

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI - 5

O.A. No. 157/94
T.A. No.

DATE OF DECISION 16.9.94

Shri Niranjan Prasad Singh

PETITIONER(S)

Sri P Choudhuri, Shri M Chanda, &
Sri M K Saikia

ADVOCATES FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri A K Chowdhuri, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

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 the Judgement is to be circulated to the other Benches?

yes

no

Judgement delivered by Hon'ble Justice
SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 157/94

Date of decision : This the 16th day of September, 1994

The Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman

The Hon'ble Shri G.L.Sanglyine, Member (Administrative)

Shri Niranjan Prasad Singh,
Son of late Ramnarayan Singh,
U.D.C. (E 2 Section)
C/o Garrison Engineer Missamari
P.O. Missamari
Dist. Sonitpur
P.I.N. 784506 (Assam) Applicant

By Advocates Sri P Choudhuri, Sri M Chanda & Sri M K Saikia

- versus -

1. Garrison Engineer,
Missamari,
Dist. Sonitpur
P.I.N.-784506,
Assam

2. Commander Works Engineer(C.W.E.)
P.B. No. 31
Tezpur
Dist. Sonitpur
P.I.N. - 784001

3. Chief Engineer,
Eastern Command
Fort William
Calcutta-21

4. Army Headquarters
E in Chief DHQ
P.O. New Delhi
New Delhi-3

..... Respondents

By Advocate Sri A K Chowdhuri, Addl.C.G.S.C.

ORDER

CHAUDHARI J (V.C.)

The respondents have not as yet shown any cause as to why interim relief should not be granted. Mr. Chowdhury stated that the reply has been drafted and it will take

some more time for filing the same. Since the very object of interim relief, if the applicant is found entitled to the same, is likely to be frustrated by further delay we have proceeded to hear the Learned Advocate for the applicant in order to get satisfied that any prime-facie case has been disclosed by the applicant so as to persuade us to admit the petition and grant interim relief. Accordingly Mr. Chanda has been heard at length.

1. The applicant is a Civilian Upper Division Clerk (Personnel working in the office of Garrison Engineer, Missamari, Assam under the Eastern Command. Prior to 27.4.90 he was posted at Chabua and had worked there ever since 2.2.1965. He has been working at Missamari since 27.4.1990. Missamari is a tenure posting. Applicant has completed three years of tenure posting.

2. By Order dated 8.10.1993 (Annexure-A) issued in the interest of State - under the heading "Posting/Transfer on turn over Civilian SUB : UDC" issued by the officiating Lt. Col. (Personnel) on behalf of the Chief Engineer, Hqrs. Eastern Command Engineers Branch, Fort William Calcutta, amongst 7 persons the applicant (U.D.C.) has been posted from under Garrison Engineer, Missamari to C.W.E., Dinjan.

3. The applicant submitted a representation against his transfer to Dinjan as aforesaid to the Chief Engineer, Headquarters, Eastern Command on 27.10.1993. Further representation was filed by him to the same authority on 15.6.1994. G.E., Eastern Command informed the C.E., Shillong Zone as well as G.E., Missamari and C.W.E. Dinjan on 23rd July, 1994 that the case of the applicant for diversion of posting was examined in depth and rejected and the applicant should be directed to move forthwith and send compliance report by 5th August, 1994. Pursuant to that direction the G.E., Missamari passed an order on 5.8.1994 informing the applicant that he was permanently

transferred to CWE Dinjan in the interest of state and that he will be relieved from his office on 12th August, 1994. He was directed to report to the new formation. It was stated that he would be eligible to draw usual T.A/D.A. and pay allowance.

4. Another representation was submitted by the applicant to the Chief Engineer, Headquarters, Eastern Command on 5.8.1994 (Annexure-G) for reconsideration of his request for diverting his posting either to Narangi or Borjhar instead of CWE Dinjan as he was put to great hardship by reason of his transfer to Dinjan for which he had not given his choice. That does not appear to have found favour with the respondents. Thereafter the applicant has approached this Tribunal on 10th August, 1994 seeking the relief that the respondents may be directed to consider his prayer for his transfer to a choice station namely, Narangi, Borjhar and Jorhat and the impunged orders dated 8.10.93 and 5.8.93 be set aside and quashed.

