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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1138 OF 2006
ALLAHABAD THIS THE 11TH DAY OF DECEMBER, 2006

HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Ashok Kumar Bhatia,
S/o Late Madan Lal Bhatia,
Aged about 56 years R/O 4/40
Krishna Nagar, Kanpur.

.....Applicant

By Advocate : Shri A. D. Singh

Versus

1. Union of India,
through the Defence Secretary,
Ministry of Defence, South Block-D.H.Q.,
P.O.-11001, New Delhi.
2. The Director General,
DGAQ. A Ministry of Defence H Block,
New Delhi-110011.
3. The Commanding Officer,
Air Armament Inspection Wing,
Khamaria, Jabalpur.
4. The Officer Incharge SSOI (detachment),
Air Armanent Inspection wing Armapur,
Kanpur.

.....Respondents

By Advocate : Shri S. Singh

O R D E R

This case relates to transfer of the applicant who is a Civilian working of Defence Establishment of Director General of Aeronautical Quality Assurance. He was employed as an Examiner quality Assurance under respondent no.4 i.e. Officer In charge SSOI (detachment), Air Armament Inspection Wing Armapur, Kanpur. On 18.09.2006 he was issued an order of transfer to Jabalpur. This impugned order is given in Annexure A-1. After the transfer order, relieving

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order was issued on 21.09.2006 and movement order was issued on 27.09.2006. This OA was filed on 12.10.2006 and on 13.10.2006 the Tribunal after a preliminary hearing directed that if the applicant was not already relieved the operation of the transfer dated 18.09.2006 should be stayed till 27.10.2006.

2. Before proceeding to examination of the substantive matter involved in this case, I heard the learned counsel for the respondents in the matter of interim order who reported through a supplementary CA on 08.12.2006 that the applicant was already relieved of his post on 21.09.2006 following upon the letter of transfer dated 18.09.2006. It has been submitted by the learned counsel for the respondents that conditional interim order was issued by the Tribunal on 13.10.2006. However, by that time the applicant already stood relieved.

3. Thereafter the learned counsel for the applicant argued to supplement the arguments put forth in the OA. The points and arguments may be summed up as follows:-

(a) According to the guidelines of transfer of the respondents (Annexure A-2) persons reaching the age of 55 years or over cannot be transferred except at their own request and to station of their choice.

(b) The applicant was a patient suffering from Cronic Asthama and he was under prolonged treatment and, therefore, his transfer at the moment would cause disruption in the treatment.

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(C) His children were also studying in MCA Course and, therefore, his transfer would adversely affect their studies at the movement.

(d) The learned counsel for the applicant has cited from three judgments of the Tribunal in similar cases:-

(i) In OA No.311/95 by Hon'ble Patna High Court.

(ii) In OA No.661/06 Akbal Beg Vs. U.O.I. dated 30.03.1981.

(iii) 1990 (12) ATC 461 S.R. Ramaswamy Vs. U.O.I. decided by CAT.

(e) The learned counsel for the applicant after coming to Kanpur had forgone permission only for the reason that on promotion he would have to move from Kanpur causing him hardship and on this ground alone he had declined promotion. Therefore, if he is suddenly transferred in this way even without promotion that will hit him hard.

(f) The applicant has also stated that there was malafide behind the transfer. Just before the order of transfer, he had submitted some medical bills, which was not sanctioned in full. He had protested against this and against delay in sanction of his GPF withdrawal. For these reasons, he says, the respondents transferred him out of malice.

4. The learned counsel for the respondents denied the allegations saying that the transfer was made in administrative interest. The posts being under Defence Establishment these are sensitive matters. Moreover the applicant was engaged as examiner in Quality Assurance of Defence protest and there has to be a balance amongst different station in so far as the availability of such personnel are concerned. The learned counsel for the respondents has also brought to my notice that guidelines of transfer policy of the

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Director General of Aeronautical Quality Assurance. According to that normally an officer having three years or less service before retirement should not be transferred except at his own request or promotion.

