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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH: ALLAHABAD.

ALLAHABAD, THIS THE 18th DAY OF July, 2006.

QUORUM : HON. MR. A.K. BHATNAGAR, J.M.

ORIGINAL APPLICATION NO.1575 OF 2005.

R.R. Mannewar, aged about 46 years, Son of,
Late Shankar Rao, Resident of, 124, A/286,
Block-II, Govind Nagar, Kanpur.

Presently posted as Deputy Director of Training
(Head of the Office) at Advance Training
Institute, Udyog Nagar, Kanpur.

..... Applicant.

Counsel for applicant : Shri Vinod Kumar.

Versus

1. The Union of India through the Secretary,
Shram Aur Rozgar Mantralaya, M/o Labour
and Employment, Directorate General of
Employment and Training, New Delhi.
2. Under Secretary, M/o Labour and
Employment, Directorate General of
Employment and Training, New Delhi.
3. Director, Advance Training Institute,
Govt. of India, M/o Labour and Employment,
Udyog Nagar, Kanpur.

..... Respondents.

Counsel for Respondents : Sri S. Singh.

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O R D E R

HON. MR. A.K. BHATNAGAR, J.M.

By this O.A., the applicant has prayed for a direction for quashing the order dated 1.7.2005 in respect of the applicant and the subsequent order dated 16.12.2005, passed by the Respondent Nos.2 and 3 respectively.

2. Pressing the grounds, taken in paragraph No.5 A to I of the O.A., learned counsel for the applicant submits that the transfer order dated 1.7.2005 has not been passed in public interest and the same has been passed against the policy of Govt. of India dated 27.12.2005. The applicant is a S.T. candidate, therefore, he is being discriminated against and harassed by the department, as the other counter parts of the respondents are still continuing at Kanpur for a period of more than the applicant.

3. Justifying the action of the respondents in transferring the applicant, the Respondents' counsel resisted the claim of the applicant and filed counter which was followed by a rejoinder reiterating the stand taken by the applicant in the present O.A. The applicant initially has challenged the transfer order mainly on three grounds such as :-

- i) The transfer is during the mid academic session.

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ii) Illness of his aged mother.

iii) Applicant himself is a heart patient.

While making a request for grant of interim relief, learned counsel for the applicant had made a statement at bar that if he is allowed to continue on the present post till the end of academic session, he will be having no hesitation to join his new place of posting at Kolkata in accordance with the transfer order. On this ground alone, the case of the applicant for interim relief was considered and the following order was passed on 27.12.2005 :-

"The applicant has prayed for an interim order of stay of order-dated 1.7.2005 read with order dated 16.12.2005. Normally transfers are not interfered with except for specific reason as provided in various judgments. One of them is that if professed norms are violated transfer can be interfered with. Transfer during middle of academic session is one of the general guidelines regulating rotational transfer. As such the applicant has established a prima facie case in his favour. Again he has fairly stated that he may not have any hesitation to move on transfer after the academic session. The balance of convenience and interest of justice are thus in favour of the impugned orders being stayed. Accordingly the respondents are directed not to relieve the applicant on 30.12.2005 as contained in the order-dated 16.12.2005 till the next date of hearing scheduled on 10.1.2006.

Sri S.C. Shukla holding brief of Sri S.Singh, Senior Standing Counsel for Govt. of India accepts notice who is handed over a copy of the O.A. The respondents may well consider the statement of the

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applicant's counsel about the applicant move after the academic session of the children is over (end April of 2006) and if the order of this nature be passed the OA will be disposed of on the basis of that order."

4. On 1.6.2006, the applicant filed an application for extension of stay on the ground that the mother of the applicant has suffered a paralytic attack and the case was listed for 4.7.2006 with the following order :-

"The stay order granted earlier will continue till then but will stand vacated after 4.7.2006 and the matter will also be heard on 4.7.2006."

Learned counsel for the Respondent further pointed out that, in pursuance of the letter dated 6.7.2006, which is taken on record, the applicant has been relieved w.e.f. 7.7.2006 to join at Kolkata.

5. Learned counsel for the respondents submitted that the academic session has come to an end, which was the basic ground for staying the applicant vide interim order dated 27.12.2005, therefore, the O.A. has become infructuous and accordingly, be dismissed.

6. Likewise by another applicant, Shri S.P. Srivastava a similar transfer order dated 16.12.2005 had also been challenged in O.A. No.1576/05 having the same prayer and the applicant of that O.A. was also granted interim order on the same day i.e. 27.12.2005 on the



ground of mid term transfer considering the very ground of education of the children and the counsel for applicant also made a statement that he will be having no hesitation to join the transferred place in accordance with the transfer order after the academic session of the children is over. The said O.A. No.1576/05, having the similar relief, has been dismissed vide order dated 1.6.2006 by the following order :-

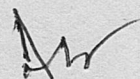
"Learned counsel for the applicant has stated that the main ground for challenging the transfer order dated 16.12.2005 was that the applicant was being disturbed in the mid of academic session and it was for this reason that this Tribunal had, by its order dated 27.12.2005, stayed the transfer till the next date, which is being continued till today. He says that the academic session is to come to an end in this June so there appears to no force in this O.A. for quashing the transfer order. The Tribunal is of the view that this O.A. has to be dismissed in the light of statement of Shri Vinod Kumar. Otherwise also there appears to be no good ground for interfering with the transfer order. So, this O.A. is dismissed. The interim order granted earlier, is vacated."

7. I have heard learned counsel for both the parties at length, perused the records as well as the order passed in O.A. No.1576/05, filed by the similarly situated person challenging the similar transfer order.

8. I find force in the arguments put forth by the Respondents' counsel that the academic session of the children is over. The argument of the counsel for applicant for

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quashing the impugned transfer order has no force in light of the statement made by the applicant's counsel himself that he will be having no hesitation to join at the transferred place after the academic session of the children is over. It is well settled that transfer from one place is generally a condition of service and the employee has no choice in the matter. Transfer orders generally should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides as held in the case of Union of India Vs. H.N. Kirtania, JT 1989(3) SC 131. Therefore, no good ground to interfere with the transfer order. Accordingly, the O.A. is dismissed and the interim order, granted earlier on 27.12.2005, is vacated.


J.M.

Asthana/