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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

O.A. No. 423 of 1993.

Kamlesh Ranjan Sahay Applicant.

Versus.

Union of India and others Respondants.

Hon'ble Mr. A.K. Sinha, Judicial Member.

(By Hon'ble Mr. A.K. Sinha, J.M.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 by the aforementioned applicant with a prayer for issuance of direction to the respondents not to give effect to the transfer/movement order dated 4.3.93 (Annexure A-1) passed in pursuance of Naval Headquarter's letter no. AI/1341 dt. 19.2.93, besides costs.

2. The applicant, who was an ex-sailor, was appointed in Naval Armament Organisation Bombay in 1988 from where he was transferred to Naysena Ayudh Nirikshnalaya Kanpur where he has been working with devotion to the satisfaction of his superior officers. It is alleged that all on a sudden he received orders of transfer and movement order dt. 4.3.93 whereby he has been transferred to Hyderabad Naval Missile Project at Naval Armament Inspectorate. The applicant, thereafter, put in his representation dt. 12.3.93 against his transfer and movement order before the higher authority for cancellation of the transfer/movement order dt. 4.3.93 on the grounds of personal domestic problems besides court litigations going on in Kanpur and Varanasi. The representation, it was alleged, has not yet been disposed of. It has been submitted that the impugned order of transfer is punitive in nature and with malafide intention to harass the applicant at the instance of his father-in-law because divorce procee-

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proceedings and connected cases are going on with his wife at Varanasi Courts.

3. The respondents have appeared on notices and filed their written statement denying the allegations of the applicant and stating inter-alia that the applicant has already been relieved/struck off strength of Nausena Ayudh Niriksh-nalaya Kanpur with effect from 16.3.93 and that the order of transfer was purely on the basis of service requirements and was not punitive. It is alleged that the posting of the applicant at Kanpur from Bombay in the year 1988 was 'under Block Sanction' and that no post of examiner (ammunition) existed at Kanpur Naval Armament Inspectorate. The post was sanctioned for a period of three years vide Govt. of India, Ministry of Defence circular dt.26.4.77 and the last sanction was extended upto 31.10.1994. The transfer order, it was averred, was duly served on the applicant. The representation of the applicant against the transfer/movement order has been duly forwarded to the 'Flag Officer Commanding-in-Chief Headquarters, Western Naval Command, Bombay under Senior Inspector of Naval Armament, Kanpur's letter dt.15.3.93. It was further stated that the applicant is on all India Roster and, as such, he could be transferred anywhere in India. It was averred that the applicant was apprised of the terms and conditions of his service at the time of his initial appointment at Bombay. It is stated that the domestic problems like father's illness and court litigations etc do not warrant cancellation of his transfer which was done in the interest of services and exigencies of administrative requirements. On all these allegations, it has been sought to be urged that the applicant has got no case for cancellation of his transfer order and it is fit to be dismissed.

4. The question for consideration is as to whether the applicant is entitled to the relief or reliefs claimed ?

5 Having heard the learned counsels of the par-

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parties and gone through the respective pleadings including the rejoinder and supplementary rejoinder of the applicant besides various annextures appended thereto and considering the settled law on the subject, I am quite clear in my mind and hold accordingly that the applicant has not made out any ground for interference by this tribunal his transfer and movement order dated 4.3.93 (Annexure A-1) passed by the respondents which was purely on the basis of 'service requirement' in the interest of Administration and exigencies of service.

6. The learned counsel for the applicant submitted that the applicant was not on the list of all India Roster published in January 1993 and as such his transfer was punitive and malafide. In this connection, it was urged that respondent no.3 was biased and prejudiced against the applicant and had issued notices to the applicant warning him to improve his performance and conduct, and in support of his contention, the learned counsel referred to the various correspondances which passed between him and the applicant and on that basis, it was contended that the order of transfer/movement was punitive and with malafide intention. I have gone through the various annextures in this regard and it was noticed that on 12.3.93, the applicant filed his representation no sooner he was served with the transfer/movement order and his representation was forwarded to the Administrative Authority for needful. Thereafter, the applicant went on for sick leave with effect from 15.3.93 (vide Annexure RA-1 dt.18.3.93), and again he filed such a petition vide annexure RA-2 dt. 22.3.93 and thereafter he filed a petition seeking permission to resume his duty at Kanpur vide Annexure RA-3 dt.2.4.93. From these documents, it is obviously clear that as soon as the applicant received the order of transfer/movement dt. 4.3.93, he started manoeuvring in this regard and obtained medical sickness report and remained on leave on that ground and again obtained medical fitness report and on that basis

basis wanted to resume his duty at Kanpur till the decision of his case by this Tribunal where he filed the case on 26.3.1993.

