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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 298 OF 2005

ALLAHABAD THIS THE 26th DAY OF JULY 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Bihsham Deo Tyagi,
s/o Shri Raghu Raj Singh Tyagi,
R/o C-3/8, Lakha Nagar,
Meerut Cantt., Meerut.

.....Applicant

(By Advocate: Shri Yar Mohammad)

1. Union of India through the Secretary, Defence Finance South Block, 139, New Delhi.
2. Comptroller General, Defence Accounts, West Block, 5 R.K. Puram New Delhi.
3. Shri Arvind Kaushal Rana, Joint Comptroller General, Defence Accounts (Admin.) West Block-V, R.K. Puram, New Delhi.
4. Controller, Defence Accounts (Army), Meerut Cantt. Meerut.

..... Respondents

(By Advocate: Shri S. Singh)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A. applicant has challenged the order dated 24.05.2004 whereby the applicant has been transferred from Meerut to Lucknow and he has been relieved with direction to join at Lucknow (Pg.16) and rejection of his representation. He has further sought a direction to the respondents to cancel his transfer from Meerut to Lucknow in view of the serious ailment of his son and to pay him salary etc.



2. It is submitted by the applicant that he joined as Auditor w.e.f. 16.04.1978 and was transferred from Jallandhar to Adampur which was accepted by him earlier. He was transferred as Senior Auditor to Meerut in 1987 and since then he has been granted exemption from transfer since his son was suffering from Polio in terms of para 375 of O.M. Part-I 1979. It is submitted by the applicant that earlier his son was having 50% disability which has now been increased to 60% but yet his request this time has been rejected, thus, denying him the benefit of para 375 of the O.M. Part-I. He was given alert notice in 2002 and 2003 for transfer out of Meerut. He therefore, immediately gave the certificate dated 21.04.2004 to show that the condition of his son has aggravated but before his representation could be considered, he was relieved from the office of the Meerut for transfer to Lucknow. His representation has also been rejected in a stereo type manner. He has further submitted that his son is studying in BSc. Therefore, it is not justifiable to transfer him at this juncture. He has also given the names of other persons who have stayed in Meerut for long periods yet they have not been transferred out of Meerut. He has thus, submitted that he is being discriminated against. Moreover, in some cases CGDA authorized to CDA Army Meerut to consider the grant of exemption from transfer outside Meerut namely Daya Chand, Guru Prasad and Radhey Shyam. He has further submitted that his daughter is also studying in B. Com final year and younger son about 14 years is studying in class 10th in Army School. Therefore, he cannot be transferred out at this juncture as he would not get any



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accommodation in Lucknow. Moreover, on account of wild allegation made against him through an anonymous letter, his representation has been rejected, which amounts taking extraneous consideration into account while rejecting his representation. Therefore, this O.A. may be allowed in terms of Para 375 of O.M. Part-I

3. Respondents on the other hand have opposed this O.A. by submitting that Defence Accounts Department has 976 offices at 249 stations all over the country. The officers in this department have all Indian transfer liability. It is catering to the needs of Army, Navy, Air Force, Ordnance Factories, Defence Research and Development Organization, Border Roads, Coast Guard and other allied organizations. Accordingly, posting of various officers is done as per the need of these organizations and keeping in view the other requirements and by looking into the facts of each case. Applicant has been transferred in public interest without any malafide as out of his total service of 27 years in the department, he has already served for 23 years at Meerut. He was last posted in Meerut in September 1987 and since then was granted exemption from transfer on account of physical disability of his son in terms of para-375 of the manual because at that time he was minor but now he is grown up and studying in a college. He is able to manage his activity independently. Therefore, he could not be allowed to stay at Meerut for all times to come. He still has 14 years to retire. There are other peoples also who have given their applications to be posted in Meerut as they are in out stations for number of years. In order to be fair, it is necessary to post some persons from Meerut to out



