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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 16th day of May 2006.

Original Application No. 206 of 2006.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Praphulla Chandra, S/o Sri Suresh Chandra,
Presently posted as Executive Engineer,
508, Army Base Workshop, Fort,
ALLAHABAD.

.....Applicant

By Adv: Sri A.K. Srivastava
Sri A. Singh

V E R S U S

1. Union of India through the Secretary,
Ministry of Defence,
NEW DELHI.
2. Director General of E.M.E. (E.M.E. Civil)
NEW DELHI.
3. Commandant, Headquarters, Base Workshop Group,
(E.M.E.),
MEERUT.
4. Commandant and M.D. 508 Army Base Workshop,
Fort,
ALLAHABAD.

.....Respondents

By Adv: Sri S. Singh

O R D E R

Transfer is the issue involved. In fact, there has been a genuine request of the applicant to defer the transfer till middle of May 2006. However, the respondents had partly acceded to the request of the applicant and effected transfer from Feb. 2006 when the applicant approached the Tribunal. No stay was

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granted. Presumably, the applicant is either on sanctioned leave or otherwise.

2. Brief Facts of the case as contained in the OA are that the applicant is working as Executive Engineer, in 508 Army Base Workshop, Fort Allahabad, since 19 July, 2003. The applicant's newly born baby is under medical observation. One sister of the applicant is a student of engineering 3rd year in United Engineering College Naini, Allahabad. The applicant is alone male family member. By order dated 22.08.2005 the applicant was transferred from Allahabad to Headquarters/Base workshop Group E.M.E., Meerut Cantt, Meerut. After that the transfer order was stayed upto 28th February, 2006. The applicant represented for deferment of his posting through representation dated 14.02.2006. The authorities have not yet been take any decision.

2. The Respondents' contention is that the applicant being a Class-I officer and having all over India liability, is liability for posting in public interest anywhere in India. The applicant has rendered 5 years 9 months service in Station Workshop EME, Allahabad and approximately three years of service rendered at 508 Army Base Workshop, Allahabad. Thus the applicant's total stay at Allahabad is 9 years. Army Headquarters vide their letter dated 22.08.2005 issued posting orders in

respect of the applicant for Headquarters Base Workshop Group EME, Meerut on forthwith basis. The applicant submitted an application dated 16.11.2005 requesting for deferment of posting up to first week of March, 2006 on medical grounds of his newly born child. The Competent Authority considered the said application and approved the request for deferment of posting up to 28.02.2006. Thus, on expiry of period of deferment, the applicant had to move to his duty place. The applicant instead of proceeding to new place of posting i.e. Meerut, has submitted in application dated 24.02.2006 for Medical Leave for 15 days by enclosing a prescription issued by Dr. A.N. Singh, Medical Officer In-charge, Infectious Disease Hospital, Allahabad. It is amply clear that the applicant intends to stay at Allahabad on the pretext of one ground to another. Therefore, the applicant is not at all entitled for any interim relief or reliefs and the OA is liable to be dismissed.

3. The Guidelines on the subject matter of transfer inter alia contain as under:-

"Planning and Approval

- (a) * Turnover of officers after completion of the six year of duty in a station.

Tenure

The normal tenure of posting will be six years in a station.

Promotion-cum-Posting

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..... Promotees may be absorbed 'In situ' provided there are vacancies in the unit/establishment/stations.

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Extension of tenure

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(c) Extension of tenure on extreme compassionate ground.

Conclusion

In aiming to meet the twin requirements of maintaining rich job content and facilitate rotation of trained of trained civilian of civilian organizational interest, it is imperative that posting of civilian officers be carried out.

.....
The instructions contained in the revised policy will be strongly adhered to."

4. The case has been considered. Guidelines, as extracted above are clear that station tenure is for six years and the applicant just completes the said period. However, there is no rebuttal to the assertion of the applicant that persons with longer station seniority have been retained and it is only the applicant who has been shifted. As such, though guidelines do not have statutory force, as held in the case of **State of U.P. v. Ashok Kumar Saxena, (1998) 3 SCC 303** when professed norms are violated, transfer order could be challenged. The Apex Court has stated as under:-

"In **N.K. Singh v. Union of India** this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles and where career prospects remain unaffected and no detriment is caused



to the government employee concerned, challenge to the transfer must be eschewed."

5. But at the same time what is to be seen is the extent of request that the applicant made before the administrative authorities. First he requested for deferment of the transfer order upto February 2006 and on 14-02-2006 his request was to permit him to stay at Allahabad upto May 2006. Had the authorities considered his later request and allowed the applicant to stay upto May 2006 no grievance could have been ventilated by the applicant challenging the transfer order. The applicant, at the time of request for deferment of transfer had not questioned the validity of transfer. Hence, doctrine of acquiescence springs into play. All that he could be permitted to pray for is for allowing his request as contained in his representation dated 14-02-2006 wherein he has requested for as under:-

"Hence it is requested to consider my case sympathetically for deferment upto 2nd week of May as a special case."

6. The above period now being over, the applicant has to move. However, the respondents shall treat the period of absence if any from the date the transfer order was passed till the applicant joins the new post as leave and accordingly grant the leave of any kind available at the credit of the applicant. Joining time as per law would also be admissible. The applicant be permitted to resume

duty in case he has not been attending the office and a fresh transfer order be passed. The authorities shall make available necessary TA/DA and joining time to the applicant. It is, however, left to the wisdom and judicious consideration of the respondents, fixing the time for transfer, depending upon the exigencies of service.

7. The OA is disposed of on the above terms. No cost.



Member (J)

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