

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 31st day of August, 1999

Original Application No.929 of 1999

Distt. Ghazipur

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

K.N. Singh S/o Late Ram Lagan Singh,
R/o Village Babura, Post Bahariyabad,
Tahsil Jakhnania, Distt. Ghazipur,
JIO-I(WT PIS No.116952).

(sri T. Shanker, Advocate)

..... Applicant

versus

1. Union of India through its Secretary, Ministry of Home, New Delhi.
2. The Director, Intelligence Bureau, Headquarters, New Delhi.
3. Assistant Director, Subsidiary Intelligence Bureau Headquarters, Lucknow.
4. Central Intelligence Officer (MHA), Government of India, Varanasi.

(sri Ashok Mohiley, Advocate)

..... Respondents

ORDER (Oral)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside the order dated 30-3-1999 and 2-8-1999 passed by the respondent no.2 without deciding the representation of the applicant dated 24-5-1999 and 30-7-1999 respectively. A direction to continue the applicant on the present post is also sought. The learned counsel for the parties have been heard.

2. The applicant by order dated 31-3-1999 has been transferred from Varanasi to Imphal. By order dated 02-8-1999 the applicant would stand relieved

of his duties w.e.f. 31-8-1999 and was required to report for duty at SBI Imphal after availing admissible joining time.

3. The applicant has challenged his transfer on personal grounds, like education of his son, his having attained the age of 56 years, his ill-health, his engagement in litigations in different courts in Ghazipur. His transfer from Barhni to Varanasi in the month of December, 1997 was done on the ground of pendency of litigations. The applicant states that on account of election of Parliament transfers of officers have been stayed and as such the applicant could not be relieved. Learned counsel for the applicant also mentioned during his arguments that the applicant has completed his tenure for serving in the border area which is of 8 years and that the applicant has already completed 15 years in border areas. It is also contended that his representation has not been disposed of by a reasoned and speaking order.

4. The law laid down by the Apex Court on transfer is very clear. The only grounds on which judicial review of transfers can be made are either violation of statutory provisions or malafides. None of these two grounds are made out in the application against the transfer in the present case.

5. The personal grounds of education, age, health etc. are matters which are to be considered in representation by the respondents and the respondents may or may not accede to the representation of the applicant. They are not required to give reasons for not acceding to the representation of the applicant in case of transfer.

6. Learned counsel for the applicant has mentioned that the tenure of 8 years of service in the border areas has been completed by the applicant. The learned counsel for respondents, in reply to these arguments of learned counsel for the applicant has stated that no such tenure is prescribed. Learned counsel for the applicant has drawn our attention to Annexure RA-3 which ^{is} a letter No. 4/C-6/93(1)/1764 dated 15-1-1993. This letter does not give any tenure but only mentions that the officers who have completed or will be completing prescribed border tenure by 31-5-1993 may be directed to submit their options in connection with general transfers of WI/Tech personnel during 1993. It is mentioned in the same memorandum that officers who are posted in plains in Subsidiary Intelligence Bureau and have completed a period of three years and are due for a shift to borders may indicate their choice(s) for border postings. Thus, what comes out is that he is liable to be posted to border areas after completing three years in the plains. This does not support the contention of the learned counsel for the applicant. Learned counsel for the applicant has mentioned that it has nowhere been mentioned in the transfer order dated 31-3-1999 that the transfer had been made in public interest. He has placed reliance upon the judgement of the Hon'ble High Court in the case of S.C. Duggal Vs. Deptt. of Personnel, Union Bank of India and Ors, reported in A.W.C.J. 1996 P.945. In this judgement it has been laid down that if an employee makes a representation against the order of transfer on the ground of some personal hardship, it is duty of the employer to consider it. Such a

representation cannot be rejected on the ground that the grievance is personal in nature. It is for the employer to accept or not to accept such a representation depending on the administrative exigencies. In para 2 of the judgement a reference has also been made to the judgement of the Apex Court to the case of Director of School Education, Madras and Others Vs. Karuppa Thewan and another, 1994 Supp.(2) S.C.C 666. It has been laid down by the Apex Court that the fact of children's of an employee studying should be given due weight if the exigencies of service are not urgent. As far as the question of public interest is concerned, it can be seen from the order itself that the order indicates that a large number of officials working as JIOSS in subsidiary Intelligence Bureau of Lucknow, has been transferred to border areas. The contention of the learned counsel for the respondents is that this has been done in the context of the current situation as the border is threatened. Therefore, the ratio of the two authorities cited by the learned counsel for the applicant is not applicable as the exigencies of service clearly require the transfer of the applicant to border area.

7. Learned counsel for the applicant has also raised the question of impending retirement of the applicant. It has been mentioned that the tenure for posting in border areas has been raised to four years and that it takes six months for an official to get relieved from the border areas. The applicant can make a representation at an appropriate time for a posting to plains in the context of his impending retirement.

8. We therefore, find no merit in the case of the applicant and the application stands dismissed with no order as to costs.

Raf Eddin
Member (J)

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Member (A)

Huber