

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 52/95
T.A. No.

199

DATE OF DECISION 3.4.1996

Hanuman Prasad Sharma

Petitioner

Mr. P.V. Calla

Advocate for the Petitioner (s)

Versus

The Union of India & Ors.

Respondent

Mr. V.S. Gurjar

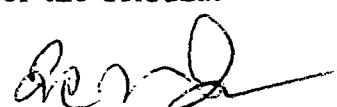
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

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?
- ✓ 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?


(RATAN PRAKASH)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R .

OA NO.52/95

Date of order: 3/4/96.

Hanuman Prasad Sharma : Applicant

Versus

The Union of India & Ors. : Respondents

Mr.P.V.Calla, counsel for the applicant
Mr.V.S.Gurjar, counsel for respondents

CORAM:

HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

This OA has been filed by the applicant Shri Hanuman Prasad Sharma to quash the impugned order dated 30.9.1994 (Annexure A-1) whereby he has been transferred from Jaipur and posted at Bandikui under Sub Divisional Engineer (Phones), Bandikui and order dated 15.10.1994 (Annx.A-2) by which he has been ordered to have been relieved to join at Bandikui. The applicant has further sought a direction to the respondents that he may be treated to continue at Jaipur as if impugned orders have never been issued.

2. Facts leading to this application and as averred by the applicant are that he entered in service on 13.8.1962 as T.S.Clerk in the office of A.O.(TR) of the respondents. He worked on various posts and on the relevant date was working on the post of Senior Section Supervisor in the scale of Rs.1600-2660. It is the case of the applicant that since the applicant

has made complaints to the State Minister (Communications) about the prevalent corruption in the Government Department, the respondents with a malafide intention have transferred him from Jaipur to Bandikui. It is also the case of the applicant that the competent authority to transfer him is A.O.(T.R.) being the Head of the Office and that the impugned orders Annexures A-1 & A-2 having been issued by an incompetent authority are liable to be quashed. His representations in this regard having gone futile, he has been constrained to file this application to claim the aforesaid reliefs.

3. The respondents have contested this application by filing a written reply to which no rejoinder has been filed by the applicant. The stand of the respondents has been that after the re-organisation scheme dated 19.9.1986, re-organisation of Telecom Circles on the basis of Secondary switching area has been introduced in Telecom Department. Under this Scheme a post of Telecom District Manager has been re-designated as Telecom District Engineer and that as per Para 8 of Annexure-1 to the Scheme a stipulation has been made that all non-gazetted staff within a Telecom District will have transfer liability over the entire Secondary Switching Area and by virtue of Para 7 of Annexure-2 to the Scheme, it is provided that postings and transfers and posting within the secondary Switching Area will be done by the

Telecom District Manager/District Manager/District Engineer according to the Schedule of Powers. The applicant being a Group C employee of Jaipur Telecom District is covered under the category of General Central Services Class-III (now called Group 'C') and he being Section Supervisor and performing operative duties his appointing authority and disciplinary authority is Deputy General Manager and Appellate Authority is General Manager. It has, therefore, been averred that Jaipur Telecom District which comprises of Dausa, Bandikui and Kothputali etc., is headed by the General Manager Telephones who is also the Head of Department for the District as per SR-2(10). The applicant having been transferred on the same post at Bandikui with the prior approval of the General Manager, he cannot now challenge it as being done with malice or by an incompetent authority. It has, therefore, been averred that the OA deserves dismissal.

4. I heard the learned counsel for the applicant as also the respondents and have carefully examined the record in great detail.

5. The only point for determination in this OA is whether the impugned orders Annexures A-1 and A-2 transferring the applicant from Jaipur to Bandikui and relieving him w.e.f. 15.10.1994 suffer from any illegality or infirmity ?

