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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 383/1997.
JODHPUR THE 11TH MARCH, 1998.

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R.A.Choudhary S/o Shri Hub Lal R/o Quarter No. Type II-17 D, Anukiran Colony, Rawatbhata, Distt. Chittorgarh, at present employed on the post of Scientific Officer/SB on deputation in the office of TG Section Rajasthan Atomic Power Project-3 & 4. Nuclear Power Corporation of India Ltd., Rawatbhata, Distt. Chittorgarh.

..... Applicant.

Versus

1. Union of India through Secretary to Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai.
2. Managing Director, Nuclear Power Corporation of India Ltd., Vikram Sarabhai Bhawan, Anushakti Nagar, Mumbai.
3. Project Director, Nuclear Power Corporation of India Ltd., Rajasthan Atomic Power Project 3 and 4 P.O. Anushakti, Rawatbhata, District - Chittorgarh.

..... Respondents.

MR. J.K.KAUSHIK, COUNSEL FOR THE APPLICANT.

MR. ARUN BHANSALI, LEARNED COUNSEL FOR THE RESPONDENTS.

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HONOURABLE MR.A.K.MISRA :

The applicant has filed this O.A.with the prayer that the impugned transfer orders dated 2.12.1997 (Annex.A/1) and 10.12.1997 (Annex.A/2), be quashed and the appliant be allowed consequential benefits.