

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 3rd day of June 2003.

Original Application no. 1503 of 2002.

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Doctor Jagdish Lal, s/o Sri Dhunni Chandra,  
R/o House no. 967-C, Allahpur,  
ALLAHABAD.

... Applicant

By Adv : Sri S Dwivedi

Versus

1. Union of India through the Secretary,  
Ministry of Forest, Govt. of India,  
NEW DELHI.
2. The Director, Botanical Survey of India,  
Office of the Director, P-8 Brabourne Road,  
Kolkata.
3. The Scientist-C and Head of Office,  
Botanical Survey of India,  
P-8, Brabourne Road,  
Kolkata.
4. The Additional Director,  
Botanical Survey of India, Central Circle,  
10, Chatham Line,  
Allahabad.

.... Respondents

By Adv : Sri S Chaturvedi.

O R D E R

Maj Gen K.K. Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged his transfer order dated 12.7.2002 (Ann A-1), transferring the applicant from Allahabad to Howrah. The applicant has also challenged orders dated 9.12.2002 (Ann A2) and ~~xx~~ dated 2.8.2002 (Ann A7). The applicant has prayed that the above orders be quashed

and he be allowed to continue on his post at Allahabad with all benefits attached to the post till the date of his retirement.

2. The facts, in short, are that the applicant was appointed on the post of Botanist in Botanical Survey of India, Howrah in 1975. The applicant was promoted to the post of Systematic Botanist in 1985. In 1990 the applicant was promoted to the post of Scientist 'C' at Dehradun. He was transferred to Allahabad during 1993. In 1996, the applicant was promoted to the post of Scientist 'D'/Deputy Director and presently he is posted in BSICC, Allahabad. The applicant has been ordered to be transferred from Allahabad to Howrah vide order dated 12.7.2002, against which the applicant made a representation. The representation of the applicant was rejected vide order dated 2.8.2002. The applicant filed OA no. 892 of 2002. This Tribunal passed an interim order in OA 892 of 2002 on 9.8.2002 staying the order of transfer of the applicant. OA no. 892 of 2002 was finally disposed of by order dated 15.11.2002 with direction to the respondents to reconsider the matter. The respondents by order dated 9.12.2002 have rejected the request of the applicant. Hence, this OA which has been contested by the respondents by filing Counter Affidavit.

3. The grievance of the applicant is that his wife who is State Govt. Employee is posted at Allahabad and his son is a student of B Com. II. Learned counsel for the applicant Sri S Dwivedi, submitted that as per policy of the Govt. the husband and wife should be posted at the same station.



3.

This Tribunal allowed OA no. 893 of 1994, Dr. G.P. Roy Vs. Union of India & Ors, by order dated 29.7.1994 in similar circumstances and quashed the order of transfer (Ann A10). In similar circumstances the relief has been granted by Hon'ble Allahabad High Court in case of Smt. Deepa Vashishtha Vs. State of U.P. & Ors, 1995 HDV Vol III pg 107 (Ann A11). Learned counsel for the applicant has also placed reliance on the judgment of Ernakulam Bench of this Tribunal in case of M. Yoosuf Vs. Regional Director, Meteorlogical Centre, Madras and others, (1989) 10, ATC 177.

4. Learned counsel for the applicant further submitted that the applicant has to retire in August 2005 and since only 2 years and few months service is left, the applicant should not be disturbed at this juncture as held by this Tribunal in case of Dr. G.P. Roy (supra). Learned counsel for the applicant further submitted that the respondents <sup>w. b.</sup> <sup>are</sup> adopting pick and choose policy. The applicant is a Scientist D and he is being posted against a lower post tenable by Scientist 'C', while number of Scientist 'C' are available at Howrah. Learned counsel for the applicant contended that no one can be transferred on a lower post even if the pay is protected as per rules.

5. Learned counsel for the applicant has placed reliance on the judgment of Principal Bench of this Tribunal in case of Amar Nath Bhatia Vs. Union of India & Ors 1986 (3) CAT 291 and submitted that such an order posting to a lower post is violative of Article 311 of Constitution of India. Learned counsel for the applicant also relied upon the judgment of A.N. Dey Vs. Union of India & Ors 2001 (1) ATJ 394.

6. Learned counsel for the applicant submitted that his request has been rejected on the ground that he is an expert of Moss, which he is not. At Howrah, the experts of Moss~~is~~ are available. The post at Howrah is lying vacant for five years. Scientists are available at Kolkata, but the applicant is being forced to join ~~there~~ whereas there is no urgency for the same. Learned council for the applicant, finally submitted that the representation of the applicant has been decided by Scientist 'C' who is junior to the applicant, whereas the same should have been decided by the Director.

