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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 1st DAY OF AUGUST, 2006

Original Application No.562 of 2006

CORAM:

HON.MR.JUSTICE KHEM KARAN,V.C

Dr. J.P. Upadhyay, son of Late Sri M.G.
Upadhyay, posted as Sr.D.M.O Jhansi at
Rani Lakshmi Bai Nagar health Unit, North Central
Railway, Jhansi.

.. Applicant

(By Adv: Shri H.P. Mishra)

Versus

1. Union of India through its General
Manager (Personnel), North
Central Railway, Headquarter,
Allahabad.
2. Divisional Railway Manager,
Northern Railway, Moradabad
3. General Manager,
North Central Railway, Allahabad.
4. Chief Medical Director,
North Central Railway,
Allahabad.

..Respondents

(By Adv: Shri P. Mathur)

ORDER

JUSTICE KHEM KARAN, V.C.

Challenged in this OA is the transfer order dated 16.5.02 (A-1), by which the applicant, posted as Sr. Divisional Medical Officer Selection grade, has been transferred to Agra Division, of North Central Railway.

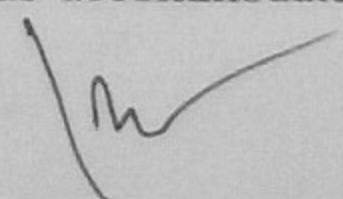
2. After having remained posted at Jhansi, for about 13 years as so, the applicant was earlier transferred to Agra, vide order dated 17.3.2004 (A-2). He joined there on 30.4.2004 (A-3). As his wife Dr. Vibha Upadhyia is also a doctor in

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Jhansi unit of Bharat Heavy Electric Ltd (BHEL) and his only issue, fortunately a doctor was getting education at Jhansi so he on his own request was transferred from Agra to Jhansi vide order dated 24.2.2006 (A-4) and he joined at Jhansi on 11.3.2006 (A-5 & 6). One doctor M.S.Yadav, recently inducted in service in South Central railway joined here at Jhansi Division of North central Railway, on his gtransfer from that Railway. Vide order dated 9.5.06 (A-) he was transferred from Jhansi Division to Agra division but before he could join at Agra, his transfer to Agra was cancelled and instead the applicant was transferred to Agra. The applicant has alleged that his transfer to Agra, is actuated by political pressure and has been done just with a view to accommodate Dr. yadav. He says that according to norms, if both husband and wife are doctors, they should be accommodated at the same place and considering this fact and family and personal problems of the applicant, his request for transfer from Agra to Jhansi was considered and he was transferred back to Jhansi just in Feb.2006 and hardly had he spent 3-4 months, these impugned orders were passed sending him back to Agra. He complains that several physicians, having put in several years at a station or in a division (as indicated in that R.A-3) have not been touched and only the applicant is being disturbed again and again just to harass him. According to him, cancellation of the transfer of Dr. yadav, does not necessarily necessitate transfer of the applicant from Jhansi, as there are three units at Jhansi where both of them can continue. The applicant has also referred to his ailments, which require continuance care from his doctor wife.

3. Vide interim order dated 23.5.2006, this Tribunal asked the respondents not to implement the transfer order dated 16.5.2006, for a period of 14 days. This order has been extended from time to time and is operative till today.

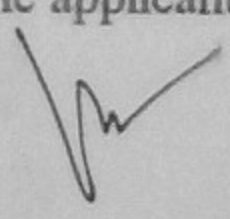
4. In their short-counter affidavit, dated 5.6.06, the respondents have tried to say that the applicant cannot complain, as he was accommodated at Jhansi for 13



years or so. In para 11, they say, services of the applicant, who is an efficient senior physician are more required in Agra Division as there are large number of patients of chronic diseases and besides that his services could be better utilized as member of Medical Board, in considering decategorization /invalidation of employees on medical grounds. They say the transfer of the applicant was ordered in the administrative exigencies, as he is M.D.Physician having a vast experience in the field. Reference to letter dated 18.4.06 (S.C.A-2) written by C.M.O Agra and to instructions (SCA-3) about Constitution of medical Board, has also been made in para 11. As regards the applicants plea that since his wife is also posted as a doctor in BHEL at Jhansi. So according to settled norms, he is also entitled to be accommodated at Jhansi. The respondents contend that it all depends on the circumstances, whether such accommodation is possible and this consideration will not outweigh the administrative requirements. Referring to education of applicants daughter at Jhansi, it is stated in para 13 that doctor wife of the applicant can take care of her.

