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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 546 of 1994

Allahabad this 14/15 date of Nov, 1994

Hon'ble

Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Sushil Kumar Bharadwaj S/o Shri K.D. Bharadwaj
R/o 8 M.E.S. -RTS Depot, Saharanpur (U.P.)

By Shri A.B.Lall Srivastava

Versus

1. Union of India through the Chief Engineer, Central Command, Lucknow.
2. The Chief Engineer, Barailly Zone, Barailly.
3. The Commander Works Engineer 2, Head Quarter No.2, Dehradun.
4. The Garrison Engineer(MES) Roorkee.
5. Mahendra Kumar, N^O.MES/461954, LDC, Office of Garrison Engineer MES, Roorkee.

By Advocate Sri N.B. Singh

O R D E R

Hon'ble Mr. Jasbir S. Dhaliwal, Member (J)

This petition has been filed under Section-19 of the Administrative Tribunals Act, 1985 by Sri S.K. Bharadwaj challenging his orders of transfer dated 25.11.93 (Annexure-2) from the office of G.E., Roorkee to Allahabad. He pleads that one Sri Mahendra Kumar, L.D.C., respondent no.5 was transferred to office of Chief Engineer(Air Force), Allahabad from office of G.E., Roorkee vide order dated "09.5.1992" on the grounds of his longest stay at Roorkee. That order was not implemented and was deferred for one reason or the other. He alleges that for ~~straneous~~ ^{strange} consideration instead of Mahendra Kumar the petitioner was transferred in violation of the policy of the department as was mentioned in the Guide Lines of transfer of

Civilian Officials through Annexure-4. He has given the details of the policy in the petition. He pleads that wrong information was supplied by the office to the transferring authority wherein the applicant was shown to be having longest stay in the office of G.E., Roorkee even though it was Sri Mahendra Kumar who had the longest stay. The applicant filed the representation(Annexure-7) but, the same was rejected. He, thus, alleges that his transfer orders are not only based on wrong facts but are against the guide lines/policy issued by the Command Office, Lucknow and the same have been passed arbitrarily in colourfull exercise of the powers. He prayed for quashing the impugned transfer order and sought direction to restrain the respondents from pressurising the petitioner to hand-over the charge in consequence of the impugned transfer order with costs. The operation of the impugned order was stayed by the Tribunal ex parte by order dated 08.4.1994.

2. The respondents in their reply have pleaded that petition is mis-conceived and not maintainable and that the petitioner cannot claim a right to remain at a particular place as his services are transferrable being a condition of service. His transfer order was issued on strong administrative grounds in public interest. They have denied the allegation of favouring Sri Mahendra Kumar being false. They plead that Sri Mahendra Kumar was not senior most in stay and that the guide lines laying policy of transfer of civilian subordinates have been revised by letter dated 25.2.1991 by the Engineer-in-Chief (Annexure C.A.-2). They plead that the transfer order is strictly in conformity with the policy of transfer. The petitioner was found to be senior most having longest stay under the Garrison Engineer, Roorkee. The transfer

order of Sri Mahendra Kumar is not of 1992 but of 9.11.93 which was cancelled vide order dated 25.11.1993 (Annexure-6). They have denied the allegation of colourful exercise of power of transfer or there being any extraneous consideration. The representation after due consideration as sent by the petitioner, was rejected by the Chief Engineer, Central Command (Annexure C.A.-8). The stay of the petitioner has been since 04.10.1979 in Bareilly Zone whereas Sri Mahendra Kumar had joined on that zone on 23.1.1982 (Annexure-C.A.-9) They plead that petitioner had all along stayed at Saharanpur and Sarsawa under the G.E. Roorkee on re-organisation the chain of command had changed and both the aforesaid stations of posting were under one sub-division which are to be treated as one station (Annexure-10). The transfer order of the petitioner were due to the exigency of service and job requirement and not on account of adjustment of surplus or service deficiency. The petitioner has been avoiding the transfer order ever since it was passed. They have prayed for dismissal of the petition.

3. Before advertiring to the facts of the case and the grievance of the petitioner, it would be profitable to see the law on question of transfer of a public servant in 'State of Punjab Vs. Joginder Singh A.I.R. 1993 Supreme Court Page 2486', it has been laid down that it is entirely for the employer to decide as to when to where and what point of time a public servant is to be transferred and the Courts should ordinarily not interfere with it. The same principle has been laid down as law in Union of India Vs. N.P. Thomas A.I.R. 1993 Supreme Court Page 1605, Mrs. Shilpi Bose Vs. State of Bihar A.I.R. 1991 page 532 and Gujarat Electricity Board Vs. Atma Ram Sungimal A.I.R.

1987 Supreme Court Page 1433. In Shilpi Bose's case the Court held that even if a particular transfer order is passed in violation of executive instructions/orders or the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authority in the department. It was also held in A.I.R. 1994 S.C.C. (L&S) 230 Union of India & Others Vs. S.L. Abbas - --- that the guide lines are for the department and normally these do not confer any rights on public servant. The only exceptions recognised are if, the transfer order is malafide or is shown to be patently arbitrary only to harass the public servant.

4. In the present case the only grievance the petitioner has made is that he has been transferred on the basis of his longest stay at one station which he disputed on facts alleging that one L.B.C. Sri Mahendra Kumar had the longest stay. A perusal of documents placed on record, shows that his transfer order has been passed specifically mentioning that this is being passed on administrative grounds in exigencies of service and in the interest of state. The employer has a right. He has not alleged that the transfer itself has resulted in any serious difficulty to him nor has he claimed for modification of transfer order for any compelling domestic reasons. He had filed a representation to his superiors which has been duly considered and rejected.

