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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1159 of 1993

G.P.Kureel Applicant

Versus

Union of India & ors. Respondents.

Hon'ble Mr. T.L.Verma, Member-3

This application under Section 19 of the Administrative Tribunal Act, 1985 has been filed to quash the order dated 27.4.1993 (Annexure-1) pertaining to his transfer from Kanpur to Dijnan, Assam, to issue a direction to allow the applicant to continue at Kanpur or in the alternative, post him at Lucknow or at any station in any of the command at a distance of 6 to 8 hours journey by rail/rode from the place of his posting to Lucknow.

2. The applicant, G.P.Kureel was posted as Senior Barrack Store Officer at Kanpur at the time the impugned transfer order was served upon him. He filed a representation on 15.5.1993 (Annexure-2) for change of place of his posting and also for granting personal interview with ADG Engineers (Personnel) to explain his grievances in person, if necessary. The applicant, it is said did not receive any reply to his representation. He accordingly filed another representation on 25.6.1993 (Annexure-3). The Chief Engineer by his letter dated 20.7.1993 (Annexure-4) informed the applicant that his representation has been rejected.

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3. The only ground on which the impugned transfer has been assailed is that the same is in violation of the guidelines issued by the Army Headquarters under the caption "Career Planing And Posting Policy for Civilion Officers of MES"(Annexure-5).

It was stated that according to clause 17 & 18 of the aforesaid policy, the officers having completed 21 years and above of service, shall not be posted at hard and semi-hard station as far as possible. It was stated that the applicant was appointed in December, 1962. He had thus, completed more than 21 years service on 27.4.1993, the date on which, the impugned transfer order was passed. According to clause 17 (c)(II), Officers who have completed 21 — and above years of service are not to be posted at hard and semi-hard station as far as possible. The learned counsel for the applicant submitted that the words "as far as possible" occuring in the clause referred to above mean 'as a matter of Rule'. It was submitted that deviation ^{from} ~~of~~ the above Rule in transferring the applicant to a hard station has rendered the transfer order void and illegal. In support of his argument, the learned counsel has placed reliance in the decision of the Supreme Court (N.K.Chauhan and others Vs. State of Gujarat and others) reported in A.I.R. 1977 Supreme Court page 251. The Supreme Court has held as follows;

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"The expression 'as far as practicable' which finds a place in the resolution of 1959 and in

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The rule appended thereto means, not interfering with the ratio which fulfils the interest of administration, but flexible provision clothing government with powers to meet special situations where the normal process of the Government Resolution cannot flow smooth. It is a matter of accent and import which affords the final test in the choice between the two parallel interpretations. The primary purpose of the quota system is to improve administrative efficiency. The state, in tune with the mandate of the rule must make serious effort to secure hands to fill half the number of vacancies from the open market. If it does not succeed, despite honest and serious effort, it qualifies for departure from the rule. If it has become non-feasible, impracticable and procrastinatory to get the requisite quota of direct recruits, having done all that promotion of suitable hands if the filling up of the vacancies was administratively necessary and could not wait. 'Impracticable cannot be equated with 'Impossible' nor with 'unpalatable'. It cannot be construed as done by the High Court, as colossally incapable of compliance. The sense of the rule is that as far as possible the quota system must be kept up and, if not 'practicable', promotees in the place of direct recruits or direct recruits in the place of promotees may be inducted applying the regular procedures, without suffering the seats to lie indefinitely vacant. If it is not necessary for the State Government to have recourse to recondite processes of ad hoc appointments and creation of ex cadre posts and if Government Resolution comes into operation. Direct recruitment ordinarily involves processing by the Public Service Commission, an independent body which functions at own pace."

4. The facts of the case in which the above decision has been given are altogether different from the facts of the case under consideration. The above decision relates to the interpretation of Rules pertaining to recruitment to the post of Deputy Collector by direct recruitment and by promotion. The interpretation has been made in the light of the spirit of the Rules that the ratio of appointment by promotion and by recruitment shall as far as

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possible 50:50. That being so, the ratio of the case relied upon by the learned counsel for the applicant has no application to the facts of this case. In addition to the above, the Supreme Court in B. Varadha Rao Vs. State of Karnataka & Ors. reported in A.I.R. 1986 Supreme Court page 1955 have spelled out the true import of the norms formulated for the guidance of officers in the matter of regulating transfers as follows;

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

5. In view of the above, I am unable to persuade myself to accede to the argument of the learned counsel for the applicant that as far as possible occurring in clause 17 of the guidelines as contained in Annexure-5 should be read 'as a matter of rule'.

6. It was next argued that the father of the applicant who is 77 years old is hospitalised in Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow for treatment of his kidney and that his only son is suffering some mental disorder and that he is undergoing treatment at Lucknow in Noor Manzil Psychiatric Centre, Lalbagh, Lucknow and there being no other male member in the family who may attend to the ailing father and son of the applicant, the applicant deserved compassionate posting at Lucknow or at some place near Lucknow

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as according to the provisions contained in clause 23 sub clause (d) of the guidelines (Annexure-5) issued by Army Head Quarters Engineer in Chief Branch. The learned counsel for the respondent has submitted that during his 30 years and 8 months service, the applicant has remained posted for 23 years and 8 months in Central command near his Home Town at a distance of 6 to 8 hours journey from his place of posting. Hence, it was submitted that the claim of the applicant for being posted at or near about Lucknow is wholly unjustified. Page, 27, Annexure-2 containing the service particulars of the applicant supports the contention of the learned counsel for the respondent that the applicant has remained posted in Central Command in most of the period from the date of his appointment in 1962 till the date of his transfer inasmuch as 3 of the 11 of his postings are at Lucknow, his Home Town. Kanpur, where he was posted at the time of his transfer, also is at a distance of about 200 Kms. from Lucknow. It would thus appear that the applicant has mostly remained posted at the places of his choice so far.

7. I am inclined to accept argument of the learned counsel for the applicant that vacancy position, job requirement, placement of other officers who have completed their tenure and have liability of family affairs have to be taken into account before making posting orders. The impugned order, it can reasonably be presumed, was passed after taking into account the above factors. Any change now in the said chain of transfer, in my opinion, will

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adversely effect the interest of administration and also the interest of persons involved in the said chain of transfer.

8. In addition to the above, the Supreme Court also in the case of Rajendra Roy Vs. Union of India & ors. reported in 1993 Supreme Court Cases (L & S) page 138 have held that;

"The order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer."

9. The applicant has of course not alleged malice or mala fide on the part of the respondents in transferring him from Kanpur to Dinjan. No statutory rule also has been brought to my notice as may have entitled the applicant to remain posted at Kanpur ^{at place} or near about Lucknow. The guidelines for transfer however, are there. As has already been mentioned above the ^{competent to transfer} authority ~~has~~ been given discretion to accommodate the officers in the matter of posting as far as possible. Personal difficulties of an officer are matters for consideration of the department. The department has already rejected the representation of the applicant whereby he had sought for change of the place of posting on the ground of personal difficulties. In that view of the matter, in my opinion, the transfer of the applicant cannot be struck down on the ground

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that it will cause lot of difficulties to him.

10. On a careful consideration of the facts and the circumstances discussed above, I find that there is no merit in this application and the same be and is hereby dismissed.

Sharma
Member-3
Allahabad Dated: *Marek* February 3, 1994
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