stations to accommodate those persons who are already posted to far flung areas. In these circumstances they have stated that it was only after examining the facts of each case that department decided to transfer out those persons whose cases were no longer falling in this category and have given exemption to only those, who were really deserving. His representations have already been rejected after due application of mind. As far as the persons who have been retained at Meerut, they are having mitigating circumstances in their cases but there are number of other persons who have now been transferred out, even though earlier they were also granted exemption from transfer or deferment of transfer in previous years. They have thus, submitted that transfer has been made in public interest which calls for no interference because this is an incidence of service and nobody can claim to be posted at one station for all times to come. They have denied that his representation was not sent to the Secretary. As far as the anonymous complaint is concerned, they have stated that the complaint received in the office of the respondent No.2 only in December 2004 i.e. after about 6 months after applicant was already relieved from his office at Meerut. Therefore, transfer cannot be linked with the anonymous letter. Moreover, even though no Stay has been granted to him yet he has not joined at Lucknow and is continuing at Meerut only which shows he is not complying with the directions given to him. They have thus prayed that the O.A. may be dismissed.

4. Counsel for the applicant referred to certain names in the list annexed by the respondents to show that they had



still been retained at Meerut namely Smt. Vimlesh Kumar Sl.No.8; Shri Mukesh Verma Sl.No.23; Shri Yogesh Kumar Sl.No.26; Smt. Laxmi Devi Sl.No.44; Som Prakash Sl.No.47; Smt. Santosh Gautam Sl. No.60; Smt. Usha Sharma Sl.No.74 and Shri Narain Singh Sl.No.80 to show that even these persons have stayed at Meerut for pretty long period yet they have been retained at Meerut which shows that respondents are adopting the method of pick and choose.

5. I have heard counsel for the parties and perused the pleadings as well.

6. It is now too well settled that transfer is an incidence and condition of service and unless transfer is shown to be made in violation of statutory rules or is actuated by malafide, court should not interfere in a transfer matter in a routine manner. It is the prerogative of the employer to decide where an officer should be posted and how best work can be taken from him. No person can claim as a matter of right to be posted at a particular station.

7. If the facts of the present case are seen in the background of the principles laid down by Hon'ble Supreme Court as mentioned above and keeping in view the original records, which was produced for the court's perusal, it is seen that para 375 O.M. Part-I as relied upon by the applicant reads as under:

"375. In case where an employee, or a member of his family, is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc. Principal Controllers/Controllers may, at their discretion



grant exemption from transfers, for a specific/limited period, provided the disease is certified by the authorized specialist. The case may be reviewed after the period of exemption is over.

Physically handicapped employees may be granted exemption from transfer taking into account the seriousness of the physical disability of the employee due to loss of limbs, spinal, cord, injuries, paralysis parasis, visual disability etc."

8. This makes it abundantly clear that discretion has been given to the Principal Comptroller/Comptroller to grant exemption from transfer for a specific/limited period in case any member of the family is suffering from serious ailments such as Cancel, Polio, Blindness, Mental Disease, Paralysis etc. and the case may be reviewed after the period of exemption is over. Thus, it is clear that it is not a mandatory provision that in every case where family members are suffering from Polio, exemption has to be granted from transfer nor can it be claimed as a matter of right because discretion would have to be applied looking at the circumstances of each cases viz-a-viz the requirement of the organization and other employees.

9. The records show that authorities did apply their mind to the case of the applicant as earlier he was granted exemption but in 2004, it was seen that his son who was suffering from Polio had grown up, he was studying in college doing BSC and was able to manage his affairs. Therefore, this case no longer fell in the category, where exemption should have been granted, keeping in view the fact that as many as 128 persons had given their request for being posted to Meerut, who were already posted in far flung areas. To my mind the reasoning given by the respondents is absolutely

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valid because it is not a case where the son was suffering from 100% disability. Since he was studying and going to the college, he could do the same even at Lucknow as well. In fact Lucknow is a better place than Meerut in so far as the medical facilities and colleges are concerned, therefore, the contention that he has been denied benefit of para 375 arbitrarily is rejected.