5. It is apparent from the record and the petition that the transfer order does not violate any statutory rule. On facts also the petitioner does not have any case at all. He wrongly mentioned that Shri Mahendra Kumar was transferred in 1992 as order of said Sri Mahendra

Kumar were passed in November 1993 only. On question of longest stay also it is seen from enclosures to Annexure-7, placed by the petitioner on record that he had joined his post at Sarsawa under G.E., Roorkee on 04.10.1979 and since then, he has remained at Sarsawa or Saharanpur. Annexure C.A.-10 clarifies that Sarsawa and Saharanpur have been part of the same sub-division. The petitioner cannot take shelter under the argument that for a brief spell, one of these stations was changed from A.G.E., Roorkee to A.G.E., Sarsawa as primarily his place of posting has remained on the same station. Sri Mahendra Kumar had joined his station of posting under the same Garrison Engineer in the year 1982. These facts have been discussed only to appreciate the contention of the petitioner which are found to be frivolous. His transfer had been ordered on administrative grounds mentioning that this is in the interest of State. He has not acquired any vested right to stay at Sarsawa/Saharanpur where he has remained since October, 1979.

6. Even though, the executive instructions do not give any right to the petitioner but, for proper functioning of any administration, the employer normally is expected to apply the same uniformly to the subordinates. It is seen from the Annexure to the Counter-reply(C.A.-2), that the transfer were categorised in four sections being adjustment of surplus/deficiency, on promotion, compassionate grounds and exigency of service/administrative requirements. Vide letter dated 25.2.1991, it was desired that no person should be allowed to hold a particular place for a period of more than 3 years. The length of service is also one of the grounds to be considered while transferring the

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one employee to another place but that is not the only consideration. In the case of the petitioner, he has remained under the same G.E. for a period of more than 15 years. He cannot now make grievance about his transfer on the ground that Shri Mahendra Kumar has been under the same G.E. for 13 years.

7. Considering the facts, the rules and the administrative instructions alongwith the language of the transfer order of the applicant and the clarification given by his employer, the petition is found to be without any merit. The same is, therefore, dismissed. However, considering the facts, there is no order as to costs.

J. Ansari
Member (J)

J. Ansari
Member (J)

/M.M./

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

~~C.A. NO. 8
D.A. NO. 2~~

M.A. 2985/94

In

D.A. 546/94

DATE OF DECISION: Dec 23, 1996

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Sushil Kr. Bhardwaj PETITIONER

C.P.A. - Sri A.B. Hullasviwala ADVOCATE FOR THE
PETITIONER

VERSUS

H.O.T. Dethge RESPONDENTS

Ch ADVOCATE FOR THE
RESPONDENTS

SCHEM

The Hon'ble Mr. Jasbir S. Dhankar, Member(J)

The Hon'ble Mr. _____

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?

Jasbir S. Dhankar
SIGNATURE

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Misc. Application No. 2985 of 1994

In

Original Application No. 546 of 1994

Allahabad this the 23rd day of Dec. 1994

Hon'ble Mr. Jasbir S. Dhalawal, Member(J)

Sushil Kumar Bharadwaj S/o Shri K.D. Bharadwaj,
R/o 8 M.E.S.-RTS Depot, Saharanpur(U.P.)

Applicant.

By Advocate Shri A.B. Lall Srivastava

Versus

1. Union of India through the Chief Engineer, Central Command, Lucknow.
2. The Chief Engineer, Barailly Zone, Barailly.
3. The Commander Works Engineer 2, Head Quarter No.2, Dehradun.
4. The Garrison Engineer(MES) Roorkee.
5. Mahendra Kumar, No.MES/461954, LDC. Office of Garrison Engineer, MES Roorkee.

Respondents

By Advocate

O R D E R

By Hon'ble Mr. Jasbir S. Dhalawal, Member(J)

Sri S.K. Bharadwaj, a petitioner in O.A. No.546 of 1994 has filed this application praying for restraining the respondents from implementing the Judgement delivered by this Tribunal dated 14.11.1994. Learned counsel for the petitioner has been heard.

2. The petitioner was ordered to be transferred vide orders dated 25.11.1993 and he had approached this Tribunal and had obtained

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an injunction order. His petition was, however, dismissed by a detailed order. He pleads that this is a peak period of academic session of his children who would be unduly made to suffer because of the transfer order. It is pleaded that there are two posts of L.D.C.'s under G.E., Roorkee and one post at Saharanpur is lying vacant against which he can be accommodated. The reference has been made to a Judgement of Hon'ble Supreme Court where it was observed by the Apex-Court that transfer should not be given effect till the end of academic year. In the light of this fact, the petitioner has prayed for passing of restraining order against the respondents from implementing the Judgement and the transfer order till the end of present academic session.

3, It is true that it is desirable that employees be not disturbed till the end of academic session of their children in schools or colleges but, that is a matter to be considered by the employer. This aspect was not mentioned when the case was argued on merits and the judgement was delivered. The petitioner had been successfully installing his transfer order for a period of more than one year. This Court, thus, does not find any reasons to stay the implementation of the Judgement already delivered or the transfer order. The employee may approach his superior officers for the same relief if, so advised who would naturally consider the guidelines as mentioned by the Hon'ble Supreme Court

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in Director of School Education Vs. O. Karuppa
Thevan & Others 1994-SCC (L & S) 1180.

4. The application is dismissed
with these observations.

Jasbir S. Dhaliwal
(Jasbir S. Dhaliwal)
Member(J)

/M.M./