

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. NO. 229/95

Date of Order : 26.5.95

Rajendra Babu Gupta

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Applicant.

Vs.

Union of India & Ors.

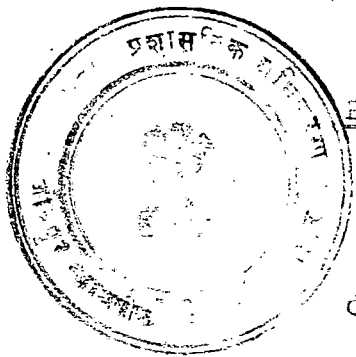
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Respondents.

Applicant present in person.

CORAM :

Hon'ble Ms. Usha Sen, Administrative Member.



BY THE COURT :

The prayer in this OA is to quash the order dated 14th November, 1994 at Annex. A/1 and the order dated 7.3.95 at Annex. A/2 by which the applicant has been transferred from his present posting as Surveyor of Works under the Commander Works Engineer (in short CWE), Bikaner, to the CWE, Air Force, Allahabad.

2. The applicant has urged various grounds in support of his prayer. The main grounds are that he was transferred to his present place with effect from 1.8.93 and he has not even completed two years at this place; before posting to Bikaner he was posted at Bhatinda where also he was allowed to remain only from September, 91 to July, 93; he has completed 55 years of age and posting him to a distinct place like Allahabad will cause hardship when he has only 3 years

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more to serve; he should have been considered for a compassionate last leg posting to his home town viz. Bareilly. ; His transfer is against the guidelines of the Department in respect of transfers as contained in the communication dated 21.2.91 at Annexure A/8, according to which the normal tenure of posting ~~is~~ at a place is 3 to 4 years ; one Shri Vinod Kumar Gupta, Assistant Surveyor of works, has been transferred from Jorhat, Assam, in his place and that posting an officer of a lower rank than a Surveyor of Works would be detrimental to official working.

3. The applicant preferred a representation dated 5.12.94 against the transfer order of 14.11.94 (Annex. A/1). Considering this representation his move was deferred up to 31st May, 95. He made a second representation vide ^a D.O. letter dated 11.2.95 at Annex. A/6. This representation was replied by the respondents vide their impugned order dated 7th March, 95 at Annex. A/2 in which it has been stated that his request for change of posting/further retention at Bikaner was not accepted on account of organisational requirements and, further, that he had completed a a combined tenure of 3 years at CWE (P), Bhatinda, and CWE (P), Bikaner (activated on closing down of CWE (P) Bhatinda).

4. As regards the contention of the respondents that he has completed a combined tenure of 3 years at Bhatinda and Bikaner as mentioned above, ^{the applicant} ~~he~~ has stated that such a computing of two postings as a single tenure is not correct and appears to be a ' colourable exercise of power '.



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5. The applicant was heard and the records perused.

6. From the record I am unable to find any facts which would seem to establish a case of 'colourable exercise of power' on the part of the respondents. Merely because it has been stated by the respondents in their letter dated 7.3.95 that the two tenures at Bikaner and Bhatinda have been computed as a single tenure of three years, can not be considered a sufficient ground to impute ulterior motives to the respondents in ordering the transfer of the applicant instead of the stated reason, namely "organisational requirements".

7. The applicant argued that it is illegal to post an Assistant Surveyor of Works i.e., an official of a lower rank in a post which is meant to be filled by a Surveyor of Works. Regarding this argument it may be stated that it is for the competent administrative authority to decide how best the work in a particular post can be managed. If at particular periods of time depending on various constraints regarding man power planning, the competent authorities decide to post an official ~~of a lower rank in a post which is meant to be filled by a Surveyor of Works~~ of a lower rank in a post which should normally be filled by a higher ranking official there is no illegality in that ^{and} the applicant has not referred to any law which prohibits such action.

8. The applicant had strenuously argued that computing the tenures at Bhatinda and Bikaner as a single tenure is irrational and ^{this} has never been done and also that since

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he has only 3 years left to serve his last leg posting should be near his home town which is Bareilly. In this connection it may be stated that the applicant had already urged all these grounds in his representations dated 5.12.94, 11.2.95 and 6.5.95. Two of these representations have already been replied to by the impugned letter dated 7.3.95 at Annex. A/2 rejecting his request on the ground of organisational requirements. The third representation dated 6.5.95 is still pending with the respondents. I find from the guidelines dated 21.2.91 at Annex. A/8 regarding the posting matters that the normal tenures of postings can be curtailed to adjust officers on compassionate last leg posting or those being repatriated from tenure stations. In view of this provision the averments of the applicant that his posting out before completion of his tenure is against the guidelines would not appear to be correct. It is seen that Jorhat is a tenure station.

9. During the course of hearing the applicant repeatedly argued that the respondents have made a mistake in computing the tenures at Bhatinda and Bikaner as a single tenure as per their letter dated 7.3.95 at Annex. A/2 and that this error should ^{be} rectified and that he has made mention of this point in his representation dated 6th May, 95 which is still pending with the respondents and has not been replied to.

10. It is obvious that the applicant is envisaging considerable difficulty if ^{his} ~~this~~ transfer to Allahabad materialises. Nevertheless it would be relevant here to mention some observations made by Hon'ble the Supreme Court in the case of Union of India Vs. S.L. Abbas (AIR 1993 SC 2444). These are :-

"While ordering the transfer of a Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court can not interfere with it."

11. From the facts and circumstances of the case I do not find that the impugned transfer order is either malafide or against any statutory provision. In the light on the law on the subject as laid down by the Supreme Court in the case supra the prayer of the applicant to quash the impugned order can not be granted. However, keeping in mind the genuine difficulties of the applicant and the allegation that the respondents seem to have erred in computing the tenures at Bhatinda and Bikaner as a single tenure, and the fact that he has only 3 years more to retire and has requested for a last leg posting near his home town, the respondents may give another look to his case and take a decision thereon. While no direction is being given to the respondents to stay the transfer of the applicant till this re-look of his case, they may themselves like not to relieve the applicant from his present posting till the reconsideration of his case as aforesaid because once the transfer is effected a reconsideration may

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become meaningless. Subject to these observations
the O.A. is disposed of. A copy of the O.A.
may be sent to the respondents alongwith a
copy of this order.

Usha Sen
(USHA SEN)
MEMBER (A)

Part II and III destroyed
in my presence on 2.6.12
under the supervision of
section officer [signature] as per
order dated 4/9/12
[signature]
Section officer (Records)

Copy of order
acquiring on
Annexures pages
1 to 43 sent to
RSP 1 to 43
Regd AD Vid
No. 105460-53
dt 6.6.95

[signature]
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