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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 254/97
T.A. No.

199

DATE OF DECISION 17.05.2000

I.K.Bindra **Petitioner**

Mr. S.K.Jain **Advocate for the Petitioner (s)**

Versus

Union of India and ors. **Respondent**


Mr. V.S.Gurjar **Advocate for the Respondent (s)**

CURAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

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 ? ☒


(N.P.NAWANI)
Adm. Member

(S.K.AGARWAL)
Judl. Member

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 17.5.2000

OA No.254/97

I.K.Bindra S/o Shri S.N.Bindra, presently posted as Stenographer in North Western Region, Atomic Minerals Division, Uniara Garden, Jaipur.

..Applicant

Versus

1. Union of India through the Secretary, Department of Atomic Energy, CSM Marg, Mumbai.
2. The Assistant Personnel Officer (R-III), Personal Division, Bhabha Atomic Research Centre, Trombay, Mumbai.
3. The Atomic Minerals Division, Department of Atomic Energy, Govt. of India, Uniara Garden, Jaipur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, Shri I.K.Bindra, the applicant seeks quashing of letter dated 12.5.1997 (Ann.A1) by which his representation regarding seniority was rejected and also to direct the respondents to treat him as continuing from the date of his initial appointment for all purposes including determination of seniority and grant of promotion to the post of Stenographer Gr.II with all consequential benefits, keeping in mind that he had already been empanelled prior to his transfer to Jaipur.

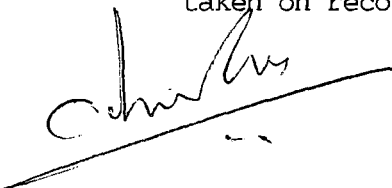
2. Brief facts, as stated, are that the applicant was initially appointed as Stenographer (for short, Steno) in April, 1975 at Shrinagar under the Department of Atomic Energy (DAE) but, on account of disturbed conditions in Jammu and Kashmir (for short J&K), he, along with others, was shifted to Jammu as per order dated 18.12.1990 (Ann.A2) and finally, on his request, he was transferred to Jaipur vide order dated 6.1.1992 (Ann.A3).

3. The case of the applicant is that because of the disturbed situation in J&K, the respondents themselves shifted him and other

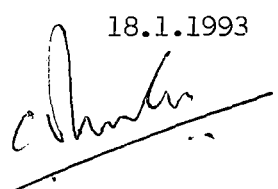
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employees, initially to Jammu. Even Jammu was not safe and the applicant and others used to suffer from fear and tension. There being no other option, the applicant made an application and also gave an undertaking that if his transfer is made elsewhere, his seniority may be reckoned from the date of joining at the transferred place. He states that this undertaking was given under compulsion and the circumstances prevalent. He joined at Jaipur w.e.f. 14.12.1992 under Atomic Minerals Division (for short AMD) though earlier he was working in Bhabha Atomic Research Centre (for short BARC). Both these organizations are under the DAE. The applicant contends that despite his "requested" transfer, he was allowed the benefit of TA/DA and his transfer was treated in public interest. The respondents compelled ^{him} to give the said undertaking, making this action of respondents illegal and arbitrary. It is also contended that after the transfer of the applicant, many other persons were also so transferred but their seniority was protected. Similar situation of transfer due to disturbed conditions in J&K also arose in other institutions/Government companies and the dispute regarding protection of seniority went upto the Apex Court, which, in the case of Veendra Kak & Ors. v. Hindustan Machine Tools and ors. (where also employees had to migrate from Shrinagar to Jammu and then Jammu to elsewhere), while not allowing the benefit of seniority, allowed seniority, only losing one year seniority after the date of their initial appointment i.e. as it was at Shrinagar. However in spite of this judgment of the Apex Court, the just prayer of the applicant was not granted. His representation was rejected vide Ann.A1. The applicant, therefore, stressed that being similarly situated person, he has not been given the benefit of continuity in service for seniority and promotion, in spite of his name being on the panel of Steno Gr.II. He has also enclosed a copy of the transfer order dated 23.6.1994 (Ann.A4) of a similarly situated person, Smt. Raina, Scientific Asstt. who has been given seniority without a break. Thus rejection of the request of the applicant is violative of the Article 14 and 16 of the Constitution of India and the impugned order of rejection (Ann.A1) is required to be set aside and quashed.

