

Reserve

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/00060/2020

Pronounced on 13.2.2020

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Ajay Singh aged about 47 years son of late Dheeraj Singh resident of C/25, Ganga Vihar Colony, New Cantt, District- Allahabad.

Applicant

By Advocates: Sri K.K.M. Tripathi

Versus

1. Union of India through its Secretary, Ministry of Defence (Finance), South Block, New Delhi.
2. Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt.
3. Principal Controller of Defence Accounts (Central Command) Cariappa marg, Near Railway Station, Lucknow.
4. Assistant Accounts Officer, barrack Store Office (BSO) New Cantt., Allahabad.
5. Principal Controller of Defence Accounts (Pension), Dropadi Ghat, Allahabad.

Respondents

By Advocate: Sri Anil Kumar

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

The applicant, Ajay Singh has filed this Original Application (O.A.) challenging the impugned transfer Order No. I 011/1v@1004@xki 0@e[; ky; @2019@[KM&4 fnukd 06-11-2 whereby he was transferred from Allahabad to Sagar.

2. This matter essentially pertains to Division Bench of this Tribunal which is not available these days. Therefore, on the request of counsel for applicant, this single bench has merely taken up the matter only on the question of interim relief.
3. Heard Sri K.K.M. Tripathi, counsel for applicant and Sri Anil Kumar, Counsel for respondents only on the question of interim relief.

4. The facts of the O.A. are that the applicant is working in the office of Principal Controller of Defence Accounts (Pension), Allahabad which is one of the offices under Ministry of Defence. This department is responsible for grant, payment, audit and adjustment of all claims of pensionary awards of defence services personnel (except retirement/death benefits of Air Force and Navy Personnel) and Civilian of the three services including some other related department.

5. The applicant was initially appointed as Lower Division Clerk (LDC) in the office of Principal Controller of Defence Accounts (Pension), Dropdi Ghat, Allahabad on 14.8.1991. Subsequently, he was promoted as Auditor and thereafter Senior Auditor in the same office.

6. Applicant says that he has been raising his voice against departmental corruption. Therefore, he has been transferred to Sagar as a punitive measure. It is pertinent to point out that applicant has not arrayed any private person as respondent and no specific allegation of malafide and bias have been established.

7. Admittedly, applicant was appointed in the year 1991 and since then he has been continuously working in Allahabad. The claim that he had also been transferred earlier, is not borne out from the record.

8. Counsel for respondents has informed that applicant has been posted in Allahabad continuously and of-course, he has been shifted to different offices but that cannot be strictly construed as a transfer.

9. The counsel for applicant has drawn the attention of this Tribunal towards the order No. 0600/AN-X/Vol.XXI dated 28.3.2014, whereby transfer policy of department has been published. The counsel has stated that in para 8, it has been

provided that exemptions can be made on the ground of education of child if he is in class X or XII.

10. The bare perusal of these rules would indicate that these rules are not mandatory. The heading of the rule itself says that exemption and deferment may be considered in particular circumstances. These rules do not establish any kind of bar for transfer of employee from one station to another station.

11. In any case, the Hon'ble Apex Court in the case of **Union of India Vs. S. L. Abbas reported in AIR 1993 SC 2444**, has held that "**the said guideline, however, does not confer upon the Government employee a legally enforceable right.**"

12. In view of the aforesaid law laid down by the Apex Court, it is clear that guidelines issued by the Department for transferring employee are in fact merely guidelines while it is expected that department would try to follow the same to the extent possible but it is not always possible to strictly transfer each employee in accordance with the said guidelines.

13. It is pertinent to point out that the transfer is an incidence of service and ordinarily Courts or Tribunals do not interfere in the transfer unless vitiated by malafides or issued in violation of statutory provisions. There is no evidence of malafide in this case.

14. In another matter of transfer which came up before the Hon'ble Apex Court i.e. the case of **Rajendra Singh & Others v. State of U.P & Others reported in (2009)15 SCC-178**, it has been observed that the scope of judicial review in transfer matters is very limited and the courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide. The Hon'ble Apex Court further observed as under:-

"9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is

vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

10. In *N.K. Singh v. Union of India* this Court reiterated that:

"6.....the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....."

15. The Hon'ble Apex Court in the case of *S.C. Saxena Vs. Union of India and others reported in (2006) 9 Supreme Court Cases 583* has held that tendency of not reporting at the new place and instead indulging in litigation to ventilate grievances needs to be curbed. The Hon'ble Apex Court has further held that it is the duty of the Government servant to first report for work where he is transferred and thereafter, make a representation as to what may be his personal problems." The relevant portion of this judgment is reproduced as below:-

"In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problem. This tendency of not

reporting at the place of posting and indulging in litigation needs to be curbed."

16. It is pertinent to point out that applicant has already been relieved from this duties as apparent from order dated 23.8.2019 (Annexure No. 11). The only course open for the applicant to join at new place of posting. He has been working in Allahabad from last 28-29 years and no reasonable cause has been shown for interfering with the impugned transfer order.

17. In view of the aforesaid discussion, this Tribunal believe that no interference is warranted in the impugned transfer order.

18. List this case before Division Bench for further proceedings on 5.3.2020.

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-