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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALL AHABAD.

Allahabad this the day 3rd January of 1994.

ORIGINAL APPLICATION NO. 1682 OF 1994.

M.S. Malik, S/o Sri K.S. Malik,
R/o Military Farm,
Agra.

By Advocate Sri Pankaj Mishra. Applicat.
Verses

Union of India through Deputy Director,
General, Military Farm Quarter Master,
General Branch, Army Head Quarters,
West Block, Wing No. 7, R.K. Puram,
New Delhi.

By Advocate Sri S.C. Tripathi. Respondents.

ORDER (RESERVED)

By Hon'ble Mr. S. Das Gupta, MEMBER (A)

1. Heard Sri Pankaj Mishra, learned counsel for the applicant, on admission. Sri S.C. Tripathi, who had taken notice on behalf of the respondents also made submissions.

2. The applicant has challenged the order dated 6.10.1994 by which he has been transferred from Military Farm, Agra to Military Farm Panitola (Assam). The grounds of which he has challenged the impugned order of transfer are that he is going to attain 55 years of age and has thus only three

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years of service before retirement and should not, therefore, have been transferred to far away place which is on the border of Assam. This, he has submitted, is violative of the guidelines contained in the Government of India, Ministry of Defence O.M. No. 32(4)/73/D (Appts) dated 21.5.1975 (Annexure-A-2), in terms of which persons reaching the age of 55 years, should not be transferred except on their request and to stations of their choice unless the transfer is necessitated by promotion. The other grounds taken by him, is that the transfer will put him to considerable problems as he has two daughters of marriageable age and it would be difficult for him to organise their marriage in far away place to which he is transferred. During the argument, the learned counsel for the applicant also stated that the marriage of one of his daughters is already fixed and is going to be celebrated very shortly.

3. It is now the settled position of law that an order of transfer of an employee, which is stated to have been issued in exigency of service, cannot be successfully challenged, unless the order is in violation of statutory rules or is actuated by malafide. In the case before us, there is no violation of the statutory rules nor any specific malafide on the part of any of the respondents has been pleaded. There is no doubt, a violation of the guidelines contained in the O.M. dated 21.5.1975, since the applicant is on verge of attaining the age of 55 years but it was decided by the Supreme Court in Shilpi Bose's case that the order of transfer

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can-not be challanged even if the same is violative of guidelines and executive instructions.

4. The personal difficulty pleaded by the applicant, can-not also come in the ~~way~~ ^{way} of the transfer.

5. The application evidently has no merit. However, in the facts and the circumstances of the case, I am of the view that it will be just and fair on the part of the respondents to give an opportunity to the applicant to ~~submitted~~ ^{the} representation~~s~~ against the transfer and to take a decision of the same on merit. In view of this, I direct that in case the applicant submits a representation against the impugned order of transfer within one week of the communication of this order, the respondents shall consider the same and dispose it of by a speaking order within a period of 15 days from the date of receipt of the representation, if any, submitted by the applicant. The respondents are also directed to maintain the status quo in respect of the applicant until the disposal of ~~the disposal~~ ^{the} of the representation. The said direction shall become inoperative, in case, the applicant fails to submit a representation within a week of the communication of this order.

6. The application is disposed of in limine with the above directions. There will be no order as to costs.

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MEMBER (A)