5. This however, was contradicted by the learned counsel for the applicant who said that this so called transfer policy pertains to Group 'B' Officers and above category in the industrial establishment and this did not relate to Group 'C' employee to which the applicant belonged. Therefore, this will not apply to the case of the applicant.

6. The learned counsel for the respondents also stated that it was true that after being relieved the applicant had submitted medical certificate with request to spare him from transfer but the medical certificate etc. were received by them on 26.09.2006 i.e. after the day of relieve of the official and, therefore, they were not in a position to take any action in the matter and they had forwarded the certificates to the appropriate authority of the station to which he was transferred.

7. As to the contention of the applicant that his transfer at the moment would effect the study of his children its was countered by the learned counsel for the respondents, who stated that children of the applicant were studying in higher classes in difficult station other then the station in which the applicant was posted. Therefore, it was not tenable as an argument that the transfer would affect their studies also.

8. The learned counsel for the respondents also argued that transfer was a matter within the domain of the administration and this can be made in administrative interest, which is to be judged by the administration authority. According to the settled position courts/Tribunal can intervene in transfer

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matters only when there is a manifest malafide in the order. It was also stated by him that guidelines were to be adhered in the normal consideration but there could always be exceptions in administrative interest. The guidelines were mere guidelines and they have no mandatory force although they are followed as far as practicable. He cited the case of S. L. Abbas in particular to stress that mere violation of transfer guidelines will not render a transfer void.

9. The learned counsel for the respondents also cited from the Apex Court case 2005(7) SCC 227 Major General J.K. Bansal Vs. U.O.I. & Ors. The direction in this case was that in transfer of members the scope of interference by courts is far more limited and narrow compared to the case of Civilian employee and those who are working in PSU's. Therefore, the courts should be extremely slow in interfering with a order of transfer of such category of persons.

10. Against this the learned counsel for the applicant, however, said that the applicant does not belong to regular Armed Forces. He is a civilian employee under the Armed establishment, therefore, this case would not relate to the case of the applicant for which the relevant judgments would be those, he which himself submitted vide para 3.

11. Learned counsel for the respondents also cited from the well known N.H.P.C. Versus Shri Bhagwan in which it was held that no Government Servant or employee of a public undertaking has any legal right to be posted forever at any one particular place as transfer was not only an incident but condition of service, necessary too in public interest an efficiency in public administration.

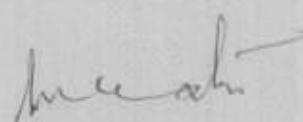
12. Having heard the arguments and having gone through the submissions I have applied my mind to the

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matter. It is not important as to which of the two guidelines would be applicable to the applicant. Whether it is the one cited by the applicant or the one given by the respondents. The settled position seems to be that guidelines are only guidelines cannot be enforced and have no mandatory force. Transfer can always be decided in administrative interest and the mere fact that it is made any violation of transfer policy will not make it assailable on legal ground. The point regarding the personal inconvenience of the applicant, particularly in the matter of study of his children have also been taken into account and it is found that the transfer is not going to affect the study. Even if it had, the Tribunal perhaps would not have been in a position to help the applicant in the matter as its role is circumscribed by the limits decided by the Apex Court in different matters.

13. The only point which remains to be decided is whether there was any malafide in the order of transfer, the only ground on which it can be interfered with by the Tribunal. The grounds given by the applicant have been considered by me. However, there is no record with the applicant with which he can substantiate the allegations, which are merely verbal/written statement without any supplementary document. In the question of malafide also the settled law seems to be that merely voicing allegations of malafide will not suffice the onus is on the applicant is to show how malafide has taken place and how it has prejudiced his case. The respondents have also emphatically denied the allegations of the malafide saying that it was a common pretext in all the matters of transfer to include an element of malafide, sometimes very farfetched.

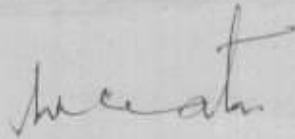
14. I am of the view that the allegations of malafide is not convincing and inadmissible. The learned



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counsel for the respondents has also said so. I am not convinced enough by the same.

15. For these reasons I am not able to allow this OA which is thus dismissed with no order to costs.



Member-A

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