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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.1728/2001

New Delhi, this the 20th day of July, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Shri Chander Ram,  
S/o Late Satya Narayan,  
R/o 1002, Lodhi Complex,  
New Delhi.

... Applicant

(By Advocate: Shri B.B. Raval)

V E R S U S

1. Union of India  
through Secretary,  
Cabinet Secretariat,  
Annexie-7, Bikaner House,  
Shahjahan Road, New Delhi.
2. Additional Secretary (Pers)  
Cabinet Secretariat,  
Annexie-7, Bikaner House,  
Shahjahan Road, New Delhi.
3. Under Secretary (Pers-IV)  
Government of India  
Cabinet Secretariat,  
Annexie-7, Bikaner House,  
Shahjahan Road, New Delhi.


... Respondents

O R D E R (ORAL)

Shri B.B. Raval, learned counsel of the applicant heard.

2. The applicant has challenged order dated 1.6.2001 (Annexure A-1) whereby he has been transferred from Head Quarters, New Delhi to Shillong set-up. Earlier on when the applicant was transferred vide order dated 27.1.2000 from New Delhi to Shillong set-up, he had filed OA 1072/2000, which was disposed of vide order dated 21.12.2000 with the following observations/directions:-

"4. The Govt. officials are transferred by administrative orders and the same cannot be questioned unless malafide is established or else orders are found to suffer from the vice of arbitrariness. Such orders can also be impugned on the ground of discrimination. Beyond this, it would not be proper for the



Tribunal to go into the merits or de-merits of a transfer order. In the circumstances placed before me by the learned counsel on either side, I find that it is not possible to contend that the transfer orders have been made for malafide reasons or are arbitrarily passed or else that the applicant has been discriminated against in the matter. The learned counsel for the respondents has made a fair offer which is to the effect that the applicant could be allowed, on account of his childrens impending examination in March, 2001, to stay on in Delhi till 31.5.2001 on the condition that thereafter he will be liable to be shifted to any place in the discretion of the respondents. The learned counsel for the applicant agrees to the same and wants that a fresh transfer order should be passed after 31.5.2001 cancelling the present order dated 27.1.2000. The learned counsel for the respondents does not see any problem in this.

5. The OA is disposed of in the aforestated terms. No costs."

3. It is now contended by the learned counsel that the applicant is seriously unwell and is prepared for transfer to Jammu & Kashmir instead of Shillong, so that he is able to come to Delhi occasionally at times of need. The learned counsel particularly draw my attention to Medical Certificate dated 21.11.1998, which reads as follows:-

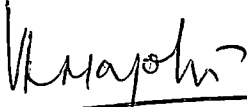
"Due to his illness he requires active full time supervision from his family members for proper management of his illness including regular follow-up and medical care."

4. The learned counsel further stated that whereas normally the respondents transfer a number of officials simultaneously, in the present case, the applicant has been picked up for transfer while he is <sup>neither the</sup> ~~new~~ <sup>nor</sup> ~~to~~ senior most <sup>and</sup> junior most official in the establishment. It is violating <sup>-ve of</sup> the transfer policy of the department.

5. When the applicant was transferred on the last occasion and he had approached this Court through OA

No.1072/2000, the learned counsel for the applicant has agreed to the fair offer of the learned counsel of the respondents that the applicant could be allowed on account of his childrens' impending examination in March, 2001, to stay on in Delhi till 31.5.2001 on the condition that thereafter he will be liable to be shifted to any place in the discretion of the respondents. The learned counsel of the applicant had agreed to the offer in pursuance of terms of order dated 21.12.2000 passed in OA No.1072/2000 (Annexure A-4). The applicant has now been transferred vide annexure A-1 dated 1.6.2001 to Shillong Set-up. Even though, there was an agreement to transfer after 31.5.2001 by the applicant on the previous occasion, the present transfer order has been challenged by the applicant. The Medical Certificate referred to by the learned counsel of the applicant is dated 21.11.1998 which was in existence even at the time when the previous application was made and decided on 21.12.2000. If the applicant is so seriously unwell and is prepared to transfer to Jammu & Kashmir, he can as well proceed to Shillong Set-up. The terms of order dated 21.12.2000 (Annexure A-4) will act <sup>constructive</sup> as res judicata in the matter of transfer of the applicant.

6. Having regard to the discussion made above, the present OA of the applicant is dismissed in limine. No costs.

  
(V.K. MAJOTRA)  
MEMBER (A)

/ravi/