

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Date of Decision: 27-5-93

OA 54/93

M.K. SHARMA

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON. MR. GOPAL KRISHNA, MEMBER (JUDL.).

HON. MR. O.P. SHARMA, MEMBER (ADM.).

For the Applicant ... SHRI S.K. JAIN.

For the Respondents ... SHRI S.S. HASAN.

JUDGEMENT

(DELIVERED BY HON. MR. GOPAL KRISHNA, MEMBER (JUDL.)).

In this application u/s 19 of the Administrative Tribunals Act, 1985, the applicant M.K. Sharma has challenged the impugned order dated 15.1.93, whereby he was transferred from Neem Ka Thana to Gehlot a on the post of Assistant Station Master.

2. The facts giving rise to this application are that the applicant was posted as Assistant Station Master at Neem Ka Thana since 1989 but due to contraction in the cadre one incumbent had become surplus and, therefore, the respondents were under a legal obligation to transfer the juniormost person and not the applicant. It is also alleged that the applicant has four children, who are prosecuting their studies in Schools and Colleges at Neem Ka Thana, and his transfer in mid session would disrupt family life and disturb the

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education of children. It is averred that the transfer having been made in violation of the circular dated 26.4.84 (Annexure A-2) is illegal.

3. The respondents, in their counter, stated that the application is liable to dismissed on the ground of non-impleadment of Shri L.K. Verma, against whom the applicant has a grievance that being juniormost he should have been transferred in place of the applicant. Shri L.K. Verma belongs to a Scheduled Caste community, and in terms of the circular of the Railway Board dated 27.7.87 he was not disturbed from his place of posting. It is also contended by the respondents that the transfer of the applicant was made absolutely on administrative grounds. As the applicant had become surplus at Neem Ka Thana Railway Station, it was necessary to transfer him from that place to Gehlota Railway Station. It is also stated that the transfer was made in administrative interest to avoid audit objections and irregular expenditure.

4. The point which emerges for consideration is whether the transfer of the applicant was made in violation of rules or the same was malafide. The contention of the applicant is that he was wrongly declared surplus since he was senior to Shri L.K. Verma and the latter should have been declared surplus and transferred from Neem Ka Thana to another place does not hold good in view of the fact that Shri L.K. Verma has not been impleaded as a respondent in this application. Our attention has been drawn to a circular dated 26-4-84 (Annexure A-2), the relevant part of which may be extracted below :-

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"On contraction of cadre, the junior most employee is required to be transferred out from that station or the concerning unit. In case, if the junior

employee obtains a stay in connection with his transfer, whether the employee senior to him is required to be transferred by retaining the junior employee as a result of stay or the junior employee is required to be retained at that station in excess to the cadre by operating the post of other station temporarily at that station or supernumerary post is required to be created."

It has been clarified in this circular itself that these instructions were laid down merely as guidelines and they were to be followed to the extent feasible. These instructions are, therefore, directory and not mandatory in nature. Normally, transfers are not based on seniority. The applicant has no right to insist that only the junior-most should have been transferred in the circumstances. Any personal inconvenience flowing from an order of transfer is no ground for quashing the same. For personal inconvenience or grievance, the applicant should have approached the Departmental Authorities with an appropriate representation. No malafide or malice has been alleged or established against the respondents. We see no reason to dis-believe the contention of the respondents that the transfer was made purely on administrative grounds. Reliance is placed on (1991 Supp (2) SCC 659), Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors., wherein their Lordships of Hon. Supreme Court have held at page 661 as follows :-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there

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will be complete chaos in the administration which would not be conducive to public interest."

5. In view of the above discussion, we find that the transfer was made neither in violation of any rule nor it is vitiated by malafides.

6. This OA, therefore, does not stand on merits and it is hereby dismissed, with no order as to costs.

(O.P. SHARMA)
MEMBER (A)

GK 27-5-93
(GOPAL KRISHNA)
MEMBER (J)