

(2)

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2935/97

This the 24th day of December, 1997.

HON'BLE SHRI N.SAHU, MEMBER(A).

Shri Bharat Bhushan
S/o late Sh.Amar Nath,
UDC Office of the Commandant
Engineers Stores Depot,
Delhi Cantt.-110010.
R/o KG-2/372,Vikaspuri,
New Delhi-110018.
(By Advocate Sh. S.L.Lakhanpal)

.....Applicant

Versus

1. Union of India,
Through the Secretary to the
Govt. of India, Ministry of Defence,
Central Secretariat, North Block,
New Delhi-110011.

2. The Director-General,
Addl.DTE.General of ORG/ORG-4(Civ(c))
Adjutant General's Branch,
Army Headquarters, Sena Bhawan,
DHO P.O.New Delhi-110011.

3. The Chief Engineer,
HQRS. Western Command,
Engineers Branch,
Chandimandir.134107.

4. The Commandant,
Engineers Stores Depot,
Delhi Cantt-110010.
(By Advocate None)

.....Respondents.

ORDER(Oral)

By Hon'ble Shri N.Sahu, Member(A).

By an order dated 26.4.96 the applicant working as UDC under the respondents was transferred from Delhi to Bikaner. He initially represented against his transfer on 21.5.96 which was rejected. Thereafter he made a second representation on 27.9.96 and when the said representation was pending he was elected as a Member of the Works Committee. He is now seeking protection of the Defence

[Signature]

(3)

Ministry's letter dated 2.4.80 against his transfer to Bikaner. This Court disposed of the first OA dated 16.7.97 with a direction to the respondent No.1 to examine the applicant's case and pass a speaking order thereon within 2 months from date of receipt of a copy of that order.

2. The respondents accordingly passed an order dated 9.10.97. One MA-2880/97 was filed seeking to revive of the earlier OA against the impugned order dated 9.10.97 which allegedly did not take into account the respondents O.M. dated 2.4.80 which provides that for transferring elected representatives of Works Committees prior approval of the Defence Ministry should be obtained after explaining the reasons for the transfer. The court noticed that the Defence Ministry passed the order and concluded that the OM dated 2.4.80 is not applicable in the present case as the applicant stood transferred to Bikaner before he got elected to the Works Committee. This O.A. is again filed against the impugned order dated 9.10.97 and the movement order dated 12.12.97 directing the applicant to move within a week to Garrison Engineer, Bikaner from the office of Commandant, Engineers Stores Depot, Delhi Cantt.

3. I have heard the learned counsel for the applicant. The law on the subject of transfer has been clearly enunciated by the Hon'ble Supreme Court. It is entirely at the discretion of the Govt. to decide when where and how an employee shall be transferred and posted for utilising his services. The only remedy available to him is to represent his grievances in a petition to the superior officers in the Department and that remedy has

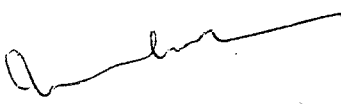
[Signature]

(4)

been exhausted and the representations have been rejected. The second representation⁴ was again considered at the direction of this court and a speaking order dated 9.10.97 has been passed. The Defence Ministry also stated that the OM does not apply to this case. Unless the transfer is malafide or unless it violates a provision of a rule or a law, the transfer cannot be questioned in a Court. Admittedly both these grounds are not raised in this case. With regard to the guidelines it is clearly established that the guidelines were not violated. Even assuming that there was no compliance with a guideline, the Apex court held that a transfer cannot be challenged merely because some executive instruction was not followed.

4. I find that several opportunities have been given in this case to the applicant to represent his case. I am satisfied that the order dated 9.10.97 is a well considered and speaking order. I therefore hold that the impugned order of transfer does not call for any judicial interference. The OA on this account is unsuccessful even at the admission stage.

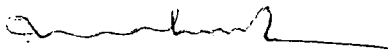
5. Even so learned counsel for the applicant has made two submissions. He stated that the applicant was hospitalised because of a road accident and medical certificates have been shown extending his leave from 25.10.97 to 22.11.97 and from 23.11.97 to 6.12.97. Learned counsel states that on medical advice further extension of leave has been granted though the applicant is not in a position to furnish the specific date of further extension. His second point is that the applicant has three dependent children. Two of them are studying in Class Xth and Class XIIth respectively. Their academic



(5)

session is going to close by the end of March, 1998. He cited the Supreme Court decision in ATC 1994 Vol. 28 page 99, O. Karuppa Thevon's case wherein the Hon'ble Supreme Court has held that when the children of the employee are studying in a school, his transfer during the academic term of the year, in the absence of any other administrative exigency has to be restrained from being effective till the end of the academic year. In any view even this ground of children's education is not valid. If the applicant had immediately complied with the order of transfer passed during April, 1996 his children would not have faced this difficulty. The problem was created by the applicant himself. I have already held that the transfer order does not call for any interference from this court. However, since the applicant states that even on medical grounds respondents have granted leave to the applicant, they may also consider the claim of mid academic session of the dependent children. I am sure the applicant's submissions in this regard will be considered since the mid session also coincided with the process of recovery of this applicant for which the respondents have already considered and granted leave.

6. In this view of the matter I would leave it to the respondents to consider the applicant's case for extension upto March '98 since his leave has been extended on medical ground. There is no need or justification to continue him at Delhi after March, 1998. With these observations, the O.A. is disposed of.


(N. SAHU)
MEMBER(A)

RB.