5. The applicant has filed rejoinder contending interalia, that another physician is Dr. S.P. Singh is there at Jhansi since 1999, and if services of a physician are required at Agra, he could be shifted. Norms of other probable doctors, have also been given in para-2, either of them could, according to the applicant, be posted at Agra.

6. By filing reply to this rejoinder, the respondents have tried to explain why Dr. S.P.Singh could not be sent to Agra, to constitute the M.edical Board. They say that Dr.Singh has been debarred from conducting Medical Board. They have tried to explain the position in respect of doctors, hinted in rejoinder. In para 16, they say that it is not feasible or desirable to call doctors from hospitals outside Agra to constitute Medical Board and so suggestion of the applicant is illconceived.



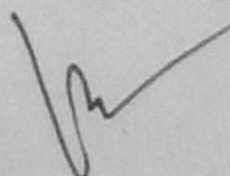
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7. The applicant has also placed on record copy of order dated 11.7.06, showing that Dr. M.S. Yadav was member of medical Board, constitute for examining medical officers selected by UPSC. According to him, if Dr. Yadav could be member of a Medical Board for this purpose, why he cannot be a member of Board, for examining decategorization/ invalidation of employees on medical grounds.

8. The Tribunal has heard Shri H.P.Mishra appearing for the applicant and Shri P.Mathur appearing for the respondents.

9. Shri Mishra has argued that the circumstances make it more than clear that applicants transfer from Jhansi to Agra, is just to accommodate otherwise politically strong Dr.M.S.Yadav. According to Shri Mishra transfer from one Railway to another, that too just in the beginning of a career and cancellation of transfer order dated 9.5.06, within a week or so,were not possible except under the patronage of political heavy weight. Shri Mishra says one employee cannot be transferred to accommodate another, as it would not be a transfer in public interest . Shri Mathur, has submitted that without impleading Dr. M.S. Yadav and without giving him an opportunity to meet all these allegations, no inference of the type suggested by Shri Mishra, can legitimately be drawn. Shri Mathur also argues that there is nothing concrete on record to say that impugned transfer is under political pressure and according to him nothing like political pressure can be read in transfers, unless that is evident from some reliable material or record.

10. I find much force in the above mentioned arguments of Shri Mathur. It is a cardinal rule that none should be condemned unheard. If this Tribunal accepts the argument of Shri Mishra that Dr.M.S.Yadav used political pressure to get his transfer from one Railway to another or in getting transfer order dated 9.5.06



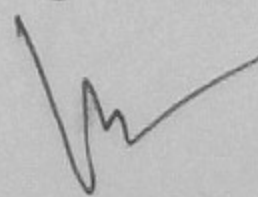
cancelled he may be subjected to disciplinary action for putting political pressure in securing transfer or posting and in this way will be condemned unheard. So, this tribunal refrains from entering into the question as to whether Dr. M.S. Yadav used political pressure in securing his stay at Jhansi.

11. I think the plea that the applicant is being transferred to Agra, to accommodate Dr. Yadav, runs counter to the plea taken in para (XIII) of O.A., where the applicants says that since there are three units in Jhansi, so he and Dr. Yadav, both can be accommodated. If it is so, then how it can be said that the applicant is being transferred to accommodate Dr. M.S. Yadav.

12. So, I find, no force in the submission that impugned transfer of applicant, is result of any political pressure or is to accommodate Dr. M.S. Yadav.

