

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2513/ 2004

New Delhi, this the 22nd day of November, 2004

Hon'ble Shri S.K. Naik, Member(A)

P.K.Banerjee
Room No.12, 3rd Floor
Village Munirka, New Delhi

Applicant

(Shri Bipin Kalappa, Advocate)

versus

Union of India, through

1. Cabinet Secretary
Rashtrapati Bhawan, New Delhi
2. Director General of Security
Cabinet Secretariat
Bikaner House Avenue, New Delhi
3. Inspector General(Head Quarter)
Special Frontier Force
RK Puram, New Delhi
4. Deputy Director(AG)
Hqrs. SFF, RK Puram, New Delhi

Respondents

(Shri B.S. Jain, Advocate)

ORDER(oral)

By virtue of the present application, applicant, working as LDC in the respondent-department, has challenged the order dated 8th October, 2004 by which he has been transferred from HQ SFF and posted at Kalsi. By order dated 7th October, 2004, he stands relieved from HQ with effect from 15th October, 2004. The grounds advanced for assailing the aforesaid posting order are that he is suffering from Rheumatic Heart Disease and undergoing treatment for the same in Safdarjung Hospital continuously and that the Head of the Department of the said Hospital has issued a medical certificate on 17.4.2002 to the effect that the applicant is fit only for moderate level activity in plains and that he may not be posted at a difficult and hard station of more than 5000 feet height. Learned counsel for the applicant has contended that the applicant has been advised mitral valve replacement immediately. He has further contended that the posting of the applicant at Kalsi is against the transfer policy guidelines which provide that individual requests on personal, domestic, health and other compassionate grounds would be given due consideration.

7 Jain

2. Respondents have contested the application. In their detailed reply, they have stated that SFF has two stations i.e one at HQ, New Delhi and another at HQ East No.22(Chakrata) where civilian staff are posted. The transfer policy (on which applicant also places reliance) clearly indicates that transfer on operational and administrative grounds may be ordered irrespective of duration at a particular station. Considering applicant's health condition and the medical advice given to him by the Safdarjung Hospital (supra) the applicant has been ordered to proceed on transfer to Kalsi, one of the SFS Units located approximately at 1500-2000 ft. from seal level. This place is not a hard and hilly station but a moderate station in plains. Medical facilities are available at Vikasnagar and Dehradun which are hardly 30 minutes and 1 ½ to 2 hrs. distance respectively from Kalsi. Moreover, medical specialist is also available at Military Hospital at HQ East No.22 (Chakrata). Who would be able to attend any patient at Kalsi.

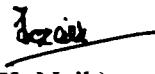
3. Respondents' counsel contends that the applicant has remained in Delhi since 8.7.96 and on completion of more than 3 years term, he was posted at Chakrata but because of the medical documents produced by him, his posting was cancelled. However, he has not got himself treated/operated and he has not taken any sort of leave on the ground of illness thereafter. It is only now when the transfer has been ordered that he has chosen to take the aforesaid grounds against the said posting at Kalsi. He has further stated that when the case was listed before the court on 13.10.2004, the Tribunal directed that if the applicant requests for leave on medical ground for getting admitted in the hospital for operation, he may be allowed the leave, if permissible under the Rules. However, the applicant has neither applied for leave for this purpose, though he stands relieved w.e.f. 15th October, 2004. nor has he got admitted to the hospital for replacement of valve as advised by the medical authorities. That apart, the counsel contends that there is no advice from the Hospital that the applicant should be retained at Delhi for his medical treatment. According to the counsel, the applicant has got all India transfer liability.

4. Drawing my attention the judgements of the Supreme Court in **NHEPC Ltd. Vs. Bhagwan and Shiv Prakash (2000 SCC L&S 21) and UOI V.Janardhan Bhineanath (2004 SCC L&S 636)**, the counsel has contended that transfer is not only an incident but also a condition of service. In view of this position, the OA be dismissed, the counsel concludes.

Janardhan

5. Law is well settled on the subject of transfer that the Tribunal ordinarily should not interfere with transfer matter unless the same has been ordered in violation of rules or with malafide intention. Admittedly, the applicant has been posted at Kalsi in view of administrative exigency after considering his state of health and the treatment facilities available in the new place of posting. Earlier also the respondents have taken a lenient view to cancel his transfer order to Chakrata on his health grounds. However, the applicant has not taken any initiative either to get himself admitted in hospital for replacement of valve nor has he applied for leave during the last two years on health grounds. Also the applicant has not been able to establish any malafide on part of the respondents in issuing the present transfer/posting order.

6. In the result, I find no merit in the application and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)

/gtv/