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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2216/2002

New Delhi, this the 14th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

M.W. Khan,
S/o Late Shri M.A. Khan,
AE E/M AGE (T) GE (U) E/M Meerut Cantt,
R/o 738, Khair Nagar Gate
Meerut City (U.P.) Applicant

(By Advocate : Shri R.K. Shukla)

Versus

1. Union of India
Through Secretary, Govt. of India,
Ministry of Defence, New Delhi
2. Lt. Gen. A.N. Sinha,
The then E in C,
E in C Branch, PHQ, Kashmere House,
New Delhi
3. Engineer-in-Chief,
E in C Branch, AHQ, Kashmere House,
New Delhi
4. Major V.S. Patil, The then GE (U) E/M,
Meerut Cantt.

(By Advocate : Shri Rajiv Bansal, proxy for
Shri B.K. Aggarwal Respondents

O R D E R

Heard.

2. This application has been filed against the order of respondent No.4 issued on 1.12.1999 transferring the applicant from Meerut to Jabalpur. Incidentally, the applicant had also filed a Writ Petition against the said impugned order before the Hon'ble Allahabad High Court, but the same was dismissed with the following observations/direction.

"Heard. learned counsel for the Petitioner. Petitioner has challenged his transfer order from Meerut to Jabalpur. Petitioner is working on a transferable post. Transfer is an exigency of

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the service. Hence, we are not inclined to interfere in the impugned order. Moreover, the petitioner is a civilian in the armed forces and hence in our opinion, Section 2 (a) of the Administrative Tribunal Act does not apply. The said provision applies only to army personnel not for civilians in the armed force. Hence, petitioner may approach the Central Administrative Tribunal. The Writ Petition is dismissed accordingly".

Accordingly, the applicant has filed this OA.

3. At the very outset, the applicant has drawn similarity of his case to the ones decided on 9.2.2001 in OA No.300/2000 and OA No.720/2000 of NES-430886 by the Principal Bench of this Tribunal. Though he has not elaborated the reasons therefor, except making a reference to the fact that the applicant in the said OAs had allegedly been tortured by the Department and who could not survive and finally expired on 31.7.2001 after complying with the Movement Order dated 4.6.2001 issued by GE (S) Meerut.

4. The applicant has alleged that the impugned Movement Order is linked with his reduction in post and pay scale by G.E. Agra in June, 1963. Hence, a reference by him to his representation submitted in the matter on 20.12.1965 which remains pending with the MES authorities till date. He has also alleged that the impugned order has something to do with his non-cooperation with his seniors and their associates in corruption and anti-national activities from the beginning of his service till date and further that the said impugned order has been issued with a malafide against him. He appears to be having a grievance that he was not assigned execution duties throughout his service of 39 years and that he was assigned duties relating to maintenance and operation

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only of MES E/M installations for 10 years.

5. Giving the back-ground of his case, he has submitted that after passing Diploma in Mechanical Engineering from AMU Polytechnic, Aligarh, he was appointed as Supdt. E/M-II in the pay scale of Rs.180-380, and while most of his colleagues of the said Polytechnic were appointed under CEEC and other Commands earlier or later, in his case there was illegal reduction in post and pay scale by GE Agra beyond his competence and jurisdiction. He has also referred to loss of his seniority in Supdt. E/M-II post for the period 25.3.1963 to 29.7.1963, which resulted in his late consideration for promotions from time to time. He has also referred to his frequent transfer in the past, retaining his juniors and seniors in the Station, and that the impugned transfer order is one of them. He seems to have represented against it on 2.6.1964, 19.8.1965, 20.12.1965, 23.4.1998 and 4.2.1999. These representations have remained unresponded to. These representations have, however, led to the applicant's transfer from GE Gorakhpur to GE Roorkee, and further that the date of the said transfer has, however, not been indicated. Reference has also been made to other sundry problems which the applicant has been made to face. He has alleged that in the matter of promotion as was recommended for him to the post of E/M-I in the year 1971/1972, he was placed below 17 - 18 juniors. Some names have been given by him in this regard in paragraph 4.8 of the OA. He also appears to have been censured on 26.7.1972 by CWE Dehradun, which, according to him, was done beyond his competence as per his CSR. His pay is reported to have been stopped vide order of CECCE, Lucknow dated 21.3.1972 when he was also the

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Branch President of the Union of Roorkee Branch. He has attributed malafide in the said transfer. He has alleged that another Memorandum dated 30.4.1973 been served on him without competence being available with CEBZ Bareilly who has ordered the impugned penalty dated 13.12.1974 for reduction in post from Supdt. E/M-I to Supdt. E/M-II. The said penalty is reported to have been withdrawn as a result of a legal notice served on the authorities concerned on 26.1.1975.

