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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1520/93.

New Delhi, this the 8th day of June, 1994.

SHRI J.P. SHARMA, MEMBER(J).

Shri Madan Lal Gakhar,
S/o: Lt. SHri Ram Ditta Mal,
aged about 50 years, 4 months,
R/o: 336-B, J&K Pocket, Dilshad Garden,
Delhi-110032,
working as Upper Division Clerk in the office of
Garrison Engineer (Project) No.1,
Referal & Research Hospital,
Delhi Cantt., Delhi-110010.Applicant

By advocate : Shri M.K.Gupta.

VERSUS

1. Union of India, through
The Secretary,
Ministry of Defence, South Block,
New Delhi-110001.
2. Chief Engineer,
Western Command Head Quarter,
Chandimandir-134007.
3. Garrison Engineer (Project) No.1,
Referal & Research Hospital,
Delhi Cantt., Delhi-110010.Respondents

By advocate : Shri V.S.R. Krishna.

ORDER (ORAL)

The applicant was posted in Garrison Engineer, Project No.1, Referal & Research Hospital, New Delhi as U.D.C. since 1987. On promotion, he was transferred along with others to Bhatinda by the order dated 10.3.88. Aggrieved by the same, the applicant preferred OA No.1235/88. The Division Bench by its order dated 23.12.88 quashed the order of transfer because there was violation of the transfer policy inasmuch the posting of the applicant at Delhi was on compassionate ground and also on the fact that he has forgone his promotion. In the present O.A., the applicant has challenged his transfer dated 13.1.93 from the present place of posting under Chief Engineer at Jalandhar at Bikaner. The applicant has prayed for the grant of the

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relief that the aforesaid order of transfer be quashed being in violation of the transfer policy and that under transfer policy dated 25.2.91 under Rule 22(f), the applicant is not liable to be transferred.

2. A notice was issued to the respondents who contested the application on the ground that the transfer of the applicant has been effected in public interest. The applicant has filed the rejoinder reiterating the facts already averred in the original application. On a perusal of the file, it appears that the respondents have filed the counter but the same is not on record. A copy of the counter has been taken from the counsel for the respondents.

3. I heard the counsel for the parties at length and perused the records. In fact, in a service with all-India Transfer Liability, it is a part of service conditions whereby an employee can be posted in anywhere in India. Of course, in order to be equitable and just as well as fair to all the employees, certain guidelines are laid down for effecting transfers as a policy matter. The respondents in this case have also prepared a guideline in 1991, a copy of which has been annexed along with this application. This transfer policy dated 25.2.91 stipulates that a person who has completed 50 years of age should not be posted to a tenure posting which is supposed to be a hard posting in the terminology of transfer. Only ground highlighted by the counsel for the applicant is that the applicant was to reach the age of 50 years and only 2 months before, the applicant has been arbitrarily chosen as a single-handed person for posting. This is a tenure posting. Rule 22(f) is quoted below :

" (f) The normal age limit for tenure station posting is 50 years. Subordinates over 50 years may also be posted for a lesser tenure but none will be retained at a tenure station beyond the age of 53 years.

Subordinates above 50 years of age will not be posted to snow-bound areas and tenure stations where the tenure is 2 years. The age for such postings will be considered as on date of issue of posting by CE Commands. "

4. The learned counsel for the applicant has also placed reliance on the authority of HOME SECRETARY, UNION TERRITORY OF CHANDIGARH AND ANOTHER v. DARSHIT SINGH GREWAL reported in 1993(4) SCC 25. This primarily relates to admission to engineering colleges. In that context, the Hon'ble Supreme Court has considered the guidelines governing that admission. The learned counsel for the applicant, therefore, argued that these policies framed either for transfer or for admission of colleges come at the same level and, therefore, as per the ratio of this judgment, are of binding nature. The learned counsel for the applicant also referred to the fact that the applicant has been chosen up only 2 months before while subsequently the normally orders were issued on 29.3.1993.

4. In fact, in the case of Full Bench in KAMLESH TRIVEDI v. UNION OF INDIA reported in Full Bench Decision Vol.I p.83, the guidelines in the matter of the transfer are of the directive nature. But, in this case, even taking the guidelines mandatory, the applicant has not attained the age of 50 years and so he is very much covered under this policy and by the order of January, 1993, no breach has been committed. Coming to this next contention of the counsel for the applicant that the applicant has been transferred in isolation rather than effecting a group transfer of officers which has already taken place in March, 1993, this shows arbitrariness and unfairness on the part of the respondents. The argument appears plausible *prima facie* but when we go to the history of the case, the applicant was transferred in March, 88 and that transfer order was clear which goes to show that the applicant was due for transfer

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and by virtue of the order of transfer having been quashed, he has not been picked up for all these 5 years. That transfer was from ~~piece~~ ^{peace} station to another ~~piece~~ station. The applicant, therefore, has a different and separate case from the other employees who during all this period might have suffered transfer either of tenure posting or of ~~piece~~ station.

5. Transfer is an administrative matter provided it is in the interest of public and in the exigencies of the service. The applicant has to serve at a place where he is ordered to serve provided the order is not mala fide or does not smell arbitrariness. That is not the case here. If the respondents were having any bias against the applicant, then immediately after quashing of the order by the Tribunal in March, 88, he could have been chosen for further transfer and that has not been done. That shows open mind of the respondents. In case an interference is made in the order of transfer, it will be inequitable to others who for all these 5 years have been transferred from their original posting. I am fortified in my opinion by the reported decision of Ms. Shilpa Ghosh v. State of Bihar reported in 1991 ATC Vol.17 p.935 and Union of India v. S.L.Abbas reported in ATC 1993 Vol.25 p.844. I find no merit in this case and the same is dismissed. The interim order passed in this case is vacated. Costs on parties.

J.P. SHARMA

(J.P.SHARMA)

MEMBER(J)

'KALRA'