

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 433 OF 2003

TUESDAY, THIS THE 29th DAY OF APRIL, 2003

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

Brijmohan Singh Cautam
s/o Shri Ramautar Singh,
H.No.543 Avas Vikas Colony,
Fatehpur.

At present working as Pharmacist Gr.I
In static-cum-Mobile Medical Unit, Beedi
Workers Welfare Fund Organisation-Fatehpur (U.P.)

...Applicant

(By Advocate : Shri P.N. Tripathi)

V E R S U S

1. Union of India through the Secretary(W.I.)
Government of India, Ministry of Labour,
Jaisalmer House- Man Singh Road,
New Delhi.
2. The Director General (L.W.)
Government of India, Ministry of Labour,
Jaisalmer House-Man Singh Road,
New Delhi.
3. The Welfare Commissioner,
Government of India, Ministry of Labour,
Labour Welfare Organisation,
555 A/2 Mumfordgang, Allahabad.

....Respondents

(By Advocate : Shri R.C. Joshi)

O R D E R

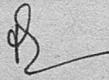
By this O.A. applicant has challenged the order
dated 13.02.2003 whereby he has been transferred from
Fatehpur to Amroha with immediate effect (Pg.18).

2. It is submitted by the applicant that being



aggrieved by the said transfer, he filed a representation dated 08.03.2003 addressed to the Welfare Commissioner, Government of India, Ministry of Labour, Allahabad region, Allahabad to cancel the said order as it was issued during the mid-academic-session apart from other grounds. In the representation it is specifically stated that his elder son is appearing in the U.P. Board Examination for which examination is scheduled from 21.03.2003 and the examination of his younger son are likely to be held in May, 2003. Therefore, it would not be appropriate to transfer the applicant at this juncture.

3. He has also submitted that he was transferred to Allahabad from Fatehpur only on 08.04.2002 and ^{there B} after, a period of 8 months have only passed, when he has been transferred again to some other station which is not justified. In the O.A. applicant has stated categorically that the reason for his transfer ^{is} because he has already filed ^{an} O.A. bearing No. 299/01 for grant of Patients Care Allowance to Group 'C' & 'D' category of Pharmacists which is still pending in the Tribunal and surprisingly vide letter dated 05.08.2002 the Ministry of Labour has issued sanction of the competent authority to grant Patients Care Allowance to Group 'C' & 'D' of non-ministerial employees excluding nursing personnel working in Dispensaries under the Labour Welfare Organisation @ Rs.690/- per month with effect from the date of issue of this order and in the same letter Welfare Commissioner, Allahabad has been asked to request the applicant and to



take necessary action for dropping up of the case from CAT by filing the Supplementary Affidavit through Government Counsel.

4. It is submitted by the applicant that he has sought the Patient Care Allowance from retrospective date and ^{said B} respondents are apprehensive that in case ~~in pursuance of~~ ^{B is allowed B} _{to B} the O.A, they would have shell out a huge amount to the Group 'C' & 'D' employees, therefore, this transfer has been issued by way of colorable exercise of power to keep him away of the station so that he is not able to pursue the said O.A. Thus, he has prayed the following reliefs:-

1. The Hon'ble Court may graciously be pleased to direct the respondents for setting - aside the impugned order of transfer which has been issued by the respondent No.3, without valid reasons and intention malafide.
2. That the respondents may also be directed to introduce a clear transfer policy and tenures of stay of the low paid employees like the applicant.
3. The Hon'ble Court may be pleased to direct the respondents to sanction the TA/DA and transit time against the journey on transfer from Allahabad to Fatehpur (order No.27 of 08.04.2002) which has been wilfully declared "Transfer on own request" by the respondent without valid reasons and ignoring the provisions of the O.M. dated 18.12.1995.
4. The Hon'ble court may graciously be pleased to quash the impugned order of transfer which has not issued by the respondent No.3, honestly, bonafide and reasonably but to get rid of an inconvenient employee, seeking the justice through his Hon. Court.
5. That the Hon'ble Court may graciously be pleased to direct the respondent to set-aside the order of transfer issued by the respondent No.3 frequently in mid-session ignoring the transfer policy guide lines and statuoty rules and vacated the post of pharmacist in a newly established dispensary at Fatehpur causing irreparable loss of poor beneficiaries, hence may not be in public interest.
6. The Hon'ble Court may graciously be pleased to direct the respondent to allow the applicant similar tenure of stay at present place of posting as allowed previously at Allahabad.
7. Any other order the Hon'ble Court may graciously be pleased to deem fit and proper, be passed."

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5. Today counsel for the applicant ~~has~~ took instructions from the applicant who is present in the court and states that he is leaving all the other reliefs as claimed in this O.A. and would be pressing only one relief namely challenging the transfer order dated 13.12.2003 (Pg.18)

6. I have heard the applicant's counsel and perused the pleadings as well.

7. Perusal of the order dated 08.04.2002 (Pg.12) shows that his transfer from Allahabad to Fatehpur was made on request which has not been challenged by the applicant. If he was aggrieved by the wording of the order on the ground that he had not made any such request, it was open to the applicant to challenge the said order at appropriate stage. He cannot challenge and seek multiple reliefs in the present O.A. However, since the said order was never challenged by the applicant, I have to go ^{by} through the order, as it stands on record. If the applicant had been transferred on request from Allahabad to Fatehpur and he has now been transferred from Fatehpur to Amroha in February, 2003 it cannot be said that it amounts to frequent transfer as there may be a valid justification for the department to transfer him out. At this stage, I do not wish to enter into the correctness or otherwise of the order dated 13.02.2003 because admittedly this order has been passed during the mid-academic session. Hon'ble Supreme Court has held in the case of DIRECTOR OF SCHOOL EDUCATION, MADRAS AND OTHERS VERSUS O. KARUPPA THEVAN AND ANOTHER 1994(28)ATC 99, which reads as

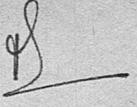
under:-

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"Transfer of employee - Employee's children studying in school-Transfer of such employee during mid-academic term- Property - In absence of urgency such transfer restrained from being effected till the end of that academic year."

8. Applicant has submitted that his elder son is appearing in the U.P. Board examination which were to start from 21.03.2003 and his younger son is also appearing in the examination to be held in May, 2003. Applicant who appeared in person has made a categorical statement in the court that he is still working in the office at Static-cum-Mobile Unit, Fatehpur. Keeping in view the Judgment given by the Hon'ble Supreme Court, without going into the merits of the case, respondents are directed to keep in-abeyance the order dated 13.02.20-03 till the end of the present academic session i.e. up to June, 2003 and also to dispose off the representation of the applicant within a period of 4 weeks from the date of receipt of a copy of this order by passing a reasoned and speaking order under § 8 intimation to the applicant § 8

9. With the above directions, the O.A. stands disposed off with no order as to costs.


Member (J)

shukla/-