

O.A. No. 494 OF 2006.

Order dated :22-09-2006

1. Applicant, working as Assistant Store Keeper in INS Chilka having faced the order of transfer under Annexure-A/1 dated 22nd May, 2006 vice Shri D.B.Bairi, Assistant Store Keeper submitted representation under Annexure-A/2 dated 5th June, 2006. During the pendency of the said representation, he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying to set aside the impugned order of transfer under Annexure-A/1 being bad in law.

2. This OA was listed on 09-06-2006 and prima facie case having been found, this Tribunal while issuing notices to the Respondents, as an ad interim directed stay of the operation of the order of transfer under Annexure-A/1 so far as Applicant is concerned.

3. Shri D.B. Bairi, who has been posted in place of the Applicant at INS Chilika has been arrayed as an intervener in this case and filed counter with a Miscellaneous

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Application for vacation of the Stay Order dated 09-06-2006 opposing the prayer of the Applicant.

4. Respondent-Department has filed a Counter opposing the prayer of the Applicant.

5. As it appears from the record, the matter was again listed on 26-06-2006 and on the request of Mr. A. Kanungo, Learned Additional Standing Counsel four weeks time was allowed for filing of Counter. On 01-08-2006 on the request of the learned Additional Standing Counsel 15 days more time was allowed for filing of counter. The matter was listed on 23-08-2006 when Learned Counsel for the applicant sought ten days time to file Rejoinder to the Counter filed by the Respondent-department. Rejoinder was filed on 04-09-2006 and on the request of the Learned Counsel for the Applicant, the matter was adjourned to 07-09-2006. On 07-09-2006 the matter was heard and on the request of Learned ASC to obtain some instruction, the matter was adjourned to 13-09-2006. Again the matter was listed on 13-09-2006 but on the request of the learned ASC to obtain instruction, the matter was listed on 18-09-2006 when Learned Counsel appearing for the Applicant also sought for some time. As the in this case Stay

Order has been continuing since 09-06-2006 and the Respondent No. 3 on being relieved is unable to join, the matter was heard at length and on the request of the Learned Counsel appearing for Applicant, time till 20.09.2006 is allowed to file written note of submission. Accordingly, learned counsel appearing for the Applicant and Intervener filed written note of submission, with copy to other side, which have been taken note of.

6. As it appears, the impediment on the part of the applicant to go on transfer is that there is no other male member in his family to take care of the health of his old ailing father who is 90 years old, education of his son who is reading in Class IX in Kendriya Vidyalaya, Chilika and would be appearing CBSE final year examination next year and he is at the fag end of his career.

7. On the other hand it is the case of the Learned Additional Standing Counsel that the applicant was never selected for the post of Store Keeper in the year 199 which is a misleading statement before this Tribunal. He has submitted that since the Applicant is holding an All India transfer liability he is required to work in any of the major Naval Store

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Depots/Units/Establishments to meet service requirements. He has submitted that the Applicant during 27 years of service has not faced any order of transfer and he has already completed three years and 6 months as Asst. Store Keeper at INS Chilika; whereas, the Respondent No.3 who has already faced four transfers during his 17 ½ years of service, considering his request, he was brought the place of the Applicant. He has further submitted that the Applicant has been posted to nearest Material Organization at Visakhapatnam so that he is not required to move to stations far away from his home town. He has, thus, emphatically submitted that there being no mala fide in the order of transfer and the same was passed keeping in view the administrative exigencies, no interference is called for.

8. It is sound principle of law that judicial interference in the order of transfer is no more res integra in view of the decisions made by various Courts in the cases of MRS.SHILPI BOSE AND OTHERS vs. STATE OF BIHAR AND OTHERS-AIR 1991 SC 532; UNION OF INDIA vs. N.P.THOMAS-AIR 1993 SC 1605; UNION OF INDIA vs. S.L.ABAS -AIR 1993 SC 2444; STATE OF MADHYA PRADESH vs. SHRI ARJUN SINGH - AIR

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1993 SC 1239 ;ABANI KANTA RAY vs. STATE OF ORISSA - 1995 (Suppl.) 4 SCC 169; UNION OF INDIA AND OTHERS vs. V.JANARDAN DEBANATH AND ANOTHER - (2004)4 SCC 245; National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574; UNION OF INDIA vs. H.N.KIRTANIA- (1989 (3) SCC 445); STATE OF ORISSA vs. KISHORE CHANDRA SAMAL- 1992 (2) Scale page-251; H.STATE OF MADHYA PRADESH vs. S.S.KOURAV- AIR 1995 SC 1056; STATE OF UP & OTHERS vs. GOBARDHAN LAL AND D.B.SINGH vs. D.K.SHUKLA AND OTHERS -2005 SCC (L&S)55; STATE OF U.P. & ORS. Vrs. SIVA RAM & ANR.- 2005(1) AISLJ 54; DR. N.S.SRIKANTA vs. SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE SERVICES -2005(1)ATJ). In these decisions the Courts and Tribunals have been debarred from interfering in the orders of transfer except where the transfer is mala fide or there is infraction of Rules or the same is made by an authority who is not competent to do so. The grounds taken and the argument advanced do not suffice to attract the interference of this Tribunal. Personal grounds urged by the Applicant is a matter

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to be looked into by his authorities and on that ground, this Tribunal cannot interfere in an order of transfer made in public interest.

9. In view of the above, I find no merit in this O.A. which stands dismissed with consequential vacation of stay order dated 09-06-2006 by leaving the parties to bear their own costs.

B.B. Mishra
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MEMBER (ADMN.)