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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 1364/92

Date of decision 17.2.1993

PRITHIPAL SINGH ... Applicant

V/s

UNION OF INDIA ... Respondents
AND ORS.

CORAM:

The Hon'ble Member Shri C.J. Roy, Member (J)

For the Applicant ... Shri D.P. Seed, counsel.

For the Respondents... Shri P.P. Khurana, counsel.

(1) Whether Reporters of local papers may be allowed
to see the Judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri C.J. Roy, Member (J)]

This case is heard on 3.2.1993 and reserved for orders. This is an application filed by the applicant claiming a relief to quash the order No.110/396/EI, dated 29th January, 1992 issued by AGE, AC & R, Delhi Cantonment and to declare the posting of the applicant from CWE, Delhi Cantonment to CWE Suratgarh (Rajasthan) as illegal and against the rules.

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2. The brief facts of the case are that the applicant is a Refg. Mechanic in the office of Garrison Engineer and he claims that his wife is a patient of Leoadrama and unable to bear the extreme and rigorous climatic effects of Rajasthan and sought transfer to Delhi at their own request under the loss of seniority. He was posted in the office of the Garrison Engineer, Delhi. He claims that the Garrison Engineer, Bharatpur and Garrison Engineer, Delhi are under the control of different Commander of Works, and that his seniority was counted from the date of joining at Delhi. The applicant claims that he got an attack of Hypertension and heart trouble on 12.3.1988 and was admitted in Army Hospital, Delhi Cantonment and since then continuing treatment and following their advice. He also says that due to some of the officials who threatened for dislocation and thus resorted to false complaints directly or indirectly, but he remained committed to his work. The applicant has again claimed that he became indisposed and apprehending massive heart attack, he was admitted in the Army Hospital Delhi Cantt. on 29.1.1992 and while he was undergoing treatment the respondents

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had served the impugned order of transfer. He was discharged on 4.2.1992 with the directions and advice to take regular treatment and rest upto 18th March 1992 by the doctors. He files Annexures A, B & C as medical certificates. Again a movement order was issued on 29.1.1992 and it was pasted at the door of his residence. After knowing, the applicant preferred an appeal dated 26.2.1992 but the same was not considered. Annexure E is the copy of his representation. Further the applicant does not belong to All India cadre. He states that a locally controlled employee is posted to another CWE area will lose his seniority. The applicant's juniors have not been touched nor his seniors were touched but he is only transferred to Suratgarh without any justification, rules and law in an arbitrary and prejudicial manner by following pick and choose manner. The posting order is bad and that he can be only posted from one CWE to another CWE area on request or on being rendered surplus but not otherwise. He claims that he is still suffering from heart ailment. Hence, this O.A.

3. The respondents have filed a counter stating that the impugned order of transfer was issued to Garrison Engineers Suratgarh and that it was served on 7.2.1992. The applicant was SOS w.e.f. 30.1.1992 and working under Sub Division,

AGE, AC & R. Vide order No. 110/396/E1, dated 29th January 1992, AGE, AC & R directed the individual to submit no demand certificate before leaving the station. When the movement order was served, the applicant, who is a civilian got himself admitted in the Army Hospital on 29.1.1992, he was absent from duty since 29th January 1992 so the Movement Order was despatched through a registered cover vide receipt No. RL-498 dated 29 January 1992 which was returned back from the Post Office with the remarks that the applicant was not available at home. The counter further states that a Board of Officers went to the residence of the applicant's house. As per the Board, the applicant was in his residence but refused to accept the movement order so it was pasted on his first entrance door. The respondents admit that they have received a representation from him. They also say that a medical certificate dated 20th January 1992 (a day 7 days prior to the movement order) attached with this appeal shows the purpose of issue of this medical certificate as posting. He being a civilian as and get himself admitted in Army Hospital and/when required he can get a medical certificate seven days prior to

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issue of movement order to him. This clearly shows that the applicant knew seven days in advance all about his likely posting. It is ^{seen} ~~seen~~ from s.no.2 of his exhibit medical certificate dated 20.1.92 where the purpose of issue of medical certificate is given as 'posting'.

4. The respondents further categorically states that the applicant belongs to all India service liability as per the terms and conditions of his appointment letter and that he was transferred in the public interest and that there was no loss of seniority.

5. Education facilities for children was also available at Suratgarh. The posting order ^{was} issued by the competent authority. The service liability of the applicant was of All India service and no injustice has been done to him and he has already been SOS on 30.1.1992 and that the contention of the applicant was miscarried, wrong and denied.

6. The applicant also filed a rejoinder subsequently more or less repeating the same points but elaborating a lot.

7. I have heard the applicant's counsel and also the Ld. counsel for the respondents and perused the records.

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It is clear that the order at Annexure A is a speaking posting order. It contains a condition that if he fails to report that office he will not be entitled to any pay and allowances. Annexure A-C is a medical certificate stating that the applicant is having Hypertension, Angina and Annexure 2 is an Army Hospital, Delhi Cantonment's diagnosis is Angina, Hypertension and Obesity.

8. The applicant was transferred to Delhi on his request and since then he is working in Delhi. It is no doubt not established by the applicant that he is not an All India service official. The applicant has also filed Ann.G showing the guidelines of transfer on compassionate grounds. It states that transfer seeking on compassionate ground only, these instructions will apply.

9. I have also seen Ann. 8 where a ^{chain} ~~changed~~ transfer is shown by the respondents posting several people here and there.

10. Under the circumstances the applicant is ~~not~~ amenable for All India transfer ^{as this is not properly established by the applicant as per rules, terms and conditions of his appointment.}

11. The applicant, according to Gujarat Electricity Board should first join at the place of transfer and then make representation. [AIR 1989(3) SC 4433].

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12. In Kirti Niyas case [AIR 1989(3) SC 133 Judgement Today] and Silpi Bose's case [AIR 1991 SC 532] it is held by the ~~Lordship~~ that ⁴ a transfer ~~which~~ is in the public interest and exigencies of duty ^{and public interest} cannot be interfered. In Gujarat Electricity Board case the Supreme Court held that the applicant should first go and ~~then~~ join the duty first and then make the representation otherwise he is liable to be ^{disciplinary} ~~dismissal~~ proceedings.

13. Under the circumstances I fail to understand how the applicant refused to accept the transfer order even though he was in the house and later got himself admitted in the hospital. He could have gone to the civil hospital ~~on the apprehension of heart attack~~ on the ground that he was apprehending heart attack, hypertension and Angina. He could get this treatment anywhere and just because his wife is here, it is not a vested right that he is posted here ^{and keeps coming} in Delhi ^{retirement}. On the basis of the judgements cited above, I dismiss the petition with no order as to costs. However, it is left to the respondents to have his representation disposed of within a month of the receipt of this order and pass appropriate order. With this direction, the application is dismissed with no order as to costs.

(C.J. Roy)
Member (J)