4. A reply opposing the OA, has been filed by the respondents to which a rejoinder has been filed by the applicant. The respondents have also filed an additional reply to the rejoinder. A reply has also been filed by AMD, the respondent No.3. All these have been taken on record and have been perused by us.



5. The respondents Nos. 1 and 2 have taken a preliminary objection of the application being hopelessly time-barred. As regards facts, it is stated that the applicant was initially appointed as a Junior Steno w.e.f. 18.4.1975 and posted to BARC felicity called Nuclear Research Laboratory, Shrinagar which was shifted to Jammu w.e.f. 1.9.1990 and accordingly the applicant moved to Jammu. The applicant actually requested for his transfer specifically at Jaipur after his wife got transferred on 27.4.1992 to the office of Accountant General, Jaipur from Accountant General, Shrinagar (Ann.R1). Keeping in view the request of the applicant, the Headquarters of Atomic Minerals Division, Hyderabad, a constituent unit of DAE was approached for exploring the possibility of accommodating the applicant in their Regional Office at Jaipur. They agreed, subject to the conditions that (i) in case the Headquarters of the Regional Office at Jaipur is not continued at Jaipur (the matter being under consideration), the continuation of the applicant will be subject to such decision and (ii) the applicant's seniority will be determined with reference to his date of joining duty at Jaipur (Ann.R2 refers). Accordingly, vide letter dated 29.10.92 (Ann.R3) the applicant was informed that if the said two conditions were acceptable to him, he may give his willingness in writing for further necessary action. The applicant gave the necessary undertaking vide letter dated 17.11.1992 (Ann.R4) and on 30.11.1992, the order (Ann.R5) was issued by the BARC, Government of India transferring the applicant, a Junior Steno, to AMD, Jaipur. This order incorporated a paragraph stating that, "As the transfer is on his own request, he is not entitled to transfer TA/Joining Time/Joining Pay etc." Contesting the averments made by the applicant in this regard, the respondents have submitted that BARC and AMD are two separate constituent units of DAE and stenographic staff working in BARC and AMD are considered for promotion on their continuous service in their respective units and not on the basis of combined service. It has also been contended that even if the transfer of the applicant is treated as in public interest, ignoring the fact of his having made the request and the undertaking given by him, his seniority position in the grade of Steno Gr.III has to be assigned by AMD. The applicant has, in fact, not challenged the seniority assigned by the AMD in this OA and he will get his promotions based on the seniority assigned to him by AMD. It has also been clarified that after issue of the transfer order (Ann.A5), the transfer was treated in public interest by BARC vide order dated 6.1.1992 (to read as 6.1.1993-by letter dated 18.1.1993 (Ann.A3), on the basis of a representation dated



10.12.1992 (Ann.R6) in which he "requested for enabling him to get the benefits like TA, Joining Time, Joining Pay etc." Any further claim for seniority etc. based on such a favour bestowed on him cannot be made a basis for issuing any unwarranted order, which will be prejudicial to the public interest and the interest of the establishment; it will be negation of law and rule of law. The respondents have also denied the averments that other persons transferred were given seniority protection by stating that they were not transferred based on their own request for a particular place of their choice; in fact these were effected on functional basis in public interest and were accommodated against existing vacancies in any of the units. The applicant has not placed on record any documents to establish what seniority has been given to them. The case of Smt. Raina was different, as her case was covered by "Merit Promotion Scheme". Finally, it is contended that the judgment of the Apex Court referred is not applicable on the facts and circumstances of the case in hand.

