

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application NO. 30 of 2001 (U)

Allahabad this the 24<sup>th</sup> day of January, 2002

Hon'ble Mr.A.K. Bhatnagar, Member (J)

Mahesh Chandra Pant a/a 57½ years S/o Shri Kedar Dutt Pant, R/o B-2/5, D-A.D. Colony, Spring Field Ranikhet, District Almora.

Applicant

By Advocate Shri K.K. Misra

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Controller General of Defence Account West Block-V, R.K. Puram, New Delhi.
3. Controller of Defence Account (Army), Meerut Cantt.
4. Senior Account Officer (O.R.S.), K.R.C. Ranikhet, District Almora.

Respondents

By Advocate Shri G.R. Gupta

O R D E R

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 to set aside the impugned order dated 03.01.2001. The applicant has further sought to quash the order dated 04.01.2001 passed by respondent no.2.

2. The brief facts of the case are that

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the applicant while working as Senior Auditor was suspended by order dated 01.06.2000. He has challenged the same by alleging malafides against respondents no.2 and 3. It is stated that suspension order was the result of various complaints made by the applicant against the respondents no.2 and 3. The respondent no.4 also granted 2 adverse entries in the character roll of the applicant. The applicant has said that in the charge-sheet dated 13.11.2000 all the charges are baseless. The ~~suspension~~ order of the applicant was revoked on 01.01.2001 and he was transferred on 03.01.2001 to the Office of A.A.O., I.M.A. Dehradun. The applicant moved representation against the order dated 03.01.2001 on 08.01.2001 taking the shelter of order dated 23.02.1993 whereby it was directed that the important office bearers i.e. President Vice President, One Treasurer and one Secretary may not be transferred before completion of their tenures as Office bearers of the registered Union. The applicant has also challenged the impugned transfer order taking wherein the help of the order dated 29.11.1972/ the Govt. of India, Ministry of Defence issued the certain guidelines stating that the person reaching the age of 55 years or above should not be transferred except at their request and to stations of their choice. At the time of filing of the O.A. the applicant was 57 $\frac{1}{2}$  years of age, therefore, he cannot be transferred. The applicant has also challenged the impugned order on the ground that since the wife of the applicant is a teacher in a School run by a Board of the Govt, he cannot be transferred in view of the circular dated 12.06.1997 passed by the Govt. of India, Department of Personnel and Training O.M.No.28034/2/97(A) dt. 12.06.97.

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The applicant moved a representation for redressal of his grievance in which he was also taking a ground that her daughter was taking education at Almora and a student of Polytechnic. Thereafter getting no response he has moved Original Application No.01/01(U), which was decided by this Tribunal on 16.02.2001, giving direction to the respondents to decide the representation moved by the applicant with a reasoned and speaking order. The respondents rejected the representation of the applicant on 04.05.2001. Hence the applicant has filed this O.A. seeking the abovementioned grievances.

2. The respondents have contested the O.A. by filing counter-affidavit, in which it is stated that the malafides alleged by the applicant against various officers are motivated and the impugned transfer order is just and proper in the prevailing circumstances. The respondents have further stated that the behaviour of the applicant to his superior officers was not proper and the entries adverse in his character roll was just. The respondents have mentioned that the disciplinary proceedings are still going on and that was the main reason to transfer the applicant as he may not disturb any witnesses. The impugned orders were passed by a competent authority and the applicant was transferred due to administrative exigencies. It is further stated that the Govt. Orders mentioned by the applicant do not help him as they are not applicable on the applicant as transfer order was passed on account of administrative exigency. With these grounds the respondents have prayed for dismissal of the O.A.

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3. I have heard the learned counsel for the parties and perused the record.

4. The impugned transfer order dated 4.1.01 was kept in abeyance by the order dated 04.06.01 with further direction to consider and decide the matter of the applicant within four weeks. The applicant is going to attain the age of superannuation very soon. Para 3(d) of guide-lines issued by Govt. of India vide Ministry of Defence O.M. dated 29th November, 1972 (annexure-13) reads as under;

"Persons reaching the age of 55 years or over should not be transferred except at their request and to stations of their choice."

The respondents are required to follow the guide lines referred to above, and should have abstained from issuing the impugned order, which is in absolute contradiction of the guide lines. Therefore, in my view, same are not legally tenable.

5. In the facts and circumstances, the O.A. is allowed. Orders dated 03.01.2001 and 04.05.2001 are quashed with the direction to the respondents to allow the applicant to work as Senior Auditor at Ranikhet. No costs.

  
Member (J)

/M.M./