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CENTRAL ADMINISTRATIVE TRIBUNAL
Allahabad Bench, Allahabad

Allahabad this 28th day of October 1994.

Original Application no. 836 of 1994

Dal Chand Verma S/o Late Sri Lal Behari Verma
R/p Vill. Muradpur, Post: Lehta Bazar
via Bridgemanganj, Distt. Maharajganj

.....Applicant

By Advocate Avnish Tripathi

versus

Union of India & others

....Respondents

By Advocate N.B. Singh

Hon. Mr. S. Das Gupta, AM

ORDER

In this application filed under section-19 of the Administrative Tribunal Act, 1985, the Petitioner has challenged the order no. RPG/S.T.A./XA/12/1/1 Ch.III, dated 14.05.1994 (Annexure-A(i)) passed by Respondent no.2 to transferring him from Maharajganj/ Ballia. It has been prayed that the impugned order of transfer be quashed.

2. The applicant was posted as SDI(P) in Maharajganj Sub Division, Gorakhpur. He had joined on this post on 18.02.1993. Within a year and two months of his posting to Maharajganj the transfer of petitioner to Ballia has been ordered by the impugned order dt.14.05.1994. The petitioner alleges that his transfer to Ballia has been ordered only to accommodate one Sri Swaminathan, who was earlier transferred from the post of SDI, Bahraich to C.I. Gorakhpur on administrative ground in the year 1992 and within 3 months thereof, he was posted as SDI(P) Central Ballia on his own request and has now been transferred again to the post of SDI(P), Maharajganj in place of applicant.

3. Apart from challenging impugned order of transfer on the ground that the same has been issued to accommodate Sri Swaminath to the detriment of the interests of the applicant, the impugned order has been assailed also on the ground that the same has been issued in the month of May '94 whereas the transfer could

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have been made only in the month of April of each year. A further ground taken to assail the transfer order is that under the relevant rules, transfer could have been made only after the expiry of a tenure of four years whereas the applicant has been transferred within a period of only one year and two months.

The applicant has also pleaded certain personal problems like the marriage of his daughter and the disturbance in the studies of his children, in case the transfer is effected.

4. In the counter reply filed by the respondents, it has been stated that the petitioner holds a transferable post and the order of transfer is on administrative ground in the public interest. It has been denied that the order of transfer was issued only to accommodate Sri Swaminath. As regards a minimum tenure of four years it has been averred that there is no hard and fast rule that an employee cannot be transferred before the completion of four years tenure. It has also been denied that transfer can only be made in April of each year.

5. I have heard the counsel of both the parties and perused records.

6. It is, now, the settled position of law that an employee has no right to remain at any particular station or for any length of time at a particular station. The Supreme Court and the other Courts and Tribunals have consistently taken the view that the transfer is an incident of service and the Courts/Tribunals shall not normally interfere with the same. While there are a large number of cases in which this principle has been enunciated, it may not be out of place to mention a few. In the case of Rajendra Roy Vs Union of India (AIR 1993 Supreme Court, 1236), the Supreme Court held as follows:-

"It is true 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. Unless such order is passed malafide or in violation of the rules of service and guidelines for transfer without any proper jurisdiction, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

7. In the case of State of Punjab Vs. Joginder Singh Dhatt (AIR 1993(SC)2486), the Supreme Court holding that it is entirely for the employee to decide when and where and at what point of time a public servant is transferred from his present posting, recorded its disapproval of the Courts below interfering with the order of transfer of public servants from one place to another.

8. In the case of Shilpi Bose Vs. State of Bihar (1992 Supreme Court Cases (L & S) 127) the Supreme Court has ruled that a Government Servant holding a transferable post has no vested right to remain posted at one place or the other and an order of transfer issued by the competent authority does not violate any of his 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.

W.L.

9. It is clear from the foregoing that the Courts/Tribunals have limited jurisdiction in interfering with order of transfer of the employees. They can however interfere only if such order is malafide in colourable exercise of power or in violation of any statutory provision. In the case before me there is nothing on record to show that the order of transfer of the applicant is in violation of statutory rules. Even the administrative instructions quoted by the applicant in support of this case does not actually come to his aid. The relevant rule regarding tenure only states that a SDI(P) amongst others should not ordinarily remain in the same division or sub division or at the same posts for more than 4 years at a time. The rule therefore enjoins that a SDI shall not be kept ~~in~~ ^{for} more than 4 years in a station but it does not stipulate that he cannot be posted out before completion of 4 years period. Even otherwise, said administrative instructions cannot come in the way once the transfer order is issued in public interest, as has been clearly spelt out by the Supreme Court in Shilpi Bose's case (Supra).

10. Similarly, the personal difficulties which the applicant states that he would face if his transfer to Ballia is effected cannot be pleaded as valid grounds for challenging the transfer order successfully.

11. Although I have noticed that Shri Swaminath has been transferred very frequently, this alone cannot give rise to any inference of malafide or colourable exercise of power on the part of the respondents in issuing the impugned order of transfer.

12. In view of the foregoing I find no merit in this application and the same is therefore dismissed. There shall be no order as to costs.

WR
Member-A