5. In his rejoinder, the applicant has essentially stated that but for the situation in which the "Kashmiri Pandits" were placed even at Jammu, he would not have applied for the transfer to Jaipur and accepted the conditions, he would have rather request Accountant General of India to transfer his wife to Jammu. His Organisation had known the problems being faced by Kashmiri Pandits and could have extended the benefits that the Apex Court had awarded in the case of M/s H.M.T. It has also been stated that letter from Head, Nuclear Research Laboratory, Jammu to Regional Director, AMD, Jaipur dated 4.6.1992 (Ann.A5) would show the background against which his transfer to Jaipur was recommended. He has again cited the case of one Smt. Asha Raina, who was also transferred on her request from Jammu to Delhi along with her post as a consequence of which she was not asked to forgo her seniority. Only after knowing of this, the applicant had represented to protect his seniority. The respondents themselves had transferred many other employees after closing the office at Jammu soon after the transfer of the applicant and none of the employees were asked to forgo their seniority, though their transfer was also on account of situation in Kashmir Valley. Thus the applicant has been given different treatment. He could also have been similarly adjusted in an existing vacancy.

6. In their additional reply to the rejoinder, the respondents have reiterated what they have stated in their reply. It is

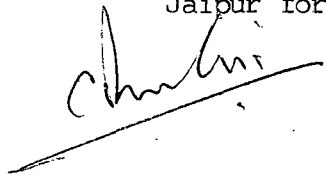
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submitted that the condition regarding fixing of the seniority in the new unit was/is in conformity with the rules, the applicant was only communicated the conditions prescribed by the AMD, who are the authorities to fix seniority of the applicant now. The applicant has accepted the conditions prior to the transfer and but for his acceptance of the same, he would not have been posted to a station of his choice. It has also been submitted that the transfer of staff working in NRL, Jammu had become inevitable due to prevailing law and order situation there; however, the employees were transferred to different stations depending upon the availability of vacancies. In the case of applicant, he was posted to a station of his choice on his own request, hence his seniority was fixed in accordance with Rules.

7. Respondent No.3, the AMD, Jaipur, have more or less supported the reply filed by the first two official respondents. It has been reiterated that the cadre to which the applicant belongs is not a centralised cadre in the Department of Atomic Energy. BARC and AMD are two separate constituent units of DAE and hence, the stenographic staff working in BARC and AMD are considered for promotion separately based on their continuous service in the respective units and not on the basis of combined service unless the transfer was in public interest in the exigencies of service. The applicant had requested for a transfer to AMD, Jaipur on personal grounds and, therefore, his seniority will be only from the date of joining AMD, Jaipur. If the case of the applicant is considered for promotion as Senior Stenographer Gr.II now at AMD, then he will supersede all the 26 Stenographers in the ^{Departmental Examination} seniority-cum-fitness quota, including those who are already empanelled.

8. We have heard the learned counsel for the parties and have perused all the material on record.

9. We find that upto the point when the National Research Laboratory of the BARC, Shrinagar was shifted to Jammu, all the employees were treated equally. Therefore, the applicant himself took the initiative of applying for a transfer to a particular place Jaipur and that too in another constituent unit of DAE i.e. the Regional HQ of AMD at Jaipur. His representation dated 27.4.1992 (Ann.R1) indicates that the request for transfer to Jaipur was on purely personal grounds - his wife's transfer to the office of AG, Jaipur, his having shifted his children from Jammu to Jaipur for the sake of their education and care of his parents. His