7. Resisting the claim of the applicant, learned counsel for the respondents, Sri S Chaturvedi, submitted that as per service conditions, the applicant has All India liability and in the interest of organisation/administration he can be posted at a place where his services are most required. The applicant has already stayed at Allahabad for 10 years and he should have no grievance at this stage that he has not been accommodated at Allahabad, where his wife is posted. Learned counsel for the respondents further submitted that the Court and Tribunal are not appellate forum to decide the transfer of Officers on administrative grounds. He has placed reliance on the following cases :-

- i. 1995 AIR SC 1056, State of MP Vs. SS Kourav
- ii. 1995 AIR SC 423, N.K. Singh Vs. Union of India & Ors
- iii. 1991 Supp (2) SCC 659 Shilpi Bose Vs. State of Bihar
- iv. 1989 (11) ATC 285 (SC) Union of India & Ors Vs. H.N. Kertaria
- v. 2001 SCC (L&S) 858, State Bank of India Vs. Anajan Sanyal
- vi. 1995 (2) SLR 1, G.G.M.T. Vs. Rajendra Chaterjee

- vii. 2002 (1) ESC 22, NHEPC Vs. Sri Bhagwan
- viii. 1989 AIR SC 1433, Gujrat Elect. Board Vs. Atmaram
- ix. 1999 (83) FLR 621, Union of India & Ors VS CAT Allahabad
- x. 2002 (3) ATJ 290, Papiya Das Vs. U.O.I. & Ors

8. Learned counsel for the respondents submitted that the administrative guidelines or Govt. orders do not confer any legal vested right to Govt. employees to challenge the transfer order. The guidelines ~~are~~ <sup>were</sup> only directory in nature and not mandatory. Learned counsel for the respondents has placed reliance on the judgment of Hon'ble Rajasthan High Court (Jodhpur) in case of Kishan Singh Vs. State of Rajasthan 1994 (2) SLR 806 and also judgment of Hon'ble Supreme Court in case of Union of India & Ors Vs. S.L. Abbas, (1993) 4 SCC 357. Relying <sup>on</sup> <sub>the judgments</sub> of Mumbai Bench of this Tribunal in case of L.B. Shahdadpur Vs. Union of India & Ors, 1999 (2) ATJ 583 and also of Hon'ble Allahabad High Court in case of Raj Deo Singh Vs. U.P. Jal Nigam 1996 (vol1) ESC (Alld) pg 471, learned counsel for the respondents submitted that the transfer order cannot be quashed on the ground of personal difficulties. Learned counsel for the respondents also submitted that the posting of husband and wife in a same station cannot be a ground to quash the order of transfer.

9. Learned counsel for the respondents finally submitted that the applicant approached respondent no. 2 vide letter dated 10.12.2002 (Ann CA1) and requested that he should be allowed to stay at Allahabad till the examination of his son of B Com I ~~was~~ was over during March-April 2003. Now the <sup>in March</sup> <sup>in April</sup> examinations ~~were~~ <sup>were</sup> over the applicant cannot take the same ground that his son is studying in B Com II and, therefore, his order of transfer should be quashed.

10. I have heard, learned counsel for the parties , considered their submissions and closely perused records.

11. The main ground on which the applicant has challenged the transfer order are following:-

- i. the wife of the applicant is a State Govt. Employee posted at Allahabad,
- ii. the son of the applicant is studying in B Com II,
- iii. he has a little more than two years service left before his superannuation and,
- iv. he is being posted against the lower post.

As regards the ground no. i that the impugned transfer order of the applicant dated 12.7.2002 should be quashed because his wife is a State Govt. Employee and is posted at Allahabad, I do not find much force in the same. The applicant admittedly joined at Allahabad <sup>in</sup> 1993 and, therefore, he has already stayed at Allahabad for about 10 years. I do not find any act of malafide or discrimination in the action of respondents. As far as the ground of education of his son is concern, I do not consider it a valid ground for quashing the transfer order. The applicant has himself vide letter dated 10.12.2002 had requested respondent no. 2 to allow him to continue till March - April 2003 as his son was studying in B Com I after the academic session in regard to B Com II was over. The applicant has somersaulted and has taken the ground of academic session in regard to B Com II in which his son is studying. I would like to observe that if this ground is accepted, the applicant would again come up with the ground of academic session in respect of B Com III. Such a ground of the applicant

cannot stand in the eyes of law. The third ground taken by the applicant challenging the transfer order is that he has a little more than two years of service left before he superannuates. I find force in the submission of learned counsel for the respondents that the transfer order was issued in July 2002 when he had more than 3 years of service left. Even otherwise, the Govt. instructions are there that one should not be disturbed, if one has less than 2 years residual service before superannuation, which is not so in the case of the applicant, therefore, this ground does not hold good. The last ground taken by the applicant challenging the transfer order is that he has been posted against a lower post, which as per law is not permitted, even if the pay is protected. I do not agree with this contention of learned counsel for the applicant. This aspect has well been considered by the respondents while deciding his representations dated 18.7.2002 and 30/31.7.2002.

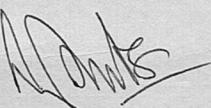
10. In view of the above and also the judgment of Hon'ble Supreme Court relied upon by the learned counsel for the respondents, I do not find any good ground for interference. The applicant has All India liability, as his transfer has been ordered in public interest and he has more than 2 years of service left before he superannuates, he should carry out the transfer order in over all interest of the organization. Besides, the applicant has to honour his commitment made to respondent no. 2, through his letter dated 10.2.2002 (Ann CA 1). I do not want to burden this order with the judgments of this Tribunal as well as superior Courts cited by the parties. The law on the subject is well settled by the various judgments of Hon'ble Supreme Court that the Tribunal cannot act as an appellate forum to decide the trans-  
*h  
h  
h*

8.

the transfer of officers on administrative grounds.

11. In the facts and circumstances and ~~the~~ <sup>hr</sup> aforesaid discussions, the OA lacks merits and the same is dismissed accordingly.

12. There shall be no order as to costs.

  
Member A

/pc/