

OA 1229/90

3.7.1990

Present:

Shri V.P. Sharma, counsel for the applicant.

Shri K.L. Bhandula, counsel for the respondents.

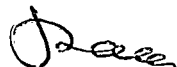
Heard the learned counsel of both the parties. The case of the applicant is that he has been picked up indiscriminately for transfer which is not in public interest and at least two persons senior to him have been kept in their old positions while he, who has a very genuine case in as much as his sister who is 38 years old and paralysed and his old mother need constant attention, is being transferred out. The learned counsel of the applicant said that although guidelines are not mandatory, the same have been applied in the case of one person and not in the case of another. This is discriminatory and amounts to violation of Articles 14 and 16 of the Constitution. It was also argued that the person who is replacing the applicant is coming on compassionate grounds and that the Tribunal should examine both the cases and decide whose case for compassion is greater.

2. The learned counsel for the respondents said that the transfer order issued by the Central Water Commission clearly states that the postings/transfers are made in public interest and that there is no malafide or arbitrariness of any type. He also said that the allegation that the applicant is being transferred while two of his seniors, namely, Shri Inderjit Rishi Raj and Shri Yograj Chadda have been kept in their place is not correct. The case of Shri Inderjit Rishi Raj was considered but he could not be spared in public interest as it was found desirable to continue him in his post for some more time whereas the other person, namely, Shri Yograj Chadda has in the meantime been transferred. It was also stated by the learned counsel for the applicant that the representation was made by the applicant but the same has been rejected without giving any reasons.

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3. We have gone through the application and given careful consideration to the arguments made by the learned counsel of both the parties. It is well settled by the Hon'ble Supreme Court vide their judgment in Kirtania's case (U.O.I and Others Vs. H.N. Kirtania (1989) 3 SCC 445) that the court should not interfere in transfers made in public interest unless there is some violation of statutory rules or the transfer/<sup>order</sup> has made some mala fide. Even if it is accepted that the person with longest stay has not been transferred, it is not discriminatory because in public interest sometimes persons with shorter stay may have to be transferred. There is no violation of Articles 14 and 16 of the Constitution as alleged by the applicant. Since the applicant has represented on compassionate grounds, it is for the respondents to examine his case on merit once again but we leave it to the respondents to consider this matter in case the applicant makes a further representation. As far as this application is concerned, the same cannot be allowed and is dismissed in limine.

4. The parties will bear their own costs.



(J.P. Sharma)  
Member (J)



(B.C. Mathur)  
Vice-Chairman