

PETITIONER:
CHIEF GENERAL MANAGER (TELECOM) N.E. TELECOM CIRCLE & ANR.

Vs.

RESPONDENT:
SHRI RAJENDRA CH. BHATTACHARJEE AND OTHERS

DATE OF JUDGMENT 18/01/1995

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
AGRAWAL, S.C. (J)

CITATION:
1995 AIR 813 1995 SCC (2) 532
JT 1995 (1) 440 1995 SCALE (1) 250

ACT:

HEADNOTE:

JUDGMENT:
FAIZAN UDDIN, J.:
1. Leave granted.
2. Arguments of the learned counsel for the parties heard.
3. The short question that arises for consideration in this appeal is whether the transfer of a civilian employee of the Central Government serving in the States and Union Territories of North Eastern region, to a station of their choice as far as possible, is a condition applicable even to those officers and employees who belong to that region itself and are appointed and posted at any station within that region by virtue of the office memorandum No. 20014/283-E.IV dated 14.12.1983, the relevant part of which read as under:-

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee 442 under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the committee have been carefully considered by the Government and the President is now pleased to decide as follows office :
(1) Tenure of posting/deputation
There will be a fixed tenure of posting of 3

years at a time for officers with service of 10 years or less and 2 years at a time for officers with more than 10 years of service. Periods of leave training etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of Om: Central Government employees to the states/ Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public services as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) -----

(iii) Special (Duty) Allowance

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will however, not be eligible for this special (Duty) Allowance special (Duty) Allowance will be in addition to any special pay and/or deputation (Duty) Allowance already being drawn subject to the conditions that that total of such special (Duty) Allowance plus special pay/P.M. special Allowance like special compensatory (Remote Locality) Allowance Construction Allowance and project Allowance will be drawn separately."

4. The respondent No. 1 was originally appointed as Wireless Operator in the department of Post & Telegraph in the year 1964 and posted at Bandilla in the State of Arunachal Pradesh and thereafter he has been working ever since in the North Eastern region of India and presently posted as Assistant Engineer at Dimapur. The detail of his postings at various places in the North Eastern region is set out herein below.

YEAR OF POSTING PLACE OF POSTING

- | | | |
|-----|------------------------|--|
| 1. | 1964 | Bemdda as Wireless Operator |
| 2. | 1965 | Agartala as Wireless Operator |
| 3. | 1967 | Lungleh (Mizoram) -do- |
| 4. | 1968 | Guwahati -do- |
| 5. | 1969 | Agartala -do- Supervisor |
| 6. | 1971 | Aizawl As Engg. Supervisor |
| 7. | 1973 | R.K. Pur
(Udaipur Tripura State) -do- |
| 8. | 1978 | Agartala -do- |
| 9. | 1983 | Two
(Garo Hills, Meghalaya) -do- |
| 10. | 1984 | Agartala -do |
| 11. | 1.5.87 to
17.1.90 | Agartala as SDO Telegraphs |
| 12. | 18.1.90 to
23.10.90 | Shillong as ALE. |
| 13. | 20. 10.90 to | |

15.7.93 Tuensang as A-E.

14. 16.7.93

continued Dimapur as A-E.

5.The Government of India with a view to attract and retain competent offic-

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ers for services in the North Eastern region issued the memo dated 14.12.1983 the relevant part of which is reproduced above laying down that "there will be a fixed tenure of posting of three years at a place for officers with service of ten years or less and of two years at a time for officers with more than ten years of service..... Officers on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible". On the basis of the aforesaid memo of the Government of India the respondent No. 1 claimed posting at Agartala as the station of his choice contending that he had completed service of two years tenure period in the North Eastern region. But the Chief General Manager, North Eastern Telecom Circle, Shillong by order dated 8.7.1993 transferred the respondent No. 1 to Dimapur. Being aggrieved by the aforesaid order of transfer the respondent No.1 approached the Central Administrative Tribunal contending that he had served at Tuensang (Nagaland) as Assistant Engineer, Computer from 24.10.1990 to 15.7.1993 and had thus completed tenure period of two years and, therefore, on the basis of the Central Government memorandum referred to above had acquired the right of a choice posting and as his choice station was Agartala he should be posted there and not at Dimapur (Nagaland). The Central Administrative Tribunal, Gauhati Bench, in Original Application No. 268 of 1993 accepted the contention advanced on behalf of the respondent No. 1 and by its order dated 25.1.1994 held that the respondent No. 1 had acquired the right of choice posting as he had completed tenure posting in hard zone i.e. North Eastern region and he was, therefore, entitled to posting at Agartala. Consequently the Tribunal directed to transfer the respondent No. 1 from Dimapur to Agartala against a vacant post of Assistant Engineer, Telecommunication within 21 days of the receipt of the said order and if no vacant post is presently available, the respondent shall be transferred to Agartala in the next available vacancy. It is this order of the Tribunal which has been challenged in the present appeal.

