

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-513/98

(16)

New Delhi this the 14th day of September, 1999.

Hon'ble Sh. S.P. Biswas, Member(A)

Shri S.K. Bahel,
R/o 40/103, Chittranjan Park,
1st Floor, New Delhi-19. Applicant

(through Mrs. Raj Kumari Chopra, advocate)

versus

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Engineer-In-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. The Chief Engineer,
Western Command,
Headquarters,
Chandimandir-134107.
4. The Chief Engineer,
Delhi Zone, Delhi Cantt.
New Delhi. Respondents

(through Sh. R.P. Aggarwal, advocate)

ORDER

Applicant, now on promotion from L.D.C. to U.D.C., is aggrieved by the orders dated 22.04.96 and 19.02.98 by which he alleges to have been transferred in violation of the rules / instructions governing the transfer policy. The applicant challenges the order on the basis that the action of the respondents in transferring the applicant to Bikaner in the absence of any administrative/public interest is on the face of it actuated by colourable exercise of power and cannot be sustained in the eyes of law. Consequently, the applicant seeks relief to quash the impugned orders at

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A-1 and A-2 and issuance of directions to respondents to give effect to the recommendations of the Chief Engineer Delhi Zone for the purpose of retaining him permanently in Delhi on genuine sympathetic/compassionate considerations.

2. Mrs. Raj Kumari Chopra, learned counsel for the applicant cited four case laws, as mentioned hereunder, in support of her contentions that the order of transfer is against the guidelines/transfer policy of the respondents, in violation of the principles of natural justice and without any reasons. Those case laws are Ram Kanwar Yadav Vs. U.O.I. & Ors. (ATC 1991(17)529); Satyendra Nath Karmakar Vs. U.O.I. & Ors. (ATC 1990(12) 895); L.S.B.P. Verma Vs. U.O.I. & Ors. (ATC 1997(35) 357) and Mahendra Kishore Sharma Vs. U.O.I. (ATC 1992 (2) 66).

3. That apart, the learned counsel would submit that the respondents had taken a decision on 26.02.96 by A-7, to retain the applicant at Delhi. In the face of this, the impugned order of 19.02.98, issued after a period of only 45 days, is only an indication of the colourable exercise of power by the respondents. The Learned counsel brought to our notice the recommendations of the Chief Engineer Western Command and other authorities where genuineness of the reasons for which the applicant needed to stay at Delhi have been highlighted. In this connection, she read out the extract of the applicant's appeal dated 25.09.95 wherein

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it is mentioned that "As the cancer was spread all over lower portion of the body his genital organs were removed and artificial passage for the urine has been made. The same needed dilation every now and then. He is bed ridden and cannot move out of the house. He is under regular treatment of Dr. A.K. Bajaj now. Medical Certificate from Dr. Bajaj is also enclosed." Not only this the case of the applicant has been forwarded duly several times by the respondents at the level of even Chief Engineers. Annexures A-5 and A-6 would support such contentions.

4. The learned counsel for the applicant also highlighted the genuineness of the case by drawing our attention to the details in Annexure A-10 of the paperbook, wherein the Chief Engineer, vide his letter dated 15.05.96 has come out with the following recommendations—^{cc}Due to sickness of his father from Cancer of urethral the individual has represented for cancellation of his posting and promotion in situ on extreme medical compassionate grounds. His case was considered and his posting for Bhatinda was cancelled vide letter No. 31299/UDC/629/EID(DPC) dated 26.02.96. Since the individual has been adjusted on promotion in situ on extreme medical compassionate grounds only in the month of Feb. 96, he may not be posted to tenure station atleast for three years as per policy which clearly states that the individuals posted/adjusted on compassionate grounds are not required to be posted till they complete three years at his choice station.^{cc}

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5. The respondents have opposed the reliefs prayed for. It has been submitted that vide orders dated 22.04.96, the applicant was posted to Garrison Engineer (P) Bikaner on tenure basis. The applicant represented against this posting and prayed for the deferment of the same for a period of three years because of his father's sickness. Competent Authority considered his request and deferred his movement temporarily upto 31.05.1997 vide order dated 21.08.96. The applicant, however, again requested for exemption from his transfer order for a period of three years vide his representation dated 24.10.96. In the meantime, the Chief Engineer Western Comman withheld move of the applicant due to some administrative grounds. However, the said Chief Engineer vide his letter dated 12.05.97 amended his posting order and finally posted the applicant under Garrison Engineer (P) No.1, Bikaner instead of Garrison Engineer (P) No. 2, Bikaner. Although the applicant had once again requested for cancellation of his posting/transfer order vide his application dated 27.11.97, but the same was rejected by the competent authority which has now been challenged.

