

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 696 of 1996

Allahabad this the 27th day of September 1999

Hon'ble Mr. S.K.I. Naqvi, Member (J)

Vipin Chandra, Son of Shri Bal Krishna Srivastava,
R/o 119L/4C, Beniganj, Allahabad, posted as Senior
Divisional Accounts Officer Construction Division
I P.W.D., Raibareilly.

Applicant

By Advocate Shri Siddhartha Srivastava

Versus

1. Union of India through Comptroller and Auditor
General of India, 10 Bahadurshah Zafar Marg,
New Delhi.
2. Accountant General (A&E) II, U.P. Allahabad.
3. DAG Works, Office of Accountant General (A&E)
II U.P. Allahabad.
4. Executive Engineer Construction Division I,
P.W.D., Raibareilly.

Respondents

By Advocates Shri Amit Sthalekar
Shri K.P. Singh

ORDER

By Hon'ble Mr. S.K.I. Naqvi, Member (J)

Shri Vipin Chandra has filed this O.A.
with the prayer for direction that the impugned transfer
order dated 24.3.99 be quashed and respondents be

Su - 27

.....pg.2/-

directed to furnish/notify the classification of divisions to the applicant and thereafter pass the transfer order taking into consideration the option submitted by the applicant.

2. As per applicant's case, while posted as Senior Divisional Accounts Officer, Construction Division I, P.W.D. Raibareilly, he has been transferred from Raibareilly to Haridwar.

3. This transfer order has been challenged mainly on the ground that the circular dated 21.11.79⁷² has been violated and the transfer of the applicant is not in accordance with directions contained in that circular. He has also mentioned that the authority have not taken into account while transferring the applicant the directions contained in circular dated 26.3.99. The applicant is also aggrieved because of the fact that the recommendation of the departmental transfer committee have not been followed which recommended the applicant for posting at a place of his choice which he is mentioned in his option. He has also pleaded compassionate ground that his old parents are residing at Allahabad who are being looked after by the applicant and his family, and his children are getting education at Allahabad and his movement on transfer for a distant place, will effect the education of his children and he may not be in a position to look after his old parents. It has been emphasised that he is still working at Raibareilly.

Correction made
Sax
0/11/99

.....pg.3/-

4. The respondents have opposed this application by filing counter. The respondent no.4 has filed his separate counter.

5. The applicant has reiterated his submissions made in the O.A. by filing the rejoinder-affidavit.

6. Considered the submission placed from either side and perused the record.

7. It is not in dispute that the services of the applicant are transferable and he is liable to be transferred. The applicant has challenged his transfer firstly on the ground that the directions contained in Circular dated 21.11.1979¹⁹⁷² have not been complied with. Copy of this circular has been filed with O.A. The perusal of this circular shows that his transfer order and place of posting comes within the orbit of the directions contained in the circular. The applicant has also referred the directions contained in the circular dated 26.5.99 but I am afraid that he is not in a position to derive any advantage, if may be available to him from the directions contained in this circular. In view of the fact that the transfer order is dated 24.5.1999 and this circular is dated 26.5.99 and therefore, at the time of transfer order, this circular dated 26.5.99 was not in existence.

Corrected Sd/-
8.10.99

(Signature)

....pg.4/-

8. So far as the recommendation of the transfer committee is concerned, it is not on record as to what were the recommendation of so failed departmental transfer committee. Moreover, the recommendation by the transfer committee are of ^{Suggestive in} ~~suggesting~~ nature only and have no binding effect.

9. So far as the posting at the place of choice given in the option is concerned, it has also no binding effect. The choice for posting is only considered to accommodate the employee if that is possible but the transferring authority is not bound under any statutory obligation to post the employee at the place of choice of the employee as mentioned in his options.

10. The contention of the applicant that he has not so far been relieved from Raibareilly and he is continuing there in the capacity of Senior Divisional Accounts Officer does not find support from the record of file. The respondents have brought on record that the applicant has been relieved in the forenoon of 22.6.1999 and the next incumbent to the post Smt. Dr. Pratima Verma has taken over there.

11. I find consistent view of the Apex Court on the point of transfer that as to ^{where} ~~whether~~ an incumbent to a transferable post is to be transferred is a matter for the appropriate authority

[Signature]pg. 5/-

to decide and the courts not to interfere with the order of transfer unless it is vitiated by malafide. The government instructions on transfer are mere guidelines without statutory force.

12. With the above facts in view, I do not find any good ground to provide the applicant any relief sought for in this O.A. Therefore, the same is dismissed. However, before parting with the case, I find it proper on compassionate ground to provide that when the applicant joins at his place of posting at Haridwar, if he is not already joined there, he shall get his absence regularised if so permissible under rules and then to make a representation to the appropriate authority who shall consider the same on compassionate ground of family circumstances and accommodate the applicant at any place of his choice as mentioned in his option, whenever any post is available there or at the time of next general transfer.



Member (J)

/M.M./