

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 7th day of March, 2001

Original Application No. 234 of 2001

C O R A M :- Hon'ble Mr. S. Dayal, Member- A.

G.S. Dhiman, S/o Late S.R. Dhiman,
Superintending Surveyor, Officer In-charge No. 70
(Forest) Party, Survey Of India, Northern Circle,
Dehra Dun.

.....Applicant

Counsle for the applicant :- Sri Saumitra Singh

V E R S U S

1. Union of India through the Secretary, M/o
Scince and Technology, Department of Scince and
Technology, Technology Bhawan, New Mehrauli Road,
New Delhi.
2. The Surveyor General of India, Hathibarkala Estate,
Dehradun.
3. The Director, Northern Circle, Survey of India,
17- E.C. Road, Dehradun.

.....Respondents

Counsel for the respondents:-

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O R D E R (oral)

(By Hon'ble Mr. S. Dayal, Member-A.)

This application has been filed for setting-aside the impugned orders dt. 02.01.2001, 11.01.2001, 22.02.2001 and 23.02.2001 passed by respondent Nos. 2 and 3. A direction is also sought to the respondents not to give effect to the impugned orders.

2. I have heard learned counsel for the applicant on the issue of admission of this case.

3. The orders challenged are order dt. 02.01.2001 passed by respondent No. 2 transferring the applicant from O.C No. 70 (F) Party (NC) Dehradun to Southern Circle, Bangalore. The order was to be impleaded before 24.02.2001. In pursuance of order dt. 02.01.01, by order dt. 11.01.2001 respondent No.3 required the applicant to be relieved of his duties latest by 31.01.2001 and report to the Director, Southern Circle, Bangalore on transfer. As per office letter dated 10.01.2001 Sri A.S. Chauhan, Officer Surveyor was required to take over charge of O.C No. 70 (F) Party (NC) on current duty basis, on transfer of G.S. Dhiman.

4. By order dated 22.02.2001, the representation dated 25.01.2001 was decided and transfer order in respect of Sri G.S. Dhiman, Superintending Surveyor, Dehradun was found in order and by order dated 23.02.2001 Sri G.S. Dhiman was ordered to be relieved of his duties and report to the Director, Southern Circle, Bangalore on transfer.

5. The facts of the case are that the applicant had challenged the orders dt. 02.01.01 and 11.01.01 in

O.A No. 60/01 which was decided on 19.01.01 granting liberty to the applicant to make a representation before respondent No. 2, The Surveyor General of India and place all the difficulties before him by filing a representation within a week and the respondents were required to decide the representation by a reasoned order. The transfer order was cancelled for a period of six weeks or till the representation is decided. The applicant thereafter made a representation on 25.01.01 which has been decided by impugned order dt. 22.02.01.

6. In the representation dt. 25.01.01 (annexure A-10) the applicant has sought the cancellation of transfer order dt. 02.01.2001 on the following grounds :-

i) Transfer order is communicated by placing the applicant's junior Sri Ram Prakash, Superintending Surveyor in the higher post of Deputy Director (Photo) (NC) on current duty charge which was deliberately to the applicant.

ii) The applicant is facing a number of difficulties namely the health of his wife due to her old age, the death of his father a few years ago and the applicant is only successor to look after his family affairs, the youngest daughter is in marriageable age and is studying in M. Sc. in D.B.S Collage, Dehradun and her final examination is likely to take place in June- July, 2001 and lastly the applicant has stated that he wants to settle at Dehradun after his retirement and has made arrangements for construction of his house in Dehradun.

iii) The applicant has mentioned that he has remain^{ed} out of Dehradun for a period of 23 years and some posts in the grade of Superintending Surveyor/ Dy. Director are lying vacant at Dehradun station in the Northern Circle itself

and in other circles also. It has also mentioned that transfer will entail a heavy burden on the public exchequer.

7. Learned counsel for the applicant mentions that the applicant is a heart patient and order dated 22.02.01 was served to the applicant in the hospital where he was admitted for treatment of ailment of heart. Learned counsel for the applicant has also mentioned that transfer order is punitive in nature and that transfer order has been passed on the basis of complaint made by Km. Savitri Devi regarding her sexual harassment by Sri B.S. Kalyania. Although, a departmental enquiry was taken against Sri B.S. Kalyania by memorandum dt. 12.01.00 and B.S. Kalyania was exonerated of charges of sexual harassment by order dt. 14.08.00.

8. As for the issue relating to the placement of Sri Ram Prakash on the post from which the applicant has been transferred, it falls within the discretion of ^{the} ~~order~~ ^{respondents} ~~and not the~~ and it is not subject to judicial review. The personal difficulties of the applicant including his ailment ^{being} ~~alleged~~ not considered by the respondents, also falls in the same category.

9. With regard to the period expended out-side Dehradun or in Dehradun or period expended by various officers in Dehradun, the same is to be considered by the respondents and judicial review for the same is not called for. Similarly the contention that the respondents are keeping post of Superintending Surveyor/ Dy. Director vacant at Dehradun, ~~it~~ ^{is} is a matter which falls within discretion of the respondents and judicial review is not called for. The matter regarding burden of the ex-chequer is also similar

and is not subject to judicial review of transfer in the circumstances of the case. As per as mid session of study of the applicant's daughter in M. Sc. are concerned, the learned counsel for the applicant has relied upon Dy. Director of School Education, Madras & others Vs. O. Karuppa Thevan & Ors. 1994 Supreme Court Cases (L&S), 1180. The Hon'ble Supreme Court in this judgment has given following order :-

"The Tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

In the present case the respondents have explained the reason as to why the applicant had to be transferred and these reasons are contained in paragraph-b and in paragraph 2,3 and 4 of parawise reply to the representation of the applicant. In the authority

relied upon, the officials are clearly permitted to be transferred if the exigencies of the services ^{So require.} ~~are~~ ^{are} urgent. The letter dt. 22.02.01 (annexure A-3) brings out such exigencies and therefore, the ratio of the authority relied upon by the applicant is not applicable to the applicant in this case.

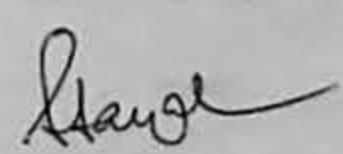
10. The applicant has further challenged that the transfer was ordered to pressurise the applicant to withdraw the review application and also to accommodate his juniors. There is no specific malafide against any respondents and vague assertion of malafide does not give entitlement to the applicant to any relief.

11. Lastly, the learned counsel for the applicant has suggested that the transfer is punitive in nature. This [&] ~~as~~ ^{assertion} is based on the complaint of Km. Savitri Devi against Sri Kalyania and recommendation No. 3 of the findings contained [&] ~~in~~ in annexure A-11 to the O.A which reads as follows :-

" In case any further inquiry is held in the interest of natural justice, D.D.(P) should also be shifted so that pressure/ influence is not exercised on the witness."

12. It is not quite clear from the facts on record that whether no further enquiry is being conducted against the applicant in this case. Therefore, this case and the applicant's transfer are not interlinked . In the circumstances I find no merit in the application and same is dismissed in limine.

13. There will be no order as to costs.


Member- A.