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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1617 of 1994

New Delhi, this the 15th day of December, 1994.

HON'BLE MR. B.N.DHOUNDIYAL, MEMBER(A)

Dr K.S. Nishal
Sr. Marketing Officer (Group-II)
under Ministry of Rural Development,
Directorate of Marketing and Inspection,
Nirman Bhawan, New Delhi. Applicant.
(through Mr B.S. Mainee, Advocate).

vs.

Union of India: through:

1. The Secretary,
Ministry of Rural Development
Govt. of India,
Department of Rural Development,
Krishi Bhavan, Rear Block,
New Delhi.
2. The Agricultural Marketing Advisor,
to the Government of India,
Directorate of Marketing & Inspection
NH-IV, Faridabad. Respondents.
(through Mr Vijay Mehta, Advocate).

ORDER

(delivered by Hon'ble Mr B.N.Dhoundiyal, Member(A)

Dr K.S. Nishal, Senior Marketing Officer,
Group-II, working in the Directorate of Marketing and
Inspection under the Ministry of Rural Development,
challenges the order dated 24.6.1994, whereby he has been
transferred from New Delhi to Patna.

2. The transfer has been challenged on various
grounds enumerated below:

- a) It is arbitrary, illegal and discriminatory,
inasmuch as his junior Smt. S.L. Chaudhary,
who joined on 5.5.1986 has been retained
at New Delhi while the applicant has been
transferred.

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b) The place, where the applicant is sought to be transferred has no work in so far as Group II Schemes are concerned and the order of transfer has been passed without consultation/recommendations of the Departmental Transfer Committee.

c) The fact that his wife is a Medical Officer in Municipal Corporation, Delhi and he himself is a patient of Hytus Hernia, Chronic Spondilitis and Gastritis has not been taken into consideration.

d) That the transfer order is punitive in nature which appears to have been passed on the basis of false complaints without any inquiry. It is also averred that his representation was rejected on 11.7.1994 through a non-speaking order. He was also not given funds required for implementation of the transfer orders.

3. We have heard the learned counsel for the parties and perused the records. In support of the averments made in the O.A., the learned counsel for the applicant has cited a number of cases. In Rajiv Saxena vs. Collector of Central Excise ATR(1990(1)CAT 378, it has been held by the Jabalpur Bench of this Tribunal that transfer is no substitute for a proper disciplinary action and in fact whenever there is a serious allegation against a Government servant he should not be transferred but his conduct properly investigated and appropriate disciplinary action taken, if necessary. In Uma Shankar vs. Union of India and others ATR 1990(2)CAT 281, the Jodhpur Bench of this Tribunal held that in

cases of transfer where the ground of administrative exigency is vitiated by extraneous consideration or its very existence is in doubt it has certainly to be looked into by the Court. In Vatsala Ravi Kumar and Others vs. The Chief Engineer MES & ors., 1993(1) ATJ, the Madras Bench of this Tribunal held that in matter of transfer equal treatment should be given to similarly situated employees. On this basis the transfer orders of female employees of MES outside Madras were ordered to be withheld and the respondents were directed to treat them on the same basis as the female employees of the Bombay office. No concrete evidence has been given by the applicant that the transfer order of the applicant is punitive in nature. It is not the case that any inquiry is pending against him or is contemplated against him. A simple averment that the authorities might have been prejudiced due to their short fall in the implementation of a Scheme or the fact that he brought some irregularities to their notice cannot be accepted as sufficient to prove that the transfer order is malafide. The applicant is amenable to All India Transfer liability and out of his total service of 20 years has been allowed to serve for 16 years either at Delhi or Faridabad. Hence the Rulings cited above do not advance the case of the applicant. In 1992 SCC 306(Bank of India vs. Jagjit Singh Mehta) it was observed that guidelines regarding posting of the husband and wife at the same station were to be followed as far as practicable but this do not confer any right on a employee to remain at the same place.



4. The learned counsel for the applicant has also cited the judgment of the Hon'ble Supreme Court in case of Union of India and others vs. S.L. Abbas (1993) 4 S.C.C. 357 wherein the guidelines issued by the Government to keep the husband and wife together at the same station quoted. However, in this very judgment, it has been clearly observed that the same guideline does not, however, confer upon the government employee, legal and enforceable right. As regards the contention that Smt. S.L. Chaudhry who was his junior and who joined at New Delhi on 5.5.1986 has been retained at Delhi, we accept the explanation offered by the respondents that ^{for} the purpose of posting, Delhi and Faridabad are treated as the same stations and according to this guideline, the applicant has already remained at one station for a period of 16 years. The contention that Patna does not have any work for a Group-II has been explained by the respondents stating that a Senior Marketing Officer generally functions as Incharge of a field Station. An officer belonging to one Group when posted as Incharge of a particular field office is required to supervise guide and coordinate activities of other groups also beside performing other administrative duties like of Head of office and that it is wrong to say that there is no work of Group II at Patna and Group II who is posted. It has also been stated that 19 other officers were transferred at the same time as the applicant. As regards payment of Transfer allowance, it is stated that there an advance of Rs. 30,000/- has been drawn by the Delhi office but the officer

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refused to take the payment. The respondents have also explained that the applicant was to be relieved on 30.6.1994 but the date was extended to 1.7.1994 at his own request. He was relieved of his duties on 1.7.1994 and his Last Pay Certificate and Service Book had also been sent to the Patna Office. However, this fact was not brought to the notice of the Tribunal and on 12.8.1994, an order for maintenance of status quo was passed.

5. Our attention has also been invited to judgment dated April 27, 1994 by the Supreme Court in case of S.L. Abbas(supra), wherein it was observed that unless a transfer order is malafide order made in violation of a statutory provision the courts cannot interfere. It was also held that not following the instructions/guidelines is not sufficient to quash a transfer order as being malafide. The authority ~~need~~ not obliged to justify the transfer by adducing the reasons therefor. It was also observed that the guidelines requiring the husband and wife to be posted in the same station is not mandatory.

6. In view of the above consideration, there is no merit in this application and it is hereby dismissed. There will be no order as to costs.


(B.N.Dhoundiyal)
Member(A)

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