

Central Administrative Tribunal
Principal Bench

O.A.No.2304/98

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 28th day of June, 1999

Iqbal Nath Sharma
s/o Shri Keshav Ram Sharma
aged about 46 years
r/o 44/8A, Sadh Nagar (part-II)
Palam Enclave
New Delhi - 110 045.

... Applicant

(By Shri B.B.Raval, Advocate)

Vs.

1. Union of India through
The Cabinet Secretary
Government of India
Rashtrapati Bhawan
New Delhi - 110 001.

2. The Secretary
Research & Analysis Wing
Cabinet Secretariat
Government of India
Room No.7, Bikaner House Annexe
Shah Jehan Road
New Dehi - 110 011.

3. Shri Ghoshal
Mechanical Transport Officer
Cabinet Secretariat
Room No.7, Bikaner House Annexe
Shah Jehan Road
New Delhi - 110 011.

... Respondents

(By Shri Madhav Panikar, Advocate)

O R D E R

The applicant, who is an ex-serviceman, joined the Research and Analysis Wing, Cabinet Secretariat w.e.f. 23.8.1988. His grievance is that ignoring his medical condition as also the illness of his child and the educational requirements of his other children, the respondents have transferred him by impugned order Annexure-A from Headquarters, Training Institute to SB, Shillong and relieved him from the the afternoon of May 1st, 1998 without payment of TA/DA. He submits that the

said transfer is not only contrary to the Rules and Instructions but is also the outcome of malafide on the part of respondents.

2. The respondents in their reply have submitted that the applicant has been working in various offices located in Delhi for the last 10 years as Heavy Vehicle Driver. He has been transferred, by the impugned order, to Shillong on operational exigency. The applicant has an all India transfer liability. They state that on being relieved w.e.f. 1.5.1998 the applicant made an application for sanction of medical leave on the ground that he was suffering from fever/chest infection and was undergoing treatment at R.M.L. Hospital, New Delhi. They say that the applicant has no medical claim for his retention in Delhi. There is also a doubt about the certificates produced by him regarding medical advice that he should avoid driving of heavy vehicles. In these circumstances, the respondents submit that the applicant has no case for his retention in Delhi.

3. I have heard the counsel. In my view the issue is now settled by the report of the Medical Board conducted by the RML Hospital, New Delhi dated 8.2.1999. A copy of the same has been produced by the respondents and has been taken on record. The opinion of the medical board consisting of four Specialists in the field of Medicine Nephrology and Urology is as follows:

"This candidate has been operated for probably perinephric abscess (Right) in 1990. There is also history of spinal-bifida, however without any neurological deficit whatsoever. Relevant evaluation reveals that except for gr.II prostatic enlargement and vague back pain, there is no significant abnormality. Furthermore the symptoms related to BPH are conspicuous by their absence. In the opinion of the medical board,

the candidate does not suffer from any renal disease at present, leading to disability which will prevent him to undertake normal duties."

4. In view of this medical opinion by the Medical Board, the plea advanced by the applicant that he is medically unfit to proceed to Shillong is rendered baseless. I do not agree with the learned counsel for the applicant that as an ex-service man, the matter should have been referred to the army hospital Delhi cantonment. The RML Hospital is a referral hospital. The Medical Board as already mentioned consisted of four experts in various specialists. There is no advice that applicant should be referred to army hospital. In any case the Tribunal cannot go against the decision rendered by an expert body.

5. As regards the treatment of his one of his sons and the education of other children who are studying in educational institutions in Delhi, the applicant cannot as a matter of right on that basis claim to continue in Delhi. When the respondents had considered the representation of the applicant and rejected the same, there is no ground for Tribunal to interfere when the transfer has been ordered on the basis of operational exigency.

6. The learned counsel for the applicant has also submitted that as the applicant as an upright did not participate in the illegal ^{activities} of some of the senior staff, the impugned order of transfer is the outcome of their prejudice and malafide. However, allegation of this nature made in a general and cursory manner cannot go towards establishing malafide.

Ans

7. The applicant has also alleged that as he was released without allowing him TA/DA, he could not comply with the order of transfer. This allegation also does not stand scrutiny as the applicant had made a number of applications for leave as well as cancellation of his transfer order and he obtained his salary also for two months. However no application has been indicated or shown for grant of advance of TA/DA for undertaking the journey to Shillong. In these circumstances, the plea taken by the applicant cannot be accepted.

In the result the OA fails and is accordingly dismissed. No costs.

R.K.Ahooja
(R.K.Ahooja)
Member (A)

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