

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

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original Application No. 1551 of 2003.

this the 19th day of January 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Avinash Chandra Srivastava, 860 Mutthiganj, Allahabad, posted at Regional Carpet Store Lekhrajpur, Allahabad.

Applicant.

By Advocate : Sri N.L. Srivastava.

Versus.

1. Union of India, Ministry of Textile, Udyog Bhawan, New Delhi, through its Secretary.
2. Smt. Tinu Joshi, Development Commissioner (Handicrafts), West Block no. 7 R.K. Puram, New Delhi.
3. Director, Central Region, Office of the Development Commissioner (Handicrafts), Kendriya Bhawan, Aliganj, Lucknow.
4. Asstt. Director (A&C), Office of the Development Commissioner (Handicrafts) 1A/3A Rampriya Road, Allahabad.

Respondents.

By Advocate : Sri R.C. Joshi.

ORDER

By this O.A., applicant has challenged his transfer order dated 8.12.2003 whereby he has been transferred from R.C.S., Lekhrajpur, Allahabad to Service Centre for Carpet weaving Training Centre, c/o Nehru Yuval Kendra, Jaisalmer Road, Barmer (Rajasthan) alongwith the post on public interest with immediate effect (page 12).

2. The applicant has challenged this transfer order on the grounds that his children are in the mid academic session as his eldest daughter K.M. Namrata Srivastava is the student

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of B.C.A. from Indira Gandhi National Open University and attending the classes in Moti Lal Nehru Regional Engineering College, Allahabad as allotted by IGNOU as study Centre, second daughter is the student of XIIth class at Govt. Girls Inter College, Allahabad and his son is also the student of XIIth class at Govt. Intermediate College, Allahabad, therefore, ^{if} ~~he~~ moved-out at this juncture, the education of his children would be totally hampered.

3. He has further submitted that at Regional Carpet Centre, Lekhrajpur, Allahabad and Service Centre, there are 11 Carpet Training Officers ~~are~~ working including the applicant, whose details have been given in para 4.10 of the O.A., but out of those 11 candidates, 10 Carpet Training Officers have not been posted-out even for a single day out of U.P., whereas applicant was earlier ^{R also} transferred to M.P. from 1991 to 1996. He has, thus, submitted that he is being discriminated against as there is no justification for only sending him out of U.P. in the second time when the other persons, similarly situated, have not been transferred out of U.P. even once. He has also relied on policy decision dated 16.11.94 annexed at page 13 of the O.A., wherein it was held that it would be compulsory for all the employees to serve outside the Home Town for 3-4 years. He has, thus, submitted that if it was compulsory for all the employees to serve outside the Home Town for 3-4 years, then he alone could not have been chosen for being transferred, while un-touching other Carpet Training Officers. In support of this contention ^{he} ^R annexed the order dated 11.3.1991 to show that he was earlier transferred from Carpet Weaving Training Centre, Ishipur District Allahabad to Carpet Weaving Training Centre, Seovdha District Datia (M.P.). It was only when he ~~was~~ completed 5 years at M.P., he requested the authorities for being transferred back to his Home Town, pursuant to which, he was transferred back from M.P. to Allahabad (U.P.)

vide order dated 17.7.1996. He has, thus, prayed that the impugned order may be quashed and he be allowed to be retained at Allahabad.

4. The applicant has next contended that he has been transferred from Allahabad due to annoyance of the respondent no.2 as he had written letters to the Secretary and other higher authorities bringing their kind attention to the falling conditions prevalent at Allahabad and requested to kindly make the arrangement of cold water and inverter during summer session. It is submitted by him that due to his repeated complaints written to the higher authorities, that ultimately cooler was installed at the place of work for which the respondent no.2 was prejudiced against the applicant as a result of which, he has been transferred. He has annexed various letters from Annexure nos. A-7 to A-15 to show how he had taken up the matter with the higher authorities. He has, thus, prayed for the relief(s) as mentioned above.

