

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 1st day of June 2007.

Original Application No. 105 of 2004.

Hon'ble Mr. P.K. Chatterji, Member-A

No. 6624263 Ganeshi Lal Yadav, Driver, S/o Dhani Ram 749(I) TPT PL ASC (Civil GT) New Cantt. Allahabad.

..... Applicant

By Adv: Sri B.B. Sirohi.

V E R S U S

1. Union of India through Defence Secretary,, Defence Ministry, New Delhi.
2. The Director General of Supply and Transport, Quarter Master General Branch, Army Headquarter, New Delhi.
3. Officer Commanding of A.S.C. Record (MT) Bangalore-7.
4. Officer Commanding 749(I) TPT PL ASC (Civ GT) C/o 56 APO.
5. Officer Commanding of 5033 ASC Bn(MT) C/o 56 APO.

..... Respondents

By Adv: Sri R.K. Tiwari.

O R D E R

The applicant has approach this Tribunal being aggrieved by the order of transfer from Allahabad to Siliguri. He was working as driver at 749(I) TPT PL ASC (CIV GT) under the Director General of Supply and Transport Army Headquarter, New Delhi. On 12.03.2001 the applicant received a letter from 5033 BN that he was transferred to 5033 ASC BN C/o 56 APO. The applicant challenged the order before the Tribunal at Allahabad by OA No. 580/01. The Tribunal passed an order dated 16.05.2001 directing

*meat*

the respondents to decide the representation within 10 days and till the disposal the transfer order of the applicant should remain in abeyance. Thereafter the applicant sent a representation to respondent No. 2 and prayed for stay of the order of transfer.

In the representation he also stated that his request should be considered in the light of transfer guidelines in respect civilian employees in the respondents' organization dated 28.11.1997.

Copy of the order 28.11.1997 has been annexed by the applicant.

2. However, the applicant is aggrieved that the representation of the applicant was not favorably disposed of and it was rejected without proper application of mind. The applicant has alleged that the respondents should have considered his representation on the basis of new policy decision of 28.11.1997. But in the letter rejecting his representation they have cited grounds under provisions of transfer policy of 1994 which was not in vogue. This shows that there was not proper application of mind.

3. The applicant has further stated that in terms of the transfer guidelines of November 1997 there is practically no scope of transfer of employees of Civil GT Units. The relevant portion has been cited as follows:

"5. It is also clarified that:

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- (a) Since the employee of Civil GT Units whether peace or field are locally recruited by the OC concerned through local Exchange, there is no requirement of moving each and every individual from his present peace/field location on completion of his tenure. In case any individual is willing to continue in field/High Attitude area, he may be allowed to do so subject to the condition that the OC Unit has no objection and there are not volunteers to move in to that units.
- (b) Similarly in peace station, efforts should be made to move out volunteers. However an individual may be posted against his willingness depending upon the situation. In such situation, the individual may be adjusted within command or to another command but not involving long distances.
- (c) Requests for home posting on compassionate grounds to be entertained and viewed sympathetically."

4. The applicant has stated that on this ground the impugned order deserves to be set aside. The applicant has also prayed that direction may be issued to respondents No. 2 to 4 to transfer the applicant to New Cantonment Allahabad for the ground that he had not expressed any willingness to move our and, therefore, the Guidelines of November 1997 did not permit such transfer. The applicant has also stated that in terms of para 5 of the guidelines of November 1997, even if a person is transferred against his wishes he should be posted within the command area and within a reasonable distance. This condition was also violated by the respondents while transferring him to Siliguri.

5. The respondents have refuted the allegation. It has been stated by them that such a transfer is not ruled out in terms of the posting and turn over instructions of the Army Headquarters dated 28.11.1997. The learned counsel has taken me

*M. S. A.*

through the condition of para 5 a, b and c and stated that there is no embargo on transfer according to this transfer policy. It has also been brought to my notice by the respondents counsel that this application has virtually become infructuous as the applicant subsequently accepted the transfer and has been working in the new unit to which he was transferred for over three years, and he will shortly be due for another transfer. Therefore, there is no point in unsettling this position at this time.

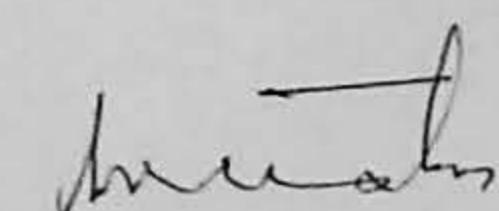
6. The learned counsel for the respondents has also pointed out the transfer on administrative grounds are matters of decision by the executive and Tribunals are not to interfere into such matters unless such decision are utterly perverse and malafide. In this case the decision cannot be stated to be perverse on any ground. Such transfer are routine exercises in the establishment and accepted with good grace. The very fact that at the request of the applicant for his wife's illness he was retained at Allahabad for two more years beyond his tenure would show that the respondents had no ill will towards the applicant. On the other hand they were very sympathetic.

7. The learned counsel has also stated that transfer guidelines are mere guidelines and their strict adherence could not be enforced in Courts and

*meath*

Tribunals. They are mere guidelines. Although they are generally followed, there may be occasions when slight deviation has to be made in administrative exigency. These do not confer any inalienable right upon the employees. The learned counsel stated that such a view was expressed by the Hon'ble Supreme Court in the well known Case <sup>of</sup> S.L. Abbas.

8. I have considered the pleadings and the submission made by both the counsel during the hearing. I have also noted that the applicant has been working for over three years in the place to which he was posted. He will shortly be due for next transfer. I have also thought over the jurisdiction of Tribunal over matter of transfer. In view of the submission and taking into account the present factual position and noticing that there is not perceptible malafide in the order, <sup>of</sup> I am of the view that there is no need to interfere with the <sup>respondent's</sup> ~~tribunal~~ <sup>decision</sup> ~~tribunal~~ at this juncture. I am, therefore, unable to provide any relief. The OA is therefore disallowed. No cost.



Member (A)

/pc/