5. Ordinarily the Tribunal would not interfere in the matters of internal administration of Government Departments. Exception can be made only where a very strong case of illegality or manifest failure of justice is made out or where the action is shown to be malafide. It is not the function of the Tribunal to find out as to which clerk or officer should be transferred where that would depend upon the needs of the department and the Heads of the department would be primarily concerned with it. Proper remedy of an aggrieved employee in matters of transfer would be to file representation to the superior authorities and the matter should ordinarily rest there. In the instant case of transfer of the applicant was affected on 8.10.93 by the Headquarters after considering his representation made to the Chief Engineer, who however rejected the same after the grievance of the applicant

was examined in depth. The applicant had represented that he was dissatisfied with his transfer to Dinjan and he should be transferred at the place of his choice where according to him vacancies were available and where he could ^{be} conveniently transferred. That representation having been considered by the competent authority it is difficult to interfere with the decision taken by the Headquarters.

✓ As observed in ~~AIR 1989 S.C. A.R. 1989 S.C.P. 1433 (Gujarat Electricity Board and anr v. Alimaram Sungonmal Poshani):~~

" Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant fails to proceed in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules".

6. In the instant case whatever difficulties the applicant had placed before the competent authority were considered by the competent authority who has not chosen to cancel the order of transfer. It would not therefore be correct to interfere in the matter. In the case of Union of India vs. H.N.Kirtania (1989) 3 Supreme Court 481 it has been laid down that:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides".

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7. At the outset we have already stated that these are the only two circumstances in which an order of transfer may be interfered with. It is pertinent to point out that the impugned order dated 8.10.93 shows thus the transfers were made in the interest of state. Likewise in the order dated 5.8.1994 it has been stated that the transfer of the applicant was made in the interest of state. That implies that the authorities concerned had found it necessary to transfer certain employees from one place to another in the interest of state and had transferred the applicant.

8. Let us now proceed to examine the ground on which the order of transfer has been challenged. According to Mr. Chanda

the order is contrary to the policy circular issued by the Headquarter of Eastern Command dated 27.9.91. He ^{submits} pointed out that under paragraph 27 of the circular (Annexure-B) an individual serving in a tenure station is entitled to submit choice for three stations but where he gives choice of only one station, he ought to be posted ^{at} any normal station. The applicant had given choice of only one station i.e. Narangi. However he has been transferred from one tenure station to another tenure station instead of a normal station and thus that is inbreach of paragraph 27. It does not appear that Missamari is a tenure station as well as Dinjan is a tenure station. Relying on paragraph 28 of the circular it is submitted that as the applicant had completed his tenure at Missamari he should have been considered for being transferred to a normal station but although there is vacancy available at Narangi the respondents have transferred the applicant ^{to Dinjan instead and} that is illegal. In the representation dated 27.10.93 the applicant had made a grievance that he was posted at Dinjan by depriving him the benefit of choice, from one tenure station to another.

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tenure station contrary to the existing policy and that
 ✓ was done without asking for ^{his} willingness of the applicant
 ✓ in that respect and ^{he} ^{had been} refused for posting him at Narangi.

9. We are not impressed by the contention that there is an illegality committed by the respondents in effecting the transfer of the applicant to Dinjan. In our view even if the policy contained in paragraphs 27-28 of the circular (Annexure-B) was not strictly followed that would not introduce any illegality in the action of the respondents. Essentially it was for the authorities concerned to determine as to - where the services of the applicant were required and it would follow that they had found it necessary to transfer him to Dinjan. The grievance of the applicant was considered by the superior authority and still the transfer was maintained. We do not think that we can substitute our opinion on the point as to whether the services of the applicant were required at Dinjan or not particularly since the transfer was made in the interest of the state. It
 ✓ cannot be held that the decision of the respondents is ~~capricious~~
 ✓ whimsical.

10. The applicant has merely alleged in paragraph 8 of the application that the order is malafide. No particulars have been given to substantiate that allegation. The basic bare allegation is not sufficient to make out the case of malafides. No interference in the impunged orders is possible on that ground.

11. Lastly, we proceed to examine the grievance of the applicant that his several personal difficulties have not been considered by the respondents. He had purported to point out these difficulties in his representation dated 27.10.93, Annexure C. He had stated that his choice station is Narangi.

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because his children are studying in higher classes and he has to look after their welfare and future life. However, he also requested that his case may be considered on sympathetic ground he being a poor clerk in the department and he may be posted at Narangi on humanitarian ground. In his representation dated 15.6.1994 he again made a request for consideration of his case on sympathetic and humanitarian ground and as the school session was going to start from 1st week of July, 1994. In the last representation dated 5.8.1994 once again he stated that his children are studying in higher classes in Central School and he has to ^{look} to the welfare and future life of the children. In the application he has stated that the transfer was illegally effected as it was during the middle of the academic year of his children and his transfer would cause hardship not only to him but also to his children resulting in loss of their academic year. This difficulty would be faced by many persons in Govt. service when transferred from one place to another and by itself would not afford a ground to challenge the transfer. However a transfer in the middle of an academic ^{year} which is likely to disturb the children may ordinarily be avoided. The difficulty in the way of the applicant in this respect however is that he has nowhere stated that his children are studying at Missamari presently and more importantly he has also not stated that adequate facilities would not be available at Dinjan. Moreover, the applicant having requested time and again for posting at Narangi it implies that he had no genuine difficulty on account of schooling of his children and he was willing to shift from Missamari. It is therefore difficult to understand as to how the position will be different if he was to shift ^{to} some other place instead Narangi. We are not therefore inclined to interfere on this ground.

12. In the Policy circular there is a provision for compassionate posting. That can be considered amongst other grounds on medical ground. Domestic grounds also can be taken into account. In paragraph 11 of the representation dated 5.8.1994 the applicant had pointed out that his wife was suddenly taken seriously ill and had to be admitted in the hospital at New Delhi in February, 1994 and a major operation had to be done on 15.3.1994 and that his wife is advised not to do any hard work and to take full rest for one year. We think that there was room for the respondents to have considered this ground sympathetically.

✓ Moreover in paragraph 12 of the representation the the applicant had asked for an opportunity of personal hearing by the CE/CE(P) so that he could explain his grievances more effectively. We feel that in fairness a second look at the difficulties of the applicant on the grounds of education of children & sickness and ill health of applicaht's wife would be justified even if it is not possible for us to interfere with the impunged action. The AS for the request of the applicant for personal hearing though ~~not be~~ ^{respondents m} not be bound to do so yet in our view it will be desirable if personal interview hearing could be given to the applicant by CE/CE(P) ^{or any other} so as to appropriate authority ^{so as to} afford an opportunity to him to place all his grievances before the authority.

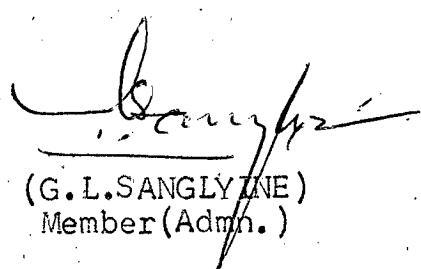
13. Consequently we direct the respondents to reconsider the case of the applicant in the light of what is stated above after affording him opportunity of personal ^{interview} ~~hearing~~ and thereafter take a suitable decision. We expect such reconsideration to be done within a period of two months from the date of receipt of copy of this order. It is made clear that the decision is left entirely to the discretion of the authorities of the respondents.

14. At this stage Mr. Chowdhury submits that the application may be finally disposed of in ^{terms} ~~merits~~ of the above order. Mr. Chanda agrees. Hence application is admitted. Mr. Chowdhury

waives notice on behalf of respondents. By consent application is taken up for final disposal and following order is passed.

15. In the light of the directions given above in the judgement the application is dismissed with no order as to costs. It is made clear that no stay of the impunged orders is granted and the applicant is expected to comply with the transfer order immediately subject to the decision by respondents after reconsideration of the matter and such further order as may be passed thereafter. A copy of this order be furnished to Shri A K Chowdhury, Addl. C.G.S.C. for the respondents who is requested to forward the same to the respondents concerned for their information and to enable them to take necessary steps in the light of above directions.


(M.G. CHAUDHARI)
Vice-Chairman


(G.L. SANGLYINE)
Member (Admn.)

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