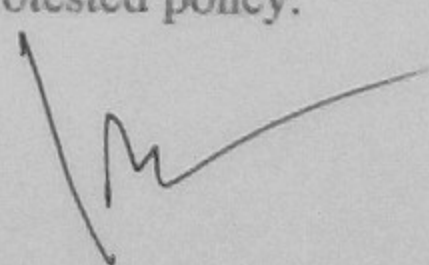
13. Shri H.P. Mishra contends that after the applicant had come on his request, just in Feb-March 2006, after serving for about two years at Agra, he should not have been disturbed just within 3-4 months, especially when he has personal and family problems. Shri mishra goes on to argue, that some other physician from this division or from other divisions, could have been sent to Agra and it was not necessary to disturb the applicant. Attempt has also been made to say that Medical Boards, that take place twice or thrice in a year could be managed, by calling doctors from other divisions, as used to be done in the past. Shri Mishra says several doctors, having longer stay one station or the other, are not being touched. According to Shri Mishra the applicant wants to stay at Jhansi for 4 or 5 months more, as career of daughter, is at crucial juncture and thereafter, the respondents may send him anywhere they like.

14. Relying on a Divisiogn Bench decision dated 15.9.2005 of this Bench in N.L. Kushwaha Vs. Union of India and Another reported in 2006(2) (C.A.T.) on pg 81



and on some of the decisions mentioned therein Shri Mathur has argued that the scope for interference in transfer of govt. servants is limited one and the Court/Tribunal is not expected to undertake the exercise as to whether there were administrative requirements to transfer one to another place or seat. Since the Hon'ble Member (K.B.S.Rajan) writing the order for the Bench in N.L. Kushwaha's case (supra), referred to numerous decisions of the Apex Court, to say that scope for the tribunal's interference was limited one, so I would not like to refer to all those decisions. The settled position is that transfer being incident of service, should not be interfered with by the Courts or tribunal, unless it is found malafide or punitive or for extraneous consideration etc. The government is the best Judge to decide how to distribute and utilize the services of its employees (See E.P. Royappa Vs. State of Tamil Nadu (1974) 4 SCC 3).

15. If the respondents say that the services of the applicant are more needed at Agra than in Jhansi, this Tribunal will not be justified to undertake the exercise as to whether some other doctor could have been asked to go to Agra and whether purpose could be achieved by calling physicians from other Divisions, to constitute Medical Boards. It will not be within the domain of court or Tribunal to say as to which of the physician or doctor should be member of one Medical board or the other. All these factors lie are to be considered by the executive authorities and not by the Court or Tribunal. If the Courts/Tribunal will start examining the propriety or validity of transfers of government servants, by evaluating the alleged administrative exigencies, perhaps, the entire work of transfer and posting would stand shifted to Courts and Tribunals. I do not say that the Courts or Tribunal cannot exercise their power of judicial review to examine the validity of transfer order, so as to see whether it is actuated by malice or is punitive or for extraneous consideration or not in public interest or is in breach of Statutory Rule or protested policy.



16. Personal problems or family problems, if brought to the notice of authority or superior authority should always be considered, so as to maintain the morale of the servant. But to say that these will justify interference from the Court or Tribunal may be fraught with danger, for almost every servant may have one or the other problems. Sometimes problems may be genuine and sometimes these are created with a view to get benefits and at other times, are exaggerated beyond permissible proportions. So, authorities considering transfer and posting may not always pass orders, in the light of personal or family problems.

17. What I want to say is that the applicant should convince his superior authorities that his personal or family problems, require his presence at Jhansi, at least for few months. But this Tribunal will not be justified to interfere on those grounds, but would like to observe if according to the respondents themselves, the applicant is good worker, all possible efforts should be made to prevent him from being victim of frustration.

17. Upon careful consideration of the entire aspect touching the impugned transfer of the applicant to Agra, this Tribunal is of the view that there are no good grounds for interference. It is hoped, that the authorities concerned will consider the problems of Dr. Upadhyaya and do the needful, but this hope will not be construed as direction of this Tribunal.

18. The O.A. is dismissed, but with no orders as to cost. Stay order granted earlier is vacated.

/s/ J. S. Rao
01.9.2006

VICE CHAIRMAN

Dated: ~~August~~ ^{Sept. 1}, 2006
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