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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH,
JODHPUR.

Date of Order: 22.2.95.

D.A. No. 85/1995.

Bachan Singh ... Applicant.

Versus.

Union of India & Ors. ... Respondents.

Mr. Kamal Dave- Counsel for the applicant.

CORAM :

Hon'ble Mr. N.K.Verma- Administrative Member.

BY THE COURT :

Mr. Kamal Dave appears for the applicant Bachan Singh with prayer for quashing the transfer order as at Annexure A/1, with the direction that the respondents shall not transfer the petitioner till the end of April, 1995. The petitioner is working as a Junior Engineer in the office of the Jodhpur Central Division, Jodhpur with effect from 18.9.91, and as per Annexure A/1, he was transferred to Jaisalmer Division by the Superintending Engineer, Central P.W.D., New Delhi under order dated 28.9.94. The applicant represented against this order on 28th October, 94. His relief was postponed and finally

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the relieving orders were passed on 18.2.95, directing him to hand over charge to another Junior Engineer. He had made a request on the same day to the Executive Engineer to let him continue in his job till the end of April,95, because of the fact that he is appearing at the examination for the Associate Member of Institute of Engineers, (AMIE) which will be held in the end of April,95.

2- The learned counsel for the applicant during arguments for admission of this case referred to para 5,3 of the application, wherein it has been stated that the transfer was actuated by malafide intention to accommodate an official called Shri A.K.Sharma as a Junior Engineer at Jodhpur, who had made request for this posting earlier. This position is borne out by Annexure A/6, in which the Executive Engineer of the Jodhpur Division had recommended the transfer of Shri A.K.Sharma to Jodhpur Division, after completion of three years of service at Jaisalmer. Shri Dave also pointed out to the provisions of Annexure A/2, under which the normal tenure of continuous service at one station is prescribed to be four years and the applicant was transferred just after three years of his stay at Jodhpur in violation of the guidelines.



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This is colourable exercise of the power in order to help Shri A.K.Sharma, who had actually requested for transfer to Jodhpur for his personal reasons and not in any administrative interest. Even then Shri Sharma was given posting to Jodhpur in a palpable favour done to him by the authorities. Shri Dave referred to the latest judgment of the Hon'ble Supreme Court in E.E.D. Royappa Vs. State of Tamil Nadu and Others, reported in 1994 (1, S.L.R. 497), wherein the Apex Court had observed that any administrative order which is malafide, arbitrary or extraneous consideration can be questioned and quashed by the court, if they are violative of Article 14 and 16 of the ~~Rajasthan~~ Constitution. The learned counsel also referred to the latest judgment of the High Court at Jodhpur delivered on 7.1.94, in a case of Chhotu Singh Vs. The State of Rajasthan and Others, in which the transfer order of the respondents-petitioner Prem Chand Rohan was quashed by the Division Bench of Hon'ble High Court on the ground that the transfer order was an act done under colourable exercise of power, not subserving public interest or exigencies of administration, but actuated by a factor not

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germane to the exercise of the power. The learned counsel also referred to a number of cases like the one decided by the Patna High Court in 1975 and earlier by the Calcutta High Court in 1972 in which it was stated that accommodating one official by dislodging another is colourable exercise of powers, which can be termed as malafide.

3- I have given very anxious consideration to the pleadings and all the arguments made by the learned counsel for the applicant. The Hon'ble Supreme Court has observed in the case mentioned by the learned counsel in E.E.O.Poyappa Vs. State of Tamil Nadu & Others, that an administrative order can be questioned only when it is malafide, arbitrary or suffers from extraneous considerations, otherwise this Appex Court has held earlier in the Union of India Vs. S.L.Abbas (1993 4, S.C.C. 357) "that the courts could interfere in matters where transfer order suffered from any malafides or was made in violation of any statutory Rule." The Hon'ble Supreme Court had prior to that case in Mrs. Shilpi Bose and Others Vs. State of Bihar and others (AIR 1991 SC 532) had held " In our opinion, the courts should not interfere with a transfer order which are made in public interest.

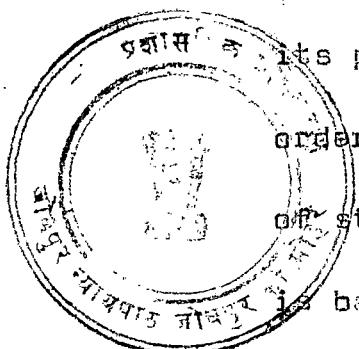


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and for administrative reasons unless the transfer order are made in violation of any mandatory/statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

Thus, the only area where this Tribunal can exercise its power in the matter of a transfer where a transfer order suffers from malafide or is arbitrary in violation of statutory/mandatory rules. The allegation of malafide is based on the fact that Shri A.K.Sharma had made a request for transfer to Jodhpur for his personal



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reasons which was recommended by the Executive Engineer to the Superintending Engineer, who is located at New Delhi. It has not been said that in what manner the Superintending Engineer got influenced in exercise of powers ~~and~~ transferring this A.K.Sharma by accepting the recommendation of the Executive Engineer. Although, the guide-lines prescribe a period of four years of continuous stay at place as a tenure, the administrative authorities have powers to curtail or to extend this period in administrative exigencies. In any case the applicant was allowed to stay for three and half years at the station of posting at Jodhpur and it is only now that he has been ordered to be relieved. He has made an application for retention in his present job till the end of April, 95. This representation has not been disposed of or rejected, before the applicant has come to the Tribunal with the D.A. Normally the applicant is expected to wait for a decision on his representation. If his continued stay at Jodhpur is warranted for the period that will enable him to appear at examination of his own choice, he can always do so by availing earned leave or any other kind of leave he is having at his credit at Jodhpur.

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4- In view of the aforesaid, I do not find that a case of malafide or exercise of arbitrary powers has been made out against the respondents. Hence the O.A. is dismissed at the admission stage itself.

Ordered accordingly.

5- No order as to costs.

N.K.Verma
(N.K.Verma)
Member (A)

