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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 622 of 1988

Navin Chandra Saxena

....

Applicant.

Versus

The Deputy Director General,
Military Farm, AHQ, R.K.Puram,
New Delhi & others

....

Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, Navin Chandra Saxena, a Lower Division Clerk (LDC) working in the Military Farm, Bareilly, has sought the annulment of his transfer order dated 29.1.1988, posting him to Gwalior and the letter dated 18.4.1988 communicating rejection of the representation of the applicant against the transfer. The applicant states that he was transferred from Agra to Bareilly in 1980 on the ground of his father's sickness and that his father is still sick. He states that his wife is Staff Nurse serving at the District Hospital, Bareilly under the State Government and that his two minor children are studying at a Convent School in Bareilly. The applicant states that he is entitled to posting at Bareilly in view of the policy of the Government of India, as stated in the Department of Personnel & Training O.M. No. 28034/7/85-Estt.(A), dated 3.4.1986, inasmuch as his wife is employed at Bareilly under the State Government. The respondents have opposed the application and denied the allegations of the applicant.

2. The case has been heard when Sri Ashok Bhushan, learned counsel for the applicant, and Sri K.C. Sinha, learned counsel for the respondents, explained the respective case of the parties. As stated above, the applicant mainly relies on the Department of

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Personnel & Training O.M. dated 3.4.1986, referred to above, and states that on this basis he has a right to be retained at Bareilly. The personal problems like his father's illness and education of his children are also subsidiary reasons for his demand. The applicant in his rejoinder affidavit, has also stated that there ~~was~~ ^{were} no administrative exigencies or reasons for his transfer from Bareilly and the ^{shri} Officer-in-Charge, viz. ^{shri} Prem Singh, is responsible for his transfer. The respondents have stated that the applicant was appointed as LDC w.e.f. 23.1.1978 at Bareilly. He was then posted to Agra in May, 1980, but within about six months he made a request for transfer to Bareilly on compassionate grounds, viz. the illness of his father. The respondents have stated that the departmental policy on transfer provides for a normal tenure of 4-5 years for LDCs working in the Military Farms. A copy of the policy guidelines has been annexed to the counter affidavit. From 1980 the applicant has been stationed at Bareilly. In 1987, due to some administrative problems, the transfer order posting the applicant temporarily at the Military Farm, Gwalior was passed, pending the permanent posting. The ~~petitioner~~ applicant's representation against the transfer was rejected. The applicant also refused to hand over the charge. It is stated that the applicant instead of cooperating with the Board of the Military Farm left the office and ran away along with the keys of the Almirah without handing over the charge to the Board. Ultimately the impugned transfer order dated 29.1.1988 was issued. His representation against the transfer has been rejected. It is stated that the Government of India letter dated 3.4.1986, referred to by the applicant, is only directory in nature and not mandatory. It is not applicable in the case of the applicant, who has been transferred due to some administrative problem. It is stressed that the applicant was posted at Bareilly on compassionate grounds in the year 1980 and was kept there for more than seven years, whereas, according to the transfer policy of the respondents, the normal stay is only

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for 4-5 years. It is stated that the applicant was transferred due to administrative exigencies and the prayer of the applicant should not be ~~denied~~ ^{acceded} to.

3. The Department of Personnel & Training letter dated 3.4.1986, on which the applicant places reliance for his demand, is only a guideline~~s~~ and is directory in nature ~~and it is~~ ^{as} obvious from ^{the} O.M. itself. It is well established by a series of decisions that transfer is an administrative act and a judicial review ~~of~~ transfer ^{may} will be justified only if the transfer made is mala fide, arbitrary, or a colourable exercise of power. In this connection a reference can be made to the Full Bench decision of this Tribunal in Kamlesh Trivedi v. I.C.A.R. (ATR 1988 (2) CAT 116). Several decisions of the Hon'ble Supreme Court have been cited in the above judgment. In this case there is nothing to show that the transfer order is either mala fide or arbitrary or a colourable exercise of power. Since the applicant has completed more than seven years' stay at Bareilly, he was due for transfer on the basis of the transfer policy of the respondents. The applicant has mentioned the names of some individuals at various levels posted at different places with a stay of more than seven years. In the absence of the details and the reasons for their retention, one cannot pass a judgment. These cases, however, do not help the applicant's case.

4. In the circumstances, the application fails and is dismissed with no order as to costs.

MEMBER (A)

~~MEMBER (A).~~

Signature
MEMBER (II)

MEMBER (J).

Dated: 13-7-, 1989.

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