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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA-511 of 1991 Date of decision: 20.3.91

P.S. Mangal

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri S.K. Bisaria, counsel for the applicant.
Shri V.S.R. Krishna, proxy counsel for,
Shri M.L. Verma, counsel for respondent No.3.

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Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C. Jain, Member (A).

(Orders of the Bench delivered by Hon'ble
Justice Shri Ram Pal Singh, Vice-Chairman (J).)

The applicant is aggrieved by his transfer orders at Annexure-1 by which he has been directed to be transferred in the same capacity and posted in the C.P.O. Office, Bombay V.T., from Jhansi. Hence, this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter called the 'Act').

2. The applicant was working as Head Clerk in Agra Cantt and in the same capacity he has been transferred to Bombay V.T. vide orders dated 16.1.1991. This court on 28.2.1991, while issuing the notice to the respondents, on admission as well as on interim relief, directed that in the meantime status quo as of today may be maintained.

3. Shri S.K. Bisaria, counsel for the applicant, Shri VSR Krishna, proxy counsel for and Shri M.L. Verma, counsel for respondent No.3, have been heard on admission as well as on interim relief.

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4. The respondents have not filed any written reply, but have opposed the prayer on admission verbally at the Bar. The applicant challenges the impugned order of transfer because, according to him, it is illegal, arbitrary and in contravention of the principles of natural justice.

5. From the facts, enumerated in the application, it appears that the applicant has been transferred in the equivalent post and there is ^{no} change in the emoluments of the applicant. The applicant was also unable to disclose that his transfer will result in any adverse effect to his future career and prospects. Transfer is an incident of service and no employee has a right to remain in a particular post and at a particular place. The Government has a right to transfer an employee in the exigencies of work from one place to another. In **Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani** (1989 (2) SCC 602), the apex court has laid down the law in this regard:

"4. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servnt has no justification to avoid or evade the transfer merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other..."

Similarly, the same view has been reiterated by the apex court in **Shanti Kumari** (AIR 1981 S.C. 1577).

6. In his application, the applicant has raised the grounds that his children are school going, that he has an old ageing mother and transfer in the mid-academic year of his school-going children is likely

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to harm the future prospects of the children. In para 6 of his petition, the applicant states that after the passing of the impugned order, the applicant, without availing any other departmental remedy, has directly filed the petition before this court. Section 20 of ✓ the Act lays down that an application under Section 19 normally of the Act is not to be admitted unless other remedies have been exhausted. Under Section 20(2)(b), the applicant should have preferred a representation against the transfer order to his immediate superiors and should have drawn their attention to his difficulties in carrying out the transfer order. It is for the employer to also consider the comforts, benefits and inconveniences of its own employees if he is directed to be transferred from one place to another. Without availing this remedy of filing a representation before the appropriate authority, this application under Section 19 of the Act is premature. Accordingly, we dismiss the O.A. as premature and also vacate the interim order passed on 28.2.1991. Parties shall bear their own costs.

(P.C. JAIN)
(P.C. JAIN)
20/3/91

MEMBER (A)

(RAM PAL SINGH)
(RAM PAL SINGH)
20.3.91

VICE-CHAIRMAN (J)