

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

1.3
O.A. No. =1272/92

R.P. Gautam

...

Applicant

Versus

Union of India and others ...

Respondents

Hon. Mr. Maharaj Din, J.M.

1. This is the application under Section 19 of the Administrative Tribunal Act, 1985 for setting aside the order dated 27.8.1992 (Annexure-1) passed by the respondent No.4.

2. The applicant was posted as scientist in Selection Centre East Allahabad in March 1976. The applicant vide impugned order dated 27.8.1992 was relieved on transfer from Allahabad to Bangalore. The applicant has alleged malafide in passing the impugned order of transfer. He has also stated that he is a patient of Asthma and the climate of Bangalore is not favourable to his health. He submitted representation stating his difficulties but no heed was paid, hence the applicant has come up before this Tribunal for redress.

3. The respondents filed a reply and resisted the claim of the applicant stating that no malafides is alleged against the Authority competent to pass order of transfer. The stay of the applicant at Allahabad is for more than 16 years, therefore he was

overdue for transfer.

4. The respondent No.4 filed counter affidavit and has denied the allegations of malafides against him. It is stated that the movement order dated 27.8.1992 is legal and valid and no interference is required to be made by the Tribunal.

5. I have heard the learned counsel for the parties and perused the record carefully.

6. The Selection Centre East Allahabad

where the applicant was posted as Scientist is meant for making selection of Potential Commissioned Officers for Indian Army. The applicant has alleged that Respondent No.4 asked him to carry out the assessment of candidates of another Board which was in violation of Technical Instructions and conventions. Therefore, the applicant expressed his inability to be party to the violation of the technical instructions. The Respondent taking into consideration the objection raised by the applicant referred the matter to Head Quarters for clarification, so it could not be said that the Respondents were prejudiced by this act of the applicant. It has been further stated by the applicant that on 23.3.1992, a batch of candidates reported to 11 S.S.B. for selection and respondents Nos. 3 and 4 were interested in one candidate, namely Shri Anjaneya Umaikar. According to the applicant,

....3

[Signature]

...5

11/3

as per normal rotation, the above named candidate was to be interviewed by the Dy. President of 11 S.S.B.

The said candidate was recommended for selection by the President and Group Testing Officer. But he was not found suitable by the President in the Psychology Test. It is said that the President of the Board under the pressure of Respondent No.4 tried to exert pressure on the applicant but the applicant did not yield to do as a result of which the candidate could not be recommended and Respondents Nos. 3 and 4 developed grudge against the applicant.

The applicant has alleged that Respondent No.4 tried to interfere with the technical instructions and centralised the entire power of selection in his own hands. These facts have been denied by Respondent No.4 who has filed the affidavit in reply. The

Respondent in reply to the allegations made by the applicant have said that there are four Service Selection Boards under the control of Central Head Quarters and as per technical instructions, the Commander Selection Centre has power to assign the work of assessment of candidates of another Board to an assessor. Accordingly the applicant were assigned the work of assessment of candidates of another Board. However, the objection raised by the applicant in this connection was referred to Army Head Quarters for clarification. So this act

.....4 rector

...5

XL
u

of the Respondent goes to show that they had no ultimate motive in assigning the job of assessment to the applicant of another Board. The Service Selection Board is an autonomous body and no influence of any sort can be exercised on any Officer of the Service Selection Board. It is to be noted that the respondent No.4 against whom allegations of malafides are alleged has filed the affidavit and has stated that the allegation made against him are baseless and incorrect. The transfer order dated 2.4.1992 has been passed purely on administrative ground. The applicant is admittedly posted at Allahabad since March, 1976 and he was over due long before for transfer from Allahabad. The allegation of malafides are made against the respondents No.3 and 4 who are not competent authority to pass the order of transfer. The applicant on receipt of transfer order proceeded on sick leave and in pursuance of Government of India Ministry of Defence (Research and Development) order dt.12.8.1992, the movement order dt. 27.8.1992 was passed and the applicant was struck off strength from Allahabad Centre with effect from 31.8.1992.

