

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.584 OF 1998

Allahabad, this the 23rd day of April, 1999.

CORAM : HON'BLE MR.S.K.AGRAWAL, MEMBER(J)

S.K.Varma, Son of Late Shri T.P. Varma,
R/o. P/34/5 Old M.H. Area Cantonement,
Kanpur

.....Applicant

(By Shri Shishir Kumar, Advocate)

Versus

1. The Union of India, through
the Secretary, Ministry of Defence,
New Delhi.
2. The Chief Engineer, Central Command,
Lucknow.
3. The Chief Engineer,
Lucknow Zone, Lucknow.
4. The Commandar Works Engineer No.1,
Wheeler Barrack Camp,
Kanpur Cantt.

.....Respondents

(By Km. S. Srivastava, Advocate)

O R D E R

(By Hon'ble Mr.S.K.Agrawal, Member(J))

In this original application the applicant makes a prayer to declare the impugned order of transfer dated 19-5-98 as null and void and to direct the respondents not to press the applicant for his movement to Lucknow on transfer.

2. In brief facts of the case as stated by the applicant are that the applicant was working as S.A.I.

in G.E.Project Factory at Kanpur from February,1992 thereafter he was transferred at Commander Works Engineer-I Wheeler Barrack Cantonement, Kanpur, but suddenly vide letter dated 2-12-97 the applicant was considered as surplus, though he was not actually surplus. The applicant filed representation dated 30-3-98 but no reply was given, on the other hand the applicant received a movement order dated 19-5-98. It is stated that a recorded warning was given to the applicant by Commandar Works Engineer under the orders of Chief Engineer, Central Command dated 8-7-97 against which the applicant filed O.A. 787/97 and this Tribunal Tribunal was pleased to stay the impugned order dated 8-7-97. It is stated that because of this the respondents passed the impugned order of transfer. It is stated that this transfer was mid session transfer which affected the education of his children. Therefore the applicant has prayed to Quash the impugned order of transfer and sought the relief as mentioned above.

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3. Counter was filed. It is stated in the counter that the applicant was longest stayee after completion of four years and ten months at Kanpur and vide his application dated 26-12-97 the applicant has requested for differment of his posting on account of education of his children, thereupon the competent authority considered his request sympathetically and differed his posting till 15-4-98. It is stated that the petitioner was served movement order of transfer dated 19-5-98 after the end of academic session and the applicant being longest stayee was transferred in the interest of service. It is also stated that at the place of transfer the applicant is having at least similar education facilities. The applicant was appointed having All India Transfer liability and his representation was replied vide letter dated 27-6-98 by which the representation was rejected. It is denied that the applicant was transferred because of transferring

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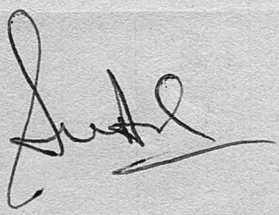
authority became annoyed with the applicant after he filed O.A. before Central Administrative Tribunal, Allahabad. At the end, it is stated that present petition is devoid of any merit and liable to be dismissed.

4. Rejoinder was filed reiterating the facts stated in the original application.

5. Heard the learned lawyer for the applicant and learned lawyer for respondents and perused the whole record.

6. Learned lawyer for the applicant during the course of his arguments submitted that applicant was transferred in violation of transfer policy meant for Group 'C' and 'D' personnel of Military Engineering Service and he has referred a letter No.78040/EC(1) dated 31-8-94. In support of his contention he has referred -

- 1) N.K.Singh Vs. Union of India & Others JT 1994 (5) S.C. 298.
- 2) Home Secretary U.T. of Chandigarh and another Vs. Darshjit Singh Grewal & others JT 1993 (4) S.C. 387.
- 3) Smt. Deepa Vashishtha Vs. State of U.P. & others 1995 HVD Vol.III.



7. On the other hand, learned lawyer for respondents while objecting the arguments has submitted that the applicant was transferred in the interest of service as he was having the longest stay at Kanpur.

He has further argued that there is no violation of transfer policy in the case of applicant and submitted that guidelines do not create any legally enforceable right in favour of the applicant. In support of his contention she has referred -

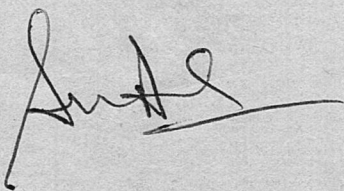
1. Union of India and Others Vs. S.L.Abbas.

2. S.S.Kaurav Vs. Union of India & others.
1995 SCC (L&S) 666.

8. I have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

9. In N.K.Singh Vs. UOI and others Hon'ble Supreme Court held that -

"Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchial superiors to make that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principles governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated. The private rights of the appellant

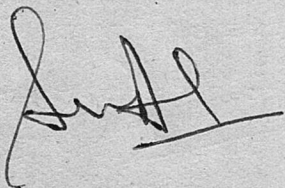


being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to them."

10. The case Home Secretary U.T. of Chandigarh and another Vs. Darshjit Singh Grewal & others JT 1993 (4) S.C. 387 cited by the learned lawyer for the applicant is not applicable in this case as this case does not relate to the transfer of an employee from one place to another.

11. In Smt. Deepa Vashishtha Vs. State of U.P. and others 1995 HVD Vol. III 107 High Court of Judicature at Allahabad has held -

"In respect of transfer of employees, law is well settled. Time and again the Courts have ruled that transfer of Government employee is a concomitant of service. Since transfers are made for administrative reasons or in public interest, therefore, no interference with the same is called for in the writ jurisdiction, save in exceptional cases where ex-facie it is demonstrated that the transfer is contrary to any statutory mandatory provisions of law or it is vitiated on the ground of malafide or it has been made in colourable exercise of power such as frequent transfers within a short span of period resulting into harassment of the employee on the one hand and unnecessary loss to the Public exchequer on the other or transfer is made during mid academic session resulting into disturbance & discontinuation of studies of the children of transferee."



12. In Union of India and others Vs. S.L. Abbas (1993) 25 ATC 844 it was held by the Hon'ble Supreme Court of India that the guidelines issued by the Govt.

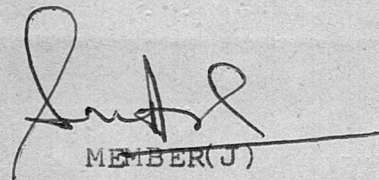
do not confer upon an employee legally enforceable right or the transfer made without following the guidelines cannot be interfered unless it is vitiated by malafides or is made in violation of statutory provisions.

13. The learned lawyer for applicant during the course of his arguments has submitted that the instant letter No.900601/2/289/Legal Cell, dated 11-12-96 is not merely guidelines for transfer but it contains a policy of transfer which has statutory force.

I am not inclined to accept the contentions of the learned lawyer for the applicant. The instant letter is nothing more than the guidelines which do not create any legal enforceable right in favour of the applicant.

14. In the instant case it appears that applicant was transferred from Kanpur to Lucknow being longest stayee and in the administrative exigencies of service. The law on this subject is also very clear and does not help the applicant at all. Therefore, no interference is called for in the impugned order of transfer.

15. I, therefore, dismiss this original application with no order as to costs.


MEMBER(J)

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