organisation, NRL/BARC, Jammu took his request very sympathetically and requested the AMD, Jaipur to explore the possibilities of accommodating the applicant at Jaipur. The Headquarters of the AMD wrote to BARC, Bombay (Ann.R2) that the request of the applicant was considered sympathetically and the applicant was asked whether the two conditions stipulated by AMD, including the condition that seniority of the applicant in the grade of Jr. Stenographer in AMD will be reckoned from the date of his reporting for duty in AMD, Jaipur were acceptable to him. The applicant vide letter dated 17.11.1992 (Ann.R4) not only accepted the two conditions without any protest/clarification etc. but requested that necessary transfer orders may be kindly issued urgently. Thereafter the transfer order dated 30.11.1992 (Ann.R5) was issued, wherein it was specifically mentioned that as the transfer was on his own request, he is not entitled to Transfer TA/Joining Time/ Joining Pay etc. Thereafter the applicant made a representation to the Head, BARC to recommend and sanction his transfer TA etc. as was done in other cases also. The respondents, in order to extend this concession to the applicant, modified the transfer order dated 30.11.1992 by the order dated 6.1.1993 treating the transfer "as in public interest and as such, he is eligible for TA/DA and Joining Time as per rules". Against this background, where the applicant has been extended repeated benefits on sympathetic consideration of his requests, we are of the opinion that the aforementioned modification did not alter the fact that the transfer of the applicant was on his own request and that too to another cadre and, therefore, his seniority has to be determined from the date he joined AMD, Jaipur.

10. It has also been clarified by the respondents that the applicant does not belong to a centralised cadre in the DAE and BARC and AMD are two separate constituent units of DAE and hence, the stenographic staff working in BARC or AMD are considered for promotion separately based on their continuous service in the respective units. It has been emphasised that, as per rules, when an employee prays for a transfer, his seniority is counted from the date he joins at the transferred place and in case the applicant's seniority is protected, he will supersede 26 stenographers in AMD, out of which 13 were empanelled for promotion under Departmental Examination quota and 4 under seniority cum fitness quota. In view of this also, it is not possible to accept the contention of the applicant that he should be allowed to carry his seniority to the separate cadre of Stenographers in another constituent unit of the

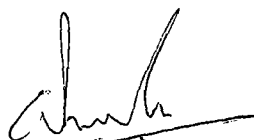


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11. The contention of the applicant that certain other employees of NRL/BARC Jammu were allowed the protection of seniority is not acceptable as it has not been established by the applicant that any of them had sought transfer to a particular place on request. The applicant has specifically requested for a transfer to AMD, Jaipur and is, therefore, not in the same boat. We also feel that the judgment of the Apex Court in the case of Veerendra Kak and Ors. v. HMT, a copy of which is placed alongwith Ann.A1 is not a judgment in rem and has been delivered against a certain stand taken on behalf of the concerned authorities therein and is distinguishable from this case in view of the background, facts and circumstances.

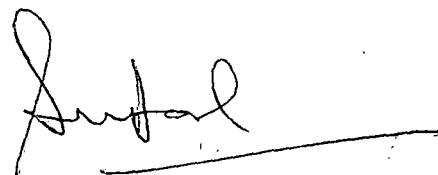
12. The applicant has tried to develop a new line of argument in his rejoinder to support his plea that the undertaking he had given was forced on him by the weight of circumstances. It has now contended that since "Kashmiri Pandits" were having a tough time even at Jammu, he was compelled to give the undertaking. The applicant has all our sympathies but this plea is not tenable. The applicant is a Government employee and there must be thousands of Government employees, including a substantial number of "Kashmiri Pandits", who are braving it out and rendering service within the disturbed conditions prevailing at Jammu. There are also thousands of refugees belonging to this community, who are living at Jammu in tents and such other temporary shelters. Just because the applicant is a member of a particular community, which, of course, had to suffer a lot in Kashmir Valley, does not mean that he will be allowed to sit over a larger number of stenographers as their senior after getting transferred to their cadre on his own request. In the peculiar background of his case, we have no alternative but to hold that the applicant cannot build his case of seniority over the employees working in the organisation to which his conditional transfer was allowed, on the foundation of reliefs extended to him by two sympathetic but separate seniority units within DAE, when the transfer was on the location specific request made by him and a modified transfer order was issued, as having been made on public interest, again on his request, just to enable him to become entitled to the Transfer TA/DA, Joining Time etc.

13. The Original Application, therefore, does not succeed and the same is accordingly dismissed with no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member