6. The applicant has grievance in regard to his seniority as explained in paragraph 4.12 of his application. There is also allegation regarding non-payment of pay and allowances from July, 1976 onward and also non-availability of medial aid during that period on account of his father's illness who finally died on 21.9.1976. There are alleged instances at several places in his OA of alleged malafide on the part of the respondents in regard to him and which, in his opinion, have culminated in the respondents issuing the impugned movement order.

7. And lastly, the applicant has alleged that the respondents have ordered his compulsory retirement with immediate effect with full pension and gratuity beyond their jurisdiction/competence, in which case CP No.1034/2000 is still pending before the Hon'ble High Court of Allahabad.

8. The learned counsel for the applicant has cited the following decisions of the various Benches of the Tribunal to support his contention that transfer ordered without application of mind and due to extraneous consideration



deserves to be quashed; that for any misconduct disciplinary proceedings are to be taken and transfer is not the remedy; and further that transfer order not passed in administrative exigencies or in public interest rather is biased and passed in colourable exercise of power and such transfer order to be quashed:

1. OA No.256/2002 - Dhangar Premgar Gosh vs. Union of India & Ors. decided on 27.11.2002 by Ahmedabad Bench;
2. OA No.191/2003 - T.L. Gupta vs. Union of India and Ors decided on 23.6.2003 by the Principal Bench; and
3. OA No.273/2003 - B.B. Biswas vs. Union of India and Ors. decided on 9.7.2003 by the Lucknow Bench

9. The respondents have filed a short counter reply as well as a regular counter reply. While in the short reply, they have mentioned that the applicant had been posted from Garrison Engineer (U) E/M Meerut to Chief Engineer Jabalpur Zone on 1.12.1999 and was struck off their strength w.e.f. 31.12.1999. He, however, did not join duty at Jabalpur and instead filed a Writ Petition No.22186/2000 before the Hon'ble Allahabad High Court challenging the transfer order which was dismissed by the Hon'ble High Court as referred to above. According to the respondents, the applicant has challenged the said transfer order dated 1.12.1999 in the present OA. But now that he has been compulsorily retired from service vide order dated 14.6.2002, the OA has become infructuous, as the penalty of compulsory retirement has not been challenged by the applicant in this OA.

10. In the regular counter reply filed on behalf of the respondents, it has been maintained that transfer is an



incidence of service and that the applicant has been posted to CE Jabalpur Zone in normal course in the interest of State against an existing vacancy without any prejudice by the competent authority. To support this aspect of the matter, they have also maintained that the applicant was allowed sufficient time of about one month from 1.12.1999 to 31.12.1999 to apply for advance of TA/DA and to prepare himself to move to the new place of posting. According to them, this should belie the allegation of malafide as made out by the applicant.

11. The respondents have further submitted that disciplinary proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 for his wilful absence from duty for a long period of 922 days and that on completion of the said proceedings he was awarded the punishment of compulsory retirement vide their order dated 14.6.2002. Accordingly, the respondents have taken the preliminary objection to the applicant having still challenged the transfer order dated 1.12.1999 on or after 24.7.2002 and as a result, in their opinion, the present OA is barred by limitation. They have also argued that the OA has become infructuous, as the order compulsorily retiring the applicant has not been challenged by the applicant vide this OA. Further, for the reason that the Hon'ble Allahabad High Court had dismissed his Civil Writ Petition No.22186/2000 in the matter vide order dated 24.1.2002 as extracted hereinabove and also at page 76 of the counter reply, the OA is barred by the principle of res judicata. In their opinion, the Hon'ble High Court has already decided the issue and had not granted any liberty to the applicant.

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12. In the detailed para-wise reply, the respondents have, apart from what has already been stated above, taken the position that the applicant has fabricated a story to strengthen his claim and further that the cases which have been referred to are not relevant to his case and also that each case has to be considered on its own merit. They have also contended as laid down by the Hon'ble Supreme Court, that a person having All India Transfer Liability should first carry out the transfer order and then make a representation. The applicant had never submitted his requisition for TA/DA advance despite one month having been given to him to apply for the same and to prepare for moving from Meerut to Jabalpur. He has also avoided accepting the Movement Order in Office which led to the same being sent to his home address through a Board of Officers and to pasting of the same at the door. It was only after he failed to report for duty at Jabalpur and that he absented himself unauthorisedly that his absence was taken as an evidence under Rule 3 of CCS (Conduct) Rules and accordingly a charge memo under Rule 14 of CCS (CCA) Rules was issued to him and relevant enquiry was instituted against him and finally he was compulsorily retired from service with all pensionary benefits w.e.f. 14.6.2002.