7. Therefore, from these aforementioned material facts, it would be seen that when the applicant received his order of transfer/movement dt.4.3.93, in order to evade the transfer and movement order, he went on medical sickness and was marking time and filed this case before the tribunal for setting aside the order of transfer and even prayed for interim order but the same was refused on 26.3.93 by the order of this court. All these circumstances shows that the grounds on which the applicant assails his transfer order are not genuine grounds and the documents have been created for the purpose of his case before the tribunal.

8. Further from Annexures RA-4 to RA-12 appended with the rejoinder application, the applicant has tried to demonstrate that the respondents were biased and prejudiced against him and the order of transfer/movement dt.4.3.93 was the outcome of malice and prejudice. I have gone through all these documents which, on perusal, would show that the applicant's behaviour with his superior officer was not in consonance with his disciplinary conduct and as such he was called upon to explain his conduct and his explanation in this regard was found to be not satisfactory and so he was 'censured' by the disciplinary authority. These documents, in my view, do not justify the contention of the applicant that the order of transfer/movement was the outcome of malice on the part of the respondents and that it was punitive in nature.

9. It is further to be noticed that the applicant was initially appointed at Bombay Naval Armament Organisation from where he was transferred to Kanpur and now when he is transferred from Kanpur to Hyderabad Unit, he has come up with a plea that he was not in 'All India Roster' and, therefore, the order of transfer was bad in law. The very fact that his initial appointment was at Bombay Naval Organisation from where he was transferred to Kanpur Naval Armament

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Armament Inspectorate shows that his post is transferrable on all India basis on the requirement of the services and as such he cannot claim that he cannot be transferred from Kanpur unit to Hyderabad Unit. It may be that the applicant had requested for his transfer from Bombay to Kanpur on compassionate ground in the year 1989 but it appears that he was transferred under 'Block Sanction' to Naval Armament Inspectorate, Kanpur and was duly paid D.A./T.A. etc as the interest of the state was involved. It appears that the applicant has already completed about 3½ yrs at Kanpur unit and since there is no post of Ammunition (Examiner) at Kanpur Unit, and that his services were required at NAI Hyderabad and as such his transfer cannot be said to be punitive since it is the requirement of the State in its interest.

10. Thus, taking into consideration all these foregoing material facts as disclosed from the various documents and affidavits filed by the parties, I am quite convinced and clear in my mind that the order of transfer/movement dt.4.3.1993 (Annexure A-1) is neither illegal nor punitive but on the contrary quite legal and valid and for the requirement of services and in the interest of the State. Where, therefore, the facts and circumstances disclose that the applicant, after receiving the order of transfer, was marking time by filing applications for leave on medical grounds and where there is not an iota of evidence or circumstances to justify the allegations of malice or arbitrariness on the part of the respondents, it cannot be presumed that the order of transfer and movement was punitive.

11. It is now a settled law that 'the transfer of a Govt. servant appointed to a particular cadre of transferrable post from one place to other is incident and condition of service. It is necessary in public interest and efficiency in public administration. No Govt. servant or employee of public undertakings has legal right for being posted at any particular post. Whenever a public servant is transferred,

he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. He has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules.' The above proposition of law has been clearly laid down by the Hon'ble Supreme Court of India in Gujrat Electricity Board's Case reported in (1989) 10 ATC, page 396 as also in 1989 S.C.C.(L & S) page 393.

12. That being the position in law and from the facts and circumstances of the instant case, it does not appear to me that any ground has been made out for interference in the order of transfer/movement dt.4.3.93 of the applicant. It is, however, an admitted fact that the representation of the applicant dt.12.3.93 forwarded to the Competent Authority for favour of disposal has not yet been disposed of and it requires in the facts and circumstances to be disposed of expeditiously. It is true, that on merit, the applicant has got no case but nevertheless his representation pending before the competent authority deserves to be considered and disposed of. Accordingly, the respondents are directed to dispose of the representation of the applicant dt.12.3.93 within a period of two weeks from the receipt of this order, and in case the applicant has not been relieved from the present post at Kanpur, he may not be relieved till then.

13. With these observations, this application is dismissed. But in the circumstances, there would be no order as to costs.

Dated: May 31st, 1993.

Ashok Kumar, Barha.
Member (Judicial).
31/5/93