6. It has been straneously argued by the learned counsel for the applicant that the impugned order has not been issued by a competent authority as in the case of the applicant the authority competent to transfer is A.O.(TR) and not the authority which has transferred him. Another argument has been that these orders have been issued with malice in order to accommodate and favour certain 'blue eyed' officers.

7. Opposing the contentions raised by the learned counsel for the applicant, it has been argued by the learned counsel for the respondents that the impugned orders have been issued by the competent authority after approval of the General Manager and that the applicant having been transferred on the same post in the re-organised Jaipur District Circle within which Bandikui also falls, the orders issued cannot be faulted.

8. I have given anxious thought to the able arguments addressed by both the learned counsels. Although the learned counsel for the applicant has tried to impress that it is on account of certain complaints made by the applicant in respect of corruption in the Department that he has been transferred, yet this contention has not been substantiated by any cogent evidence. May be that the applicant has complained to the State Minister

for Communications but the applicant has failed to substantiate that it is on account of malafide of any officer of the respondent Department that he has been transferred from Jaipur to Bandikui. This is borne out by the fact that although the applicant has tried to aver that he has been transferred out of Jaipur to adjust some 'blue eyed officers' yet no such order has been placed by the applicant on record. On the contrary, by virtue of the impugned order dated 30.9.1994 only the applicant has been transferred and posted at Bandikui under Sub Divisional Engineer (Phones) Bandikui and that too in the interest of service. This order nowhere shows that some other person has been posted to Jaipur in place of the applicant. Moreover the applicant has been transferred to Bandikui on the same post. The contention of the learned counsel for the applicant that the applicant cannot be transferred from Jaipur to Bandikui as there is no post of Senior Section Supervisor, is also without any substance. As averred by the respondents, after re-organisation of the Telecom Circles on the implementation of the scheme of re-organisation in the Telecom Department on the basis of Secondary Switching Area, Bandikui has come under the Secondary Switching Area of the Jaipur Telecom District. The applicant was working as Senior Section Supervisor and was performing non-operative duty under Hindi Officer, Office of GMTD Jaipur and has been transferred on the same post to Bandikui under the SDE Bandikui with the consent of General Manager Telecom District. The argument that it is

A.C.(T&S) who is the competent authority to transfer the applicant from Jaipur to Bandikui is also without any substance. It appears that although the Accounts Officer has been declared as Head of Office in the upgraded Jaipur Telecom District but his powers does not include the power of transferring a non-gazetted officer like applicant. In this regard, a reference can be made to a clarification issued by the Ministry of Communication, Department of Telecommunications on 12.10.1990 (Annx. R-15). Paras 2 and 3 of this communication reads as under:-

"2. The matter has been carefully considered and your attention is invited to the instructions contained in this office letter No.6-73/89/TE-I dated 12.10.1989 addressed to General Manager, Telecom District Jaipur which inter alia clarify that the said Accounts Officer has been declared as Head of office only for the purpose of exercising powers available to the Head of Office under financial rules such as general financial rules, delegation of financial power rules, supplementary rules etc. and not for the purpose of exercising powers under CCS(CCA) Rules, 1965.

3. It is further clarified that administrative/ disciplinary powers under CCS(CCA) Rules, 1965 can only be exercised by the prescribed authorities of various offices/unit of the department as laid down in the various prescribed schedules of P&T Manual Vol.III."

It is thus abundantly clear that the Accounts Officer even if it has been declared to be a Head of Office has not been conferred with the administrative and disciplinary powers under the CCS(CCA) Rules, 1965 which are exercisable only by the prescribed authorities under the Schedules given in P&T Manual Vol.III. In the Schedule to the Manual, in the case of non-gazetted officers it is the Deputy General

Manager (Telephones)/District Manager who have been declared to be the competent authority in this regard. It may also be mentioned in this regard that vide Para-7 of Annexure-II to it, posting within the Secondary Switching Area will be done by the Telecom District General Manager/District Manager and the applicant having been posted on the same post to Pandikui being the Secondary Switching Area can have no grievance on this account. The contention of the learned counsel for the applicant that the authority issuing the impugned order Annexure A-1 and A-2 is not competent is without any force. Merely because the competent authority has sought prior approval of the General Manager it would not mean that the order of transfer of the applicant has been issued by the General Manager or for that matter by an incompetent authority. The reason is that in the exigencies of situation and in the interest of service the competent authority in some cases may have to seek prior approval of the Head of the Department but that by itself does not mean that the order issued by the competent authority is tainted with malice.