13. The applicant has filed rejoinders to both the short counter reply and also to the regular counter reply. One of the significant things that he has submitted in his rejoinder to the short reply is that the order of penalty dated 14.6.2002 as issued by the respondents compulsorily retiring him from service, according to him, has nothing to do with the present OA and that the said order will be separately



challenged by him in accordance with law. In his opinion, the legality of the Movement Order has to be determined by the Tribunal and further that in case the Movement Order dated 1.12.1999 is quashed by the Tribunal, the applicant will be entitled to the salary as prayed for by him in the OA.

14. In his rejoinder to the regular reply, the applicant has referred to pay fixation proforma of certain persons not having been signed properly as explained in paragraph (ii) and also to some other alleged irregularities, some of which have already been mentioned in the OA. Reference has also been made to one Shri R.K. Gupta, UDC, similarly placed, having been taken back on the strength. On the question of the applicant having not made any claim for TA/DA advance, he has argued that the question of seeking advance did not arise, as the transfer order was not delivered to him. Here also he has reiterated that challenging the disciplinary proceedings as initiated against him by the respondents is a separate course of action. He has submitted that it is not correct on the part of the respondents to say that he was not granted liberty to file an OA in the Tribunal.

15. On a closer examination of the facts as submitted by both the sides, it is observed that the applicant has a long history of grievances against the administration for one reason or the other. Even prior to the impugned transfer order, he appears to have been transferred from time to time. Relationship of the applicant with the administration appears to have been influenced by his being straight-forward and forth-right in the discharge of his duties, as is observed



from his submissions He has submitted representations to the respondents for one reason or the other from time to time. Such representations as claimed to have been filed by the applicant to the respondents are not reported to have been given due consideration by the respondents. While the transfer order dated 1.12.1999 has been impugned by the applicant on the grounds as stated above and placing reliance on the decisions of this Tribunal as mentioned in paragraph 8 above, the respondents have vehemently argued that the said impugned transfer order has not been issued with any malafide or prejudice on their part. They have maintained that it has been ordered in the normal course in the interest of the State and against an existing vacancy without any bias or prejudice. They have taken the plea that, as in any normal transfer, the applicant has been given sufficient time to draw TA/DA advance and to move smoothly from his present place of posting to Jabalpur. It appears that while there could be some element of unsatisfactory performance on the part of the applicant and which might have caused him to think that the respondents have issued the transfer order malafidely or with a prejudice, it is difficult to draw a line between unsatisfactory performance and transfer flowing from that. In any case, the fact remains that the applicant had a transfer liability and he could not have skipped it in normal way of functioning or in public interest as well as in administrative exigencies. It also remains a fact that transfer is the prerogative of the administrative authorities concerned if the same has not been ordered with any malafide or has not been ordered by violating the rules/policy/law on the subject. Moreover, public interest and administrative


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exigencies do constitute the over-riding basis for carrying out transfers in some cases. Accordingly, the Courts are not expected to interfere with transfer if ordered validly. As regards the argument of the respondents that as the applicant has, in the meantime, been compulsorily retired and which has not been challenged by him in the present OA, the same becomes infructuous, does not appear to be relevant in the light of the submissions of the applicant that the same constitutes a fresh cause of action which he will be proceeding against separately by filing another OA, if necessary. The present OA, therefore, has to be dealt with with reference to the impugned transfer order only.

16. Having regard to the facts and circumstances of the case and also the submissions as made by both the sides as well as the oral submissions made by the learned counsel for them, I am inclined to take a view that the transfer of an employee is normally dictated by considerations of public interest and administrative exigencies and any transfer order which is issued on the basis of these considerations need not be interfered with. I also subscribe to the view that the administrative authorities are competent to take a view and necessary action in the matter of transfer of its employees and they are supposed to be following the policy on the subject as laid down by the competent authority in the said organisation or the relevant authority outside the said organisation. It is also observed that nothing prevented the applicant from obeying the transfer order first and then

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agitating the matter seeking the relief as prayed for in this application. Instead, he chose to file this OA, which act is not convincing. Accordingly, this OA has to fail, and I have no hesitation in dismissing it for the said reasons. No costs.


(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER

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