

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Mar 1st 2012
On
31/3/12

O.A. No. 366/2002

199

~~Case~~ No.

Gopal Singh

DATE OF DECISION _____

M.K.Gupta

Petitioner

Mr.C.B.Sharma

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr.Virendra Lodha

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Adm.Member

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 ?

(Gopal Singh)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 11.02

OA 366/2002

M.K.Gupta, Assistant Accounts Officer O/o Divisional Engineer Telecom Project S-6, Ajay Sadan, Hawa Sarak, Jaipur, under transfer to O/o Dy.General Manager, Telecom Project, Dehradun.

... Applicant

Versus

1. Union of India through Secretary, Department of Telecommunications, Sanchar Bhawan, Ministry of Communication, New Delhi.
2. Chief General Manager, Northern Telecom Project Circle, Eastern Court Complex, New Delhi.
3. Dy.General Manager (Finance)/IFA, Northern Telecom Project Circle, Eastern Court Complex, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

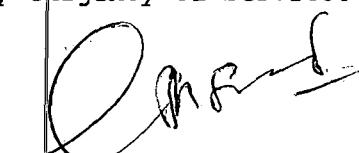
For the Applicant ... Mr.C.B.Sharma

For the Respondents ... Mr.Virendra Lodha

O R D E R

PER MR.JUSTICE G.L.GUPTA

The applicant was initially appointed as Telephone Operator on 14.11.86. He was appointed as Junior Accounts Officer on his passing the departmental examination and posted at Delhi in the year 1995. He was transferred to Jaipur at his own request. In September, 1997, he was transferred from Jaipur to Delhi. He challenged the said transfer order by filing OA 432/97. During the pendency of the said OA the grievance of the applicant was redressed. Therefore, he withdrew that OA. Thereafter, the applicant was transferred to Jodhpur in the year 1999. On 31.5.2001 he was retransferred to Jaipur, where he joined on 13.6.2001. Vide impugned order dated 25.6.2002 (Ann.A/1) he has been transferred from Jaipur to Dehradun. The applicant made representation against the impugned transfer order. His grievance having not been redressed, he has filed this OA challenging the said transfer order on the grounds that some persons have been accommodated and have been given their choice place of posting depriving the applicant of this benefit. It is averred that the respondents have not followed the guidelines of transfer, and the applicant has been transferred just to harass without any exigency of service. It is also stated that the applicant has been



transferred in the mid academic session and due to this transfer the education of his children will be adversely affected.

2. In the counter, the respondents' case is that the transfer order has been issued in public interest. It is denied that the order has been issued to harass the applicant. It is stated that no guideline of transfer has been violated. It is further stated that wife of the applicant is also in service and, therefore, there is no difficulty in carrying out the education of the children in Rajasthan.

3. We have heard the learned counsel for the parties and perused the documents placed on record.

4. The contention of the learned counsel for the applicant was three folds. First, the applicant has been punished by way of transfer on account of his absence from duty on 2.1.2002, which is evident from the reply. Second, the respondents have discriminated the applicant as they have not accommodated the applicant at Jaipur and have accommodated Shri Ram Pal and Shri U.C.Gupta. Third, the transfer order has been issued in the mid academic session and education of the children of the applicant is likely to affect adversely. He cited the case of Director of School Education, Madras & Ors. v. O.Karuppa Thevan & Anr., (1994) 28 ATC 99.

5. On the other hand, the learned counsel for the respondents contended that scope of judicial review in the matter of transfer is very limited and the Court is not justified in interfering with the order of transfer when it is not stated that the authority issuing the order of transfer was not competent to transfer the applicant, or that the transfer order is against some statutory provisions or that the order of transfer is mala fide. He placed reliance on the cases of State Bank of India v. Anjan Sanyal & Ors.- 2001 SCC (L&S) 858, National Hydro v. Shri Bhagwan - (2001) 8 SCC 574, and State of MP v. S.S.Kaurav - AIR 1995 SC 1056.

6. We have given the matter our thoughtful consideration.

7. It is now settled legal position that the transfer is the condition of service and the court should not interfere unless it is shown that it is against the service rules, or the authority issuing the transfer order was not competent or that the transfer order suffered from mala fide. This principle has been laid down in the rulings relied on by the learned counsel for the respondents.

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8. In the instant case, it is not stated by the applicant that the transfer order has been issued against the provisions of some rules or that the order has been issued by an authority not competent to transfer the applicant. It is also not stated in so many words that the applicant has been transferred because of mala fide. What is stated is that the respondents have transferred the applicant just to harass him.

There is no averment in the OA that the transferring authority had animus against the applicant or had any other cause to harass him. On the vague averment of harassment it cannot be found that the transfer order was not issued in public interest and was issued to harass the applicant.

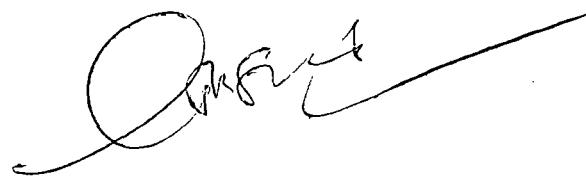
The learned counsel for the applicant did not point out that any of the guidelines of Ann.A/6 has been violated when the applicant has been transferred.

9. The emphasis of the learned counsel for the applicant was that children of the applicant had sought admission and deposited the fee in various schools and if the children are taken out from the schools, great financial hardship will be caused to the applicant. It is not disputed that wife of the applicant is also in service. She is, therefore, available at Jaipur and there cannot be any difficulty in the continuance of the education of the children at Jaipur.

10. As to the ruling cited by the learned counsel for the applicant, it may be stated that in the said order it was clearly stated that there is no rule whereunder the transfer can be ordered to take effect after closure of the academic session. Keeping in view the peculiar circumstances of that case, their Lordships had stayed the implementation of the transfer order for one academic session.

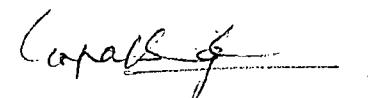
11. The applicant also cannot get relief on the ground of alleged discrimination. The matter of transfer of each individual is considered on facts placed by the individual for cancellation of the transfer order or for his transfer to a particular place. If the authorities were satisfied with the grounds advanced by some individuals, the applicant cannot get relief on that basis.

12. Simply because there is an averment in the reply that the applicant had absented himself from duty for one day, it cannot be

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inferred that the transfer order has been issued to punish him. It is relevant to state that the said absence period has been considered as dies non without break in service, which shows that the respondents themselves were sympathetic to the applicant.

13. Having considered the entire material on record, we find no merit in this OA and dismiss it. No order as to costs.



(GOPAL SINGH)

MEMBER (A)



(G.L. GUPTA)

VICE CHAIRMAN