

(2013) 03 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) 1470 of 2012

Union of India and Others

APPELLANT

Vs

Vinod Aggarwal

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0215

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rajesh Katyal, for the Appellant; M.K. Bhardwaj, Advocate and Ms. Minal Sehgal, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The respondent, after serving for 19 years reached the stage of exercising a choice for a posting which he did, resulting in respondent being posted at Delhi for the first time on August 06, 2008; by said date the respondent who had joined as a DFO(M) with the Sasashtra Seema Bal (SSB) on June 22, 1989 had served the organization and the country well for 19 years. His grievance was of being transferred out of Delhi as per order dated April 16, 2010. This was within less than two years of he having worked at Delhi. Respondent placed reliance upon the transfer policy which envisages tenure of 5 years at a place of posting.

2. The respondent pointed out instances of people who had served for tenure longer than him at Delhi, and in particular pointed out the case of one Dilbagh Singh who had served for 4 years. Since the transfer order was being defended by SSB on the application of principle of: "exigencies of service", the petitioner would urge before the authorities that if "exigencies of service" had to be applied as a principle to over-reach the transfer policy then the principle: "first come to go first" should have been applied i.e. if the tenure at choice of posting had to be curtailed then why not the person who had availed the maximum benefit of the choice.

3. Respondent's arguments have found favour with the Tribunal.

4. Suffice would it be for us to state that on issues of transfer policy and especially when department relied on "exigencies of service", it would be difficult for a Court or a Tribunal to start comparing the tenure of individuals.

5. For example, there may be exigency of work in a hill station where a young man may be expected to work better than a middle aged or an old person. Can an argument then be premised that since middle aged or an old person has worked in Delhi longer than the young man who was sought to be transferred, the principle of "first come to go first" should be applied. The answer would be "No". The reason is obvious. The hill station, the altitude, the arduous duties to be performed, would require a fit young man to be posted.

6. Thus, declaring that the legal approach of the Tribunal is incorrect, we relieve the writ petitioner from the rigors declared by law as per impugned order dated April 19, 2011 but we do not set aside the order for the reason we find that the respondent had the benefit of an interim stay against his transfer till the Original Application got decided.

7. In the instant writ petition, though prayed for, no ad-interim stay of the direction issued by the Tribunal was passed. As a result, the respondent has continued to serve in Delhi till today. As per the transfer-posting policy relied upon by the respondent, the maximum right he would have to serve in Delhi would be August 6, 2013. As we are at the end of March, 2013 the date August 6, 2013 is merely 4 months away. The respondent has two children; one in class 12 and other is in college, the children have to take their Board and College examinations.

8. Declaring the legal position as above, we maintain the findings of the Tribunal as per impugned order dated April 19, 2011. The writ petition stands disposed of but without there being any order as to costs.

CM No. 3221/2012

Dismissed as infructuous.