

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1162/99

(6)

New Delhi this the 27th day of July, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)

Hon'ble Mr. R.K. Aahooja, Member (A)

Ashok Kumar Arora,
S/o late Shri Prithvi Raj Arora,
R/o Sector IV/658,
R.K. Puram,
New Delhi-110022.

...Applicant

(By Advocate Shri Surinder Singh)

-Versus-

1. Union of India, through
the Secretary,
Ministry of Defence,
DHQ, P.O. New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
DHQ PO
New Delhi.
3. The Chief Engineer,
Western Command,
Chandi Mandir.
4. The Chief Engineer,
Delhi Zone,
Delhi Cantt.
5. Commander Works Engineers,
Delhi, Delhi Cantt,
New Delhi.
6. The Garrison Engineer (West),
Delhi Cantt. ... Respondents

O R D E R

By Reddy, J.

Heard the learned counsel for the applicant and the
respondents.

The applicant is aggrieved by the order of transfer
dated 11.11.98. The applicant is an Assistant Engineer in

VRS

Military Engineering Service. He submits that he has served in Hard/Field station area postings. On 8.7.97, he was posted to G.E. (W), Pathankot and he got it cancelled on health grounds. It is his case that he is undergoing regular treatment, for AL Brochial Asthama, Hypertension, Lumbago Sciatica, in the Safdarjung Hospital and has been declared unfit for field area as well as unfit for duties in humid, dusty HAA and extreme cold climatic conditions. He was allowed to continue in Delhi only. But, in the impugned order of transfer he is now posted to Bombay. It is contended by the learned counsel for the applicant that climate in Bombay is humid and if he is posted there his Asthamatic condition would be aggravated. He is, in fact unfit to work in the humid conditions which prevail in Bombay. After receipt of the impugned order he has made a representation to the higher authorities for retaining him in Delhi, but it was rejected. The learned counsel for the respondents, however, submits that transfer is an incident of service and he is liable to serve anywhere in India. He has also completed his tenure of three years at Delhi and he was due for posting. It is further contended that the applicant relies upon a medical certificate issued in September, 1994, which will not reveal his present condition.

2. The applicant is liable to be transferred to any part of the country. The only ground on which he is now challenging the order of transfer is on ^{the} grounds of health. In support of his plea he placed reliance on a medical

[Signature]

(6)

certificate dated 28.9.94. It is stated in the said certificate that he is unfit for duty in humid, dusty, HAA and extreme cold climatic conditions. But it is also stated in the medical certificate that he would be benefitted from change of place. In fact the impugned transfer would be beneficial to him, as Delhi is more humid, dusty and of extreme climatic condition than the climate in Bombay. In Bombay it may be humid for few months but generally it cannot be said that the climate there is ~~bad~~ ^{bad}. Further, this certificate being issued in 1994 cannot have much weight as he might have improved his condition in these five years with the treatment in the Safdarjung Hospital. There is no reason why he should not have filed the present material certificate.

3. The Tribunal will not ordinarily interfere with an order of transfer. It is well settled that transfer is an incident of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer (vide N.K. Singh v. **Union of India**) (1994) (6) SCC 98. We do not find any such ground in this case. An officer cannot be retained at one place only on health grounds. In fact in the present case he has been working here since 1988 and his earlier transfer was cancelled in 1997 on compassionate grounds. It is for the department to consider his case for retention in Delhi on health grounds. On a representation made by the applicant these grounds raised were considered and rejected.

✓

(9)

4. In the circumstances, we do not find any merit in the OA. The O.A. is, therefore, dismissed, at the admission stage itself.

~~R.K. Anboja~~
(R.K. Anboja)
Member (A)

'San.'

Mr. Jayarajulu
(V.Rajagopala Reddy)
Vice-Chairman (J)