, his superior officer intimated that the applicant could be relieved on from 1-6-1989(F.N). On 12-4-1989 the applicant requested that (i) he may be posted at Bombay instead of Itarsi; and (ii) that he may be granted extension upto 31.7.1989. By a letter dated 26.5.1989, the applicant was informed

that both these requests had been rejected and he was issued with a movement order dated 10.5.1989 directing him to proceed to Itarsi. By an application dated 27-5-1989 the applicant applied for deferment of his movement to Itarsi for one month i.e. upto 30.6.1989 on the ground that his wife had met with a serious road accident. This request was accepted and he was issued with the impugned movement order dated 10-6-1989 directing him to report at Itarsi on or before 11.7.1989. On 23-6-1989 Respondent No.3 sent a telegram approving deferment of the applicant's movement till 31-12-1989. By a subsequent letter dated 12.7.1989 the telegram dated 23.6.1989 was cancelled and it was ordered that the applicant would be attached to SQAE(A) Kirkee from the period from 1 to 31.7.1989 and that he would be relieved of his duties w.e.f. 31-7-1989.

5. The applicant had, in the meantime, filed this application on 11.7.1989. By an ex-parte ad interim order of the Tribunal on 11-7-1989 the respondents were restrained from giving effect to the impugned order dated 10.6.1989. But this was vacated on 27-7-1989. By a further order of the Tribunal on 21.8.1989, the applicant was permitted to move ^{to} Itarsi immediately

and would be treated as joined w.e.f. 1.8.1989.

By a further order of the Tribunal on 6.10.1989 the respondents were given liberty to enforce the order of the transfer of the applicant to Itarsi and if the applicant disobeys this order, the respondents were given liberty to take such action including initiating the departmental proceedings against the applicant as they deemed fit.

6. The respondents have opposed the application by filing their written statement.

I heard Mr.R.B.Repale, learned advocate for the applicant and Mr.R.C.Kotiankar, holding the brief of Mr.M.I.Sethna, learned advocate for the respondents.

7. Various and varied contentions were raised before me on behalf of the applicant. The first was that the respondents were prejudiced against the applicant because he had filed O.A. No.434/87, which I have mentioned earlier. In support thereof he mentioned that one Shri Pushpakram had been retained. But, I do not see how the mere fact that one particular employee was retained can prove prejudice against the applicant. In this regard I am in respectful agreement

with the view taken by the Punjab High Court in

LACHMAN DAS V. SHIVESHWAR KAR AND OTHERS (AIR 1967

PUNJAB 76) in which they have held:

"A variety of factors may weigh with the authorities while considering the question of transfer, viz. the suitability of the official for the post, his aptitude, past conduct, reputation, period for which he has been on that post and a number of other grounds which may be clubbed together under the head "exigencies of service"....."

8. The applicant's second contention was that because one Shri P.D. Kulkarni was an influential person he did not feature in the revised transfer order dated 20.3.1989 although he too was originally slated for transfer. Mr. Kotiankar readily countered this contention by his submission that the said Shri Kulkarni had been transferred by a separate order also dtd. 20.3.1989.

9. The applicant's third contention was that the rotational transfer policy of non-gazetted officers Technical/Scientific of the DGQA organisation had been laid down in the Government's letter dtd. 7.3.1988. It was his contention that as the policy laid down therein was that orders for rotational transfer should normally be issued in April/May each year, the impugned transfer order was against

this policy. I do not see any merit in this contention as these guidelines are not mandatory - see B.Varadha Rao v. State of Karnakata and others (AIR 1986 SC 1955). In any case, the applicant was to be relieved only on 1-6-1989.

10. The applicant's fourth contention was that in terms of para 7 of the circular dtd. 3.7.1982 "persons who have been the longest in the station should normally be moved first." I see no merit in this submission also because here, too, the instruction is not mandatory. In any case, a plain reading of the circular makes it clear that it applies only to rotational transfers.

11. The applicant's firth contention was that in a circular dtd. 1-6-1985 (at annexure 'L' to the application) it had been laid down that refusal of promotion by individual would not now be accepted in a routine manner. It was his case that he was being transferred because some individual had refused promotion and that the respondents' acceptance of this refusal of promotion was arbitrary being violative of the circular dtd. 1.6.1985.

I do not see any merit in this submission. How to deal with a person who refuses promotion is a matter which is solely for the respondents to concern themselves with. It is quite obvious that after having done so, the respondents will have to take steps to ensure that their work is carried out to their satisfaction and they will have to post individuals accordingly. I do not see any way in which certain rights can be said to accrue to a person merely because some one else has refused promotion.

12. The applicant's sixth submission was that station seniority had been ignored when effecting the transfer. Mr. Kotiankar readily countered this by submitting that a positive decision had been taken that five ladies with the same date for station seniority should be retained at Kirkee even though they had been longer at Kirkee than their male counterparts.

13. It is now well settled that the question about the transfer of an official is primarily one for the authorities concerned. Courts can only interfere if the transfer is violative of any legal

provision or is otherwise mala fide. Except in such a limited contingency, the order of transfer is neither open to judicial review nor justiciable —

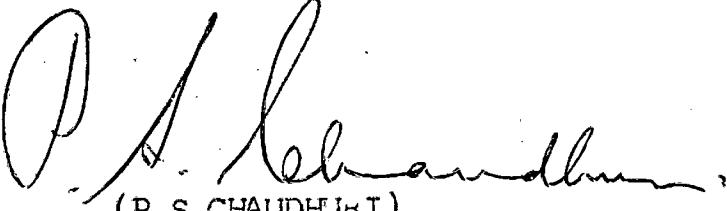
~~As~~ see Lachman Das's case (supra), Shanti Kumari v.

Regional Director, Health Services, Patna Division and others (AIR 1981 SC 1577) and Union of India and Others v. H.N. Kirtania — (1989) 11 ATC 269 (S.C.).

No allegations of malafides or violation of legal provisions has been substantiated in this case.

14. In this view of the matter the application has no merit and deserves to be dismissed.

15. The application is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.


(P.S. CHAUDHURI)
Member (A)