

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 20th day of May 1997.

Original Application no. 797 of 1996.

Hon'ble Mr. S. Dayal, Administrative Member.

Sri Pratap Narain Agnihotri, S/o Late Shri Pandit Ram Shanker Agnihotri, at present posted as Assistant Director (P & D) Grade II, resident of 11/286, Sounerganj, Kanpur.

... Applicant

C/A Sri B.P. Srivastava

Versus

1. Union of India, through the Secretary, Ministry of Textile, Government of India, New Delhi.
2. The Textile Commissioner, 48, New Marine Lines, New C.G.O. Building, Mumbai-20.
3. The Director (Administration), Office of the Textile Commissioner, 48, New Marine Lines, New C.G.O. Building Mumbai-20.

... Respondents.

C/R Km. Sadhana Srivastava.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985. The applicant has come to this Tribunal with the prayer that his order of transfer from Kanpur to Noida be set aside.

2. The applicant has sought the relief on the ground of his impending retirement on 31.05.98^{and} his medical problems. The transfer order was once deferred by the respondents on similar grounds in 1994 has again been made in 1996 by the impugned order. The respondents have mentioned in their counter reply that the applicant was transferred to Noida because he was taking medical treatment from Doctor of Batra Hospital, New Delhi and it would be convenient for him to be in Noida^{and} frequent journeys from Kanpur to Delhi would thus be avoided. They have also stated that judicial review would be warranted only if malafide or statutory bar to transfer is proved. It is also stated that transfer is an incident of service and can not be interfered with on the grounds taken in the application.

3. / Arguments of Sri B.P. Srivastava, were heard for the applicant while Km. Sadhana Srivastava appeared for the respondents.

4. The applicant has shown that he underwent angioplasty in October 1992. He has also shown that he is under continuous medical supervision each quarter and is on a drug, exercise and diet regimen because he has been^{diagnosed as} positive for a^aesche^amia since 1994. (Annexure A XIII) It is also an admitted fact that he has less than two years before his superannuation and Kanpur Office has already started preparing papers for his pension and other benefits. (Annexure A XXII). These are admitted facts.

5. The contention of the respondents with regard to

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impending superannuation has been that the transfer is not going to affect his settlement of pensionary benefits as he can send details from his next place of posting. The respondents have cited a number of cases including State of M.P. & Another Vs. S.S. Kourav and others, 1995 SCC (L&S) 666 to contend that judicial review is not warranted only on account of hardship caused to an employee on account of transfer.

6. In this case the respondents claim that they have acted in the best interest of administration as well as of the employee in transferring him to Noida. The applicant has contested it in his representation (Annexure A XX). He has stated that he has less than two years to go before his retirement that he has an ancestral house in Kanpur where he stays with his brothers and has frequently ~~he~~ seek help from them when he has medical problems. It is difficult to accept the contention of the respondents that this transfer is in the interest of the applicant. The applicant **will** have to search accommodation for himself and his family in the last two years of his service when normally the Govt. accommodates the officials by transferring them to their ~~home towns~~ ^{that} towns. After ~~he~~ ^{that} he will have to pack up his luggage and get it transferred to Noida to be retransported next year when he retires. There will be additional stress and ~~his~~ lifestyle will undergo a change at a time when he has grave medical problems and needs a settled life. He will have to change his diet, rest and exercise patterns the continuation of which is crucial for his survival.

7. The applicant is due to retire in May, 1998. The change of place and office would involve the completion of his accounts like payments, advances, leave etc by Kanpur office and their transference to another office. Each official, who has retired, knows how difficult it is to obtain early payment of all retiral benefits even when an official is stationary at one place. It adds to difficulties and delays if an official changes place. This would lead to further stress as flow of income would stop and any medical emergency would be ^anightmare. Hence the assurance of the respondents that change of station would not affect the settlement of pension etc sounds hollow and unrealistic.

8. The applicant made a representation to the respondents against his transfer. Paragraph 27 of the counter reply states that the representation of the applicant was rejected because he desired to continue at Kanpur on domestic as well as health grounds. The respondents appear to suggest that domestic and health problems of a cardiac patient can be separated and that domestic problems can be ignored because the domestic problems in their opinion would ^{not} cause any stress.

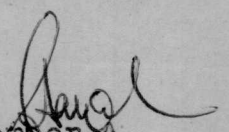
9. The respondents have admitted in their counter reply that the transfer of the applicant was made to accommodate another official who had requested for a transfer to Kanpur and he had to be considered ^{because} ~~considered~~ because he had spent four years and two months in Burhanpur and had requested for a transfer because his wife was working at Hamirpur

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near Kanpur. The transfer order which has been impugned shows a chain of four officials in which two officials have been given request transfer and the other two officials had to be transferred from their places of posting because the officials making request for transfers had to be accommodated. While such transfers are routinely made in administration but the difference in the case of the applicant is that he has a greater need to stay at Kanpur, and yet without applying mind properly to the question of balance of convenience, the respondents have transferred the applicant out.

10. Taking a composite view of the status of health and the fact that the official of applicant, the impending superannuation is being replaced by an official on the latter's request without any assessment of the comparative need of the two officials to be in Kanpur, the only conclusion can be that the transfer was arbitrary and hence malafide in view of the circumstances discussed above. The transfer order is, therefore, set aside. The applicant shall be entitled to consequential benefits as sought in clause 8 B of the relief by way of pay and allowances and future payment of salary and allowances on a regular basis.

11. There shall be no order as to costs.


Member-A

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