4. Notice was issued on 23.12.2003 to the respondents to file their reply on these points specifically as according to the applicant, order dated 8.12.2003 was served on the applicant on 18.12.2003 only.

5. Respondents have since filed their reply. They have submitted that this transfer order was issued in public interest due to administrative exigency, therefore, the Tribunal may not interfere in the transfer matter as has been held by the Hon'ble Supreme Court in various cases. Counsel for the respondents submitted that simply because his request for cooler was acceded to and his transfer order happened to be issued around the same time, it cannot be linked with that aspect that is an independent aspect of the matter and has nothing to do with the transfer. As far as policy is concerned, they have submitted that nowhere states that if a person has been transferred once, he cannot be transferred again. since the applicant has transferable post

he can be posted any-where in India in public interest. They have, thus, submitted that the O.A. may be dismissed with costs as no case for malafides has been made-out by the applicant.

6. I have heard both the counsel and perused the pleadings as well.

7. It is seen, even at the time of issuing notice, respondents' counsel was directed to give reply to the averments made by the applicant on the ground that he alone has been singled-out while leaving the other officers, but interestingly, even ^{though R} ~~if~~ applicant had made specific averments ^{to effect} ~~on this aspect~~ clearly that there are 11 Carpet Training Officers at Lekrajpur and Service Centre, Allahabad, but ~~expecting R~~ ~~expecting~~ the applicant, none of the others have been posted out of U.P. even for a single day. The respondents have not bothered to reply to the same and have rather avoided to give reply to the said averments by stating it needs no comments being matter of record, therefore, adverse inference has to be drawn against the respondents to the effect that barring the applicant, none of the other Carpet Training Officers at Allahabad had been posted out of Allahabad even for a single day. After all, when the respondents have themselves taken a policy decision that every employee has to serve outside the Home town for 3-4 years, it had some object behind it and the respondents are expected to conduct themselves in a reasonable manner by treating all the employees equal in the eyes of law. If out of 11 officers only officer is asked to leave the station, while not touching others at all, definitely it would cause heart burning to the one who is being singled out and ^{would R} ~~amounts~~ to arbitrariness. If the respondents had taken pains to satisfy the Court as to why it was necessary to post the applicant out, while not touching others, probably things would have been different, but as I have stated above no explanation has come-forth



from the respondents justifying such action at all as all that they have stated in the reply is that these averments need no comments, therefore, I am satisfied that there is no justification in transferring the applicant alone to a place outside his Home town the second time, while untouched other similarly situated officers.

8. Even otherwise, applicant has shown with evidence that his children are studying at Allahabad in the crucial classes namely Class XII and BCA 1st year, therefore, unless there was some emergent situation, which could not have waited till the current academic session was over, it was not proper to post him in mid academic session. Respondents have not given any justification as to why applicant was transferred alongwith the post in December' 2003. At this juncture, it would be relevant to quote the judgment of the Hon'ble Supreme Court reported in 1994 (28) ATC 99 in re. Director of School Education Madras and others vs. O. Karuppa Thevan & Others, wherein it was held as under :

"Transfer of such employee during mid academic term - propriety - in absence of urgency such transfer restrained from being effected till the end of that academic year."

9. Keeping in view the above judgment and the fact that applicant's children were in the mid academic session, I am of the opinion that the respondents have not been able to show absolute urgency as to why applicant had to be transferred in December' 2003, therefore, the transfer order dated 8.12.2003 is liable to be quashed and set-aside with a direction to the respondents to permit the applicant to continue at Allahabad till the academic session 2003-04 is over i.e. upto Mar'y' 2004. In the meantime, respondent no.2 is directed to apply her mind to the applicant's grievance that he alone has been transferred out of his home town, while similarly situated Carept Training Officers have not been moved-out even once and then to pass an appropriate orders in accordance



with law. Since this case is being disposed of with the above directions and order dated 8.12.2003 has already been quashed, there is no need to go into the question of malafides ^{in terms of para 9 B} O.A. is accordingly disposed off with no order as to costs.


MEMBER (J)

GIRISH/-