10. As far as the contention of the applicant, that other persons have been retained at Meerut, it is seen that all the persons who have been pointed out by the applicant are either widows or are having serious problems, namely at Sl. No.8 Smt. Vimlesh Kumari is a widow; Sl.No.23 Mukesh Verma's son is handicapped with 100% disability; Shri Yogesh Kumar at Sl.No.26 is due to retire on 31.07.2005; Smt. Ajay Sheela's husband is patient of brain tumor; Smt. Laxmi Devi is widow and 55 years of age; Som Prakash has already retired from service; Smt. Malti Dogra has expired; Shri Daya Ram is himself physically handicapped; Smt. Santosh Gautam is a widow; Shri Charan Singh's wife is disabled (blindness) and Shri Narain Singh's wife is patient of TB and he is 59 years old.

11. From the reasoning given above, it is clear that these cases did require compassion and in any case each case has to be decided on the given facts. I am unable to accept the contention of the applicant that respondents have adopted the method of pick and choose because the record shows that case of one Shri Rajiv Sharma was recommended for deferring his transfer but the higher authorities clearly stated there



as under "let us know make any exception for Shri Rajiv Sharma", which clearly shows that respondents have followed the same yardsticks for all officers and have decided each case depending upon their circumstances. Therefore, the contention of pick and choose is rejected.

12. As far as the complaint filed against the applicant is concerned, it is seen that he was already transferred and relieved from Meerut in April 2004 itself and was relieved immediately thereafter whereas the pseudonymous complaint was received in the office only in December. Therefore, that cannot be said to be the basis for his transfer. It is however, correct that the said compliant was taken into consideration while deciding the representation. It is however seen that this compliant was not the only basis for rejecting his claim as basically his request was rejected on the ground that he has been at Meerut for more than last 15 years and out of 27 years had already spent 23 years in Meerut whereas number of other persons who are posted in far flung areas had given their request for being posted at Meerut. Had the respondents rejected his request solely on the basis of pseudonymous complaint probably I would have held the same to be wrong in view of the fact that CVC has issued instructions in 1999-2001 to the effect that no action should be taken on the anonymous and pseudonymous compliants but from the records I have seen this was only a passing reference and this was not the basis for rejecting his request for granting exemption from transfer. Therefore, I find no illegality in the orders passed by the respondents.



13. The contention of applicant's counsel that representation has been rejected in a stereo type manner without giving any reasons is correct. In normal course I might have remitted the matter back to the authorities for disposing of his representation by reasoned order but now that respondents have placed the entire records before me for perusal and I am satisfied that the request has been rejected on a valid ground, I find no justification to interfere in this matter. It is also relevant to note that applicant was transferred and relieved from Meerut as far as back on 24.05.2004 and even though he had requested for Stay from this Court but no Stay was granted to him yet he has not bothered to join at the place of his posting. It was probably because while issuing notices to the respondents, this Court had observed that meanwhile no coercive steps be taken against the applicant regarding vacation of the accommodation. None-the-less it did not give any right to the applicant to sit at home as that amounts to violation of the orders of the respondents and shows defiant attitude of the applicant which is not in his own interest.

14. Next contention of the applicant that his daughter and younger son are studying in college and school also does not have any merit, in view of the fact that he was transferred and relieved in May 2004, by which time the session is over and he could have easily got admissions at Lucknow on transfer. Even now we are in July which means the session has just started. Therefore, this contention is also not sustainable in law because it is not as if he was transferred in the mid session, therefore, this contention has to be



rejected. Hon'ble Supreme Court has held in the case of Guzrat Electricity Board that when a person is transferred from one station to the other he must comply with the orders and in case there is any genuine difficulty, give his representation to the authorities concerned, after joining at the place of posting.

15. In view of this matter this case calls for no interference. Applicant should join at Lucknow immediately. In case he joins at Lucknow and respondents are not in a position to give accommodation to the applicant at Lucknow immediately, it would be in the interest of justice to direct the respondents to allow him to retain the accommodation at Meerut for a period of 3 months from today.

13. With the above directions, this O.A. stands disposed off. No order as to costs.


26/11/05

Member (J)

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