

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 31st day of January, 2001

Original Application No. 97 of 2001

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Har Prasad Dixit son of
Late Sri Devi Prasad Dixit,
Resident of 432 Basant Vihar,
Kanpur.

(Sri O.P. Gupta, Advocate)

..... Applicant

Versus

1. Executive Engineer C.P.W.D. Kanpur,
G.T. Roadk, Kalyanpur, Ianpur.
2. The Director General of Works,
Central Public Works Department,
Nirman Bhawan, New Delhi.
3. Union of India through Director General,
Central Public Works Department,
Nirman Bhawan, New Delhi.

..... Respondents

O R D E R (O_r_a_l_)

By Hon'ble Mr. Justice RRK Trivedi, V.C.

By this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has questioned the legality of the order dated 5-1-2001 by which he has been transferred from Kanpur to Agra as Assistant Engineer against an existing vacancy. The transfer order has been challenged on various grounds including the academic interest of the daughters and son of the applicant. The academic interest of his children shall be adversely affected on account of this



impugned order of transfer which has been passed during the mid of academic session. Learned counsel for the applicant has placed reliance on the judgement of Hon'ble Supreme Court in the case of Director of School Education, Madras & Others, reported in 1994 SCC (L&S) 1180. In para 2 of the judgement the Hon'ble Supreme Court has held as under :-

"2. 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."

2. In the present case, in para 4(iv) the applicant has stated that his two daughters, namely, Km. Rashmi is a student of M.A. (Economics) Final and the 2nd daughter Km.Ratana is student of M.A.(English Literature) and their examinations are likely to be held in the month of June, 2001. It has also been stated that the son of the applicant Sri Ajai Dixit is the student of B.Sc. IIInd year and his final examination is likely to be held in May, 2001. Thus, from the facts stated in the application there is likelihood that the children of the applicant may suffer on the basis of the impugned order



of transfer.

4. The application is accordingly disposed of finally with liberty to the applicant to make a representation before respondent no.2, Director General of Works, C.P.W.D. ^{within two weeks} Nirman Bhawan, New Delhi. The representation if so filed shall be considered by respondent no.2 in the light of the observation made above and shall be decided by a reasoned order within a month from the date a copy of this order is filed before respondent no.2. For six ^{Weeks} ~~months~~ or till the representation is decided, whichever is earlier, the impugned order of transfer shall be kept in abeyance. There shall be no order as to costs.

Vice Chairman

Dube /