6. Shri R.P. Aggarwal, learned counsel for the respondents strongly contended that the order has been issued by the competent authority and is not in violation of any rules and regulations on the subject. He would also submit that tenure posting is must in MES service and the applicant's case does not call for any exemption. It has also been submitted that even other 22

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officials who were transferred, like the applicant herein, have joined their new places of posting except only the applicant. Shri Aggarwal would also submit that orders of transfer, in violation of the guidelines, cannot be questioned in terms of the law laid down by the Apex Court in a series of recent orders.

7. Heard the learned counsel for both the parties in details.

8. Postion of law on the subject of "transfer" is now well settled. An order of transfer, when issued in public interest by the competent authority, cannot be assailed unless the same is in violation of the statutory provisions, or actuated by malafides or has been issued by means of colourable exercise of powers. Who should be transferred where is a matter for the appropriate authority to decide. There is no doubt that the authority must keep in mind the guidelines issued by the respondents on the subject of transfer, the said guidelines do not, however, confer upon the Government servant a legally enforceable right. If any authority is needed for this proposition, it is available in the case of U.O.I. Vs. S.L. Abbas (1993(2) SLR 585). The principles that are required to be followed in such matters have been laid down elaborately by the Apex Court in a long line decisions, namely, N.K. Singh Vs. U.O.I. & Ors. (1994(28) ATC 246); Shilpi Bose Vs. State of Bihar (1992 SCC(L&S) 127) and CGM (Telecom) North Telecom Circle & Anr. Vs. R.C. Bhattacharya (1995(2) SCC 532).

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✓ A transfer order do not get vitiated by personal inconveniences or circumstances covering compassionate grounds, Even hardships pleaded by the applicant is not a matter which can enter legitimate considerations. Authority is legion for this purpose and it is available in the case of State of M.P. Vs. S.S. Kaurav & Ors. (JT 1995(2) SC 498). It has also been stated in the same judicial pronouncement of the Apex Court that transfer order issued in violation of the transfer policy is not legally invalid. The aggrieved persons are entitled to make representations against such orders and the respondents are to consider where ^a departure has to be allowed on the basis of exigencies ^{of service} of service and on other considerations.

9. I find that the respondents have considered the applicant's plea of his father being in serious condition and it is on that basis the order of movement was deferred for some time. The present appeal of the applicant for deferment of the order for a period of three years cannot be supported in the light of the law laid down by the Apex Court as aforementioned. The Courts/Tribunals are to administor the law as they find it, however, inconvenient it may be to the individuals. The Courts/Tribunals are required to endeavour to find out whether a particular case in which sympathetic considerations are to be weighed, falls within the scope of law. Disregardful of law, however, hard the case may be, should never be done. Yielding to instinct will tend

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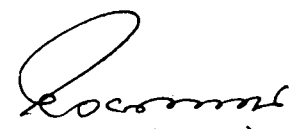
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to ignore the cold logic of law. (See L.I.C. of India Vs. Asha Ramchandra Ambekar (Mrs) & Anr.) 1994 SCC (L&S) 737).

10. In the light of the position of law as aforesaid and the details of circumstances, I do not find any merit in the applicant's case. The O.A. deserves to be dismissed and I do so accordingly.

However, dismissal order aforesaid will not stand in the way of the respondents to reconsider the applicant's inconveniences/serious personal difficulties and accommodate the applicant in terms of the guidelines, if the respondents are so advised.

11. The O.A. is disposed of. No order as to costs.


(S.P. Biswas)
Member(A)

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