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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

O.A.No. 595/92

C.K.Sharma.....

.....Applicant

Versus

Union of India and others.Respondents

Hon'ble Mr. Maharaj Din, J.M.

(By Hon'ble Mr. Maharaj Din, J.M.)

This is an application under section 19 of the Administrative Tribunal Act 1985 praying for the relief for quashing the transfer order dated 9.4.92 passed by the respondent no.3 vide (Annexure 'A').

2. The applicant is working on the post of senior auditor and is posted in the office of A.C.D. I/c P.A.C. (Or) J.R.C. Bareilly since June 1989. The applicant vide impugned order referred to above has been transferred from Bareilly to Kanpur. The transfer order has been challenged being without jurisdiction and punitive. The malafides are also alleged in passing the said order of transfer.

3. The respondents filed a reply and resisted the claim of the applicant on the ground that the transfer order was passed by the competent authority and no illegality is done in passing the said order.

4. I have heard the learned counsel for the parties and carefully perused the record of the case.

5. The appointing authority of the applicant is Controller General of Defence Accounts (respondent no.2) whereas the order of transfer is alleged to have been passed by the Controller of Defence Account. The respondents have filed photo copy of the order dated 1.2.92 (Annexure CA1) which clearly shows that the order of transfer has been issued by the Controller General of Defence Account.

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In pursuance of the order passed by the Controller General of Defence Account the officials ~~who~~² were ordered to be relieved vide order dated 9.4.92. The said order was communicated by the Assistant Controller of Defence Account. So the order of transfer has been passed by the Appointing Authority of the applicant and the same cannot be said to be without jurisdiction.

6. It is stated that the order of transfer was passed with malice by the respondents. In this connection it is said that the applicant had a buffalo (cattle) for which he had a licence for keeping the same at his residence. The respondent by an order dated 18.3.92 stop the applicant for keeping the cattle and also wrote a letter to the department for removing the cattle (Annexure A3). A perusal of this letter would show that the respondents had not written this letter to the applicant about unauthorised construction for keeping the cattle in the premises, but it was written by the Administrative Commandant and Estate Officer ^{who} is neither the Appointing Authority nor he had to do anything in passing of the transfer order of the applicant. He has also not been impleaded as respondent. It is further said that one Baijnath who retired from the employment of the department made a false complaint against the applicant to the effect that the applicant was demanding illegal gratification on account of sending papers for his payment. According to the applicant on this complaint disciplinary proceedings ^{were} initiated against the applicant. The applicant was asked to furnish the reply of the said complaint within 3 days. The respondents in their reply have said that on receiving the complaint

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of Sri Baijnath simple reply was called for and no disciplinary enquiry was initiated nor it is pending. As such the applicant has alleged malice against the person who are not the respondents. The malice has, however, not been alleged against any of the respondents who are made party to this application.

7. The applicant has attained the age of 54 years as such he has claimed benefit of para 373 of Defence Accounts Department Office Manual, Part I which reads as under:

" persons above 54 years of age will not normally be subjected to transfer. Such persons, if not serving at their home stations or stations of choice, will be repatriated to those stations (if so desired by them) to the extent administratively feasible."

This para is not absolute as it is in the nature of guide line which is not applicable to the transfer made in administrative exigency. It has been clarified in para 378(i) of the Defence of Accounts Establishment Office Manual Part I which read as under:

" The above mentioned guide lines will not apply to transfers on administrative grounds, which may be effected at the discretion of the Administration."

In the order of transfer (CA1) annexed together with the reply it has been made clear that the transfers are being made on administrative ground.

8. The applicant in the rejoinder affidavit has said that the persons having longer stayed at Bareilly ^{are} retained and the applicant who joined

Dr. S. S. S.

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there in the year 1989 has been transferred. The applicant has not given the details of those persons who have longer stayed^a at Bareilly nor has filed any document in support of his contention. The applicant has also taken the plea that he is the chronic heart patient and is getting treatment at Bareilly. This could not be a ground for quashing the order of transfer, moreover, the applicant will have better medical facilities at Kanpur for treatment of heart disease.

9. Lastly it has been stressed by the learned counsel for the applicant as also mentioned in the replication that within the radius² of 2 kms. of Bareilly, there are other 4-5 offices of Defence Accounts and the petitioner can be locally adjusted in those offices.


10. In view of the discussion made above it has become clear that the impugned order of transfer is neither without jurisdiction nor punitive. The applicant has ~~not~~^{neither} alleged nor ~~proved~~^{proved} malafide against any of the respondents. The guide lines provided in the Manual are not mandatory provision and on the basis of the same the order of transfer cannot be quashed.

11. The application of the applicant for quashing the transfer is hereby dismissed with no order as to the costs.

12. Considering the heart ailment of the applicant it is, however, observed that the respondents, if deemed proper may consider the posting of the applicant locally in any of the Defence Accounts Offices at Bareilly within the radius of 2 kms.

Dated: Allahabad
10th Sept., 1992

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10.9.92
J.M.