7. The rotation of scientist/Psychologist posted at various Selection Boards was mooted by Army Head Quarters in the year 1986 and was under consideration of the Defence Research and Development Organisation Head Quarters and accordingly the matter was discussed in the meeting held in the office of Additional Director

[Signature]

(X/5)

Recruitment (Respondent No.3) on 19.4.1990. The Respondent No.3 sent a detailed proposal for rotation of a Scientist who have completed more than 10 years at one station in June 1990. In a meeting held on 31.12.1991 between CCR and DS and Additional Director General Recruiting, it was agreed that as a matter of principle the Defence Research and Development Organisation (in short, D.R.O.) will endeavour to rotate the civilian Psychologists posted at various service station centres. Accordingly, as a first step, i.e., D.R.D.O. Scientist who had completed more than 10 years at one station were to be posted out. In pursuance of this decision three Scientist of Service Selection Board were transferred and the applicant was one of the three Scientists who in his particular case had completed more than 16 years stay at Allahabad. Thus the transfer of the applicant was made in view of the policy decision taken at the highest level. This transfer of the applicant was made in the public interest. The applicant submitted representation dated 1.7.1992 and 16.7.1992 (Annexure 6&7) which were duly considered by the competent authority (D.R.D.O.), and the same did not find favour taking the view that the transfer was made in exigencies of service and in public interest. The applicant vide representation dated 24.8.1992 (Annexure-10) requested for premature retirement with effect from 1.8.1993 and also requested for deferment of his posting at Bangalore till 1.8.1993.

Amu

...6

X✓
X✓

This representation was duly considered by the competent authority at the Research and Development Head Quarters but the same did not find favour.

A request for premature retirement is still in process because the applicant can exercise the option of withdrawal of the request of premature retirement available to him under the rules.

8. The transfer of the Government employees from one station to another is the incidents of service and normally the same can not be interfered with by the Court unless the transfer order is mala fide or the same has been passed in violation of any mandatory statutory rule. The same view was taken in A.I.R. 1991 Supreme Court 532, Mrs. Shilpi Bose Vs. State of Bihar and others in which their Lordships have held :

"The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his

Om

1/3

legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

9. The applicant has filed (Annexure-5) which is the transfer order approved by the competent authority and the same was communicated to the applicant by the Joint Director of Personnel on behalf of Director General Research and Development. The applicant alleged malafides against the Respondent No.3 and 4 who are made party by designation and not by names. The Respondents Nos. 3 and 4 are not the competent authority to pass the transfer order. The applicant has been transferred from Allahabad to Bangalore under the policy decision as is apparent from (Annexure -5). The policy decision regarding transfer was taken at the highest level. The Director General is the competent authority to pass the transfer order and no malafide are alleged against him. Therefore, the transfer order can not be said to have been passed in violation of any mandatory statutory rule or on the ground of malafide. The applicant stayed at Allahabad continuously for more than 16 years and on the ground of long stay he has been transferred to Bangalore.

10. It is stated on behalf of the applicant

....8

[Signature]

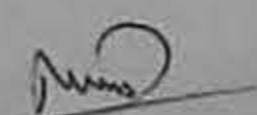
X/4

that one A.R. Hindi Scientist posted at Allahabad is senior to the applicant and according to the policy decision he should have been transferred first. Mr. A.R. Hindi has completed 2 years only at Allahabad, therefore, according to the policy decision taken at the highest level he was not liable to be transferred. As such no discrimination has been done in transferring the applicant as compared to the Senior or the Junior Scientist who have lesser period of stay at one station.

11. The petitioner has stated that his representation has been rejected without applying the mind and it has been rejected in routine manner. The respondents brought the record which on perusal revealed that the representation of the applicant was forwarded to the Army Head Quarters and Army Head Quarters referred the same to the D.R.D.O. The Joint Director Personnel acting on behalf of the Director General, communicated to the applicant vide order dated 12.8.1992 that his representation has been rejected. Thus it is borne out from the record shown at the time of the arguments that the representation was duly considered and it was not rejected without applying the mind.

12. The applicant is one of the 3 Scientists who had completed more than 16 years service at Allahabad and in view of the policy decision taken at the highest level, he has been rightly transferred from Allahabad to Bangalore. The transfer of the petitioner has been made in the public interest as such it is not violative of the statutory rules nor it is punitive.

.....9



AA

A4

13. The applicant has taken the ground that he is suffering from asthma and getting treatment at Allahabad. He has also stated that the climate of Bangalore ~~is not favourable~~ ~~would not suit~~ to his health. The exigencies in service are of paramount importance so while considering the transfer of Government employee from one station to another the ailment or the other family circumstances can be ignored.

14. Thus in view of the discussion made above we find no merit in the application of the applicant and it is hereby dismissed with no order as to the costs.

[Signature]
4.1.93

J.M.

Dated: Allahabad
24.1.93
(AR)