9. Moreover it is settled law that the Courts/Tribunal should not interfere in the orders of transfer issued by the Executive authorities; in the interest of service; unless it can be shown that the transfer order is based on malafides or is in contravention of the statutory rules. This principle has been succinctly laid down by Hon'ble the Supreme Court

in the case of Chief General Manager Vs. Rajendra Bhattacharya, 1995 (29)ATC 379 wherein it has been laid down that in absence of a legal or statutory right of the transferee, judicial review of an order of transfer is unjustified. Further in the case of N.K. Singh Vs. Union of India, 1994 (28)ATC 246 the Hon'ble Supreme Court has held that interference in transfer case is justified only in cases of malafides or infraction of any professed norm or principle. It has been further held that where career prospects remained unaffected and no detriment is caused, challenge to transfer must be eschewed. In the instant case the applicant is being sent on transfer on the same post within the Telecom District Jaipur and it cannot be complained that by virtue of his being posted to Bandikui he has to suffer any pecuniary loss or the loss of seniority in service.

10. In view of the law laid down by Hon'ble the Supreme Court in the case of Chief General Manager and N.K.Singh (supra), the authorities relied upon by the learned counsel for the applicant viz., B. Pratap Vs. The Deputy, Director of Administration, Doordarshan, New Delhi decided by Central Administrative Tribunal Madras Bench on 24.7.1987 and another decision of Calcutta Bench in CA No.1319/92 Pradeep Kumar Banerjee V. Union of India decided on 12.7.93 are of no consequence. In the case of Union of India and others Vs. D.Mohan and others relied upon by the applicant, the facts have been otherwise as after

re-organisation Hyderabad Telecom District was merged with the A.P. Telecom Circle and were brought under the administrative control of Chief General Manager Telecom, A.P. The respondents therein having been transferred from erstwhile Hyderabad Telecom District to that covered by erstwhile Telangana Telecom District approached the C.A.T. Hyderabad bench which set-aside the orders of their transfer except one of them. On appeal to the Hon'ble Supreme Court and on finding that this merger has resulted into formation of a common gradation list of A.P. Circle including those of the erstwhile Hyderabad Telecom District, it was held by Hon'ble the Supreme Court that:

"the Chief General Manager Telecom Circle A.P. before passing the order of Transfer, ought to have obtained options from those employees and Officers who belonged to the erstwhile Telecom District who were recruited to the specific units and after considering their individual options should have passed the order of transfer, so as to avoid any possible hardship to them. In the present case admittedly no options were taken from the respondents and for this reason alone the transfer order cannot be enforced. But this aspect appears to have escaped the notice of the tribunal."

Consequently while allowing the appeal partly and modifying the order of the Tribunal, it was held that in the event the respondents or any of them are proposed to be transferred to the difficult Telangana Areas, the appellants shall obtain options from them and pass the order of their transfer afresh after considering their individual options. The facts, therefore, in the case before Hon'ble the Supreme Court being distinguishable and different from that in the instant application, the applicant

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cannot take any advantage of this authority; moreso when there has been transfer in the interest of service within the Secondary Switching Area falling within the same Telecom District.

11. For all the aforesaid reasons, I am of the considered opinion that there is no merit in this OA. While answering the issue raised in this OA in the negative, this OA being without any merit is hereby dismissed with no order as to costs.

Rattan Prakash
30/11/96
(RATTAN PRAKASH)
MEMBER (J)