6.Learned counsel appearing for the appellant contended that it is clear from the Central Government memo dated 14.12.1983 that the consideration for posting at a station of choice is provided only for those officers who come to North Eastern region to complete their tenure posting and the said choice is not available to those officers who are appointed and posted in the North Eastern region itself and that even otherwise the posting at the station of choice is not a mandatory condition. We find much force in these submissions. A bare reading of the memo dated 14.12.1983 will go to show that it is meant for attracting and retaining the services of competent officers in the NorthEastern region, from other parts the country and the expression tenure posting will imply the posting of officers in that region from outside the region who have been attracted from other parts of the country and the region other than the North Eastern region and not the persons belonging to that very region where they are appointed and posted. This was also the view expressed by this Court in Union of India & Ors. v. Vijay Kumar & Ors. [JT 1994 (6) 443]. The point for consideration in Vijay Kumar's case (supra) was whether the

respondents of that case were entitled to special duty allowance even though they are residents of North Eastern

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region merely because of the posts to which they were appointed were of "All India Transfer Liability". After considering various memorandums of the Central Government including the one dated 14.12.1983 which is in question before us and after due consideration this Court took the view that the said memorandums clearly indicated that the allowance was meant to attract persons outside the North Eastern region to work in the region because of inaccessibility and difficult terrain. This view was taken particularly because even the 1983 memorandum referred to above stated that the need for allowance was felt for "attracting and retaining" the service of competent officers for service in North Eastern region. Applying the same analogy it can well be said that the 1983 memorandum with regard to the choice posting after the tenure posting is available only to persons belonging to the region other than the North Eastern region. Admittedly the respondent No. 1 belongs to North Eastern region and Agartala which is in the State of Tripura is his home town. There is also no dispute that he was originally appointed and posted in that region and the detailed chart given in para 3 above will go to show that all through he has been posted at places within the North Eastern region ever since his appointment and for most part of his service career he was posted at Agartala. It is evident from the chart showing the details of his places of postings that he remained at Agartala between 1965 to 1967 and 1969 to 1971. He was again transferred and posted at Agartala in 1978 where he remained till 1983. In 1984 he was again posted at Agartala. Thereafter he remained posted at Agartala from 1.5.1987 to 17.1.1990. Thus for most of the part of his service the respondent No. 1 was posted at his home town, Agartala.

7. It is needless to emphasize that a Government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting. Since the respondent has no legal or statutory right to claim his posting at Agartala and, therefore, there was no justification for the tribunal to set aside the respondent's transfer to Dimapur.

8. Apart from the above facts the appellants have stated in the memo of appeal which is supported by an affidavit filed by Shri P.C. Chaturvedi, Vigilance Officer of the Office of Chief General Manager, N.E. Telecom Circle, Shillong that during the last posting of respondent No. 1 at Agartala from 1.5.1987 to 17.1.1990 a number of complaints were received from the staff unions against him. There are also several complaints of various irregularities committed by the respondent No.1 which are being separately investigated by the vigilance department and a copy of a complaint signed by 270 employees has been filed as Annexure 'B' along with the memo of appeal. In these facts and circumstances the posting of respondent No. 1 at Agartala would not be justifiable from the administrative point of view also. The transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. In the present case we find no such grounds. On the contrary, as discussed above, the respondent remained

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Agartala for most of the period. In the facts and circumstances stated above the claim of the respondent No. 1 for choice posting cannot be accepted and for that reason the impugned order of the tribunal could not be sustained. In the result the appeal succeeds and is hereby allowed. The impugned order of the tribunal dated 25.IA994 is set aside and the application filed by the respondent No. 1 before the tribunal is dismissed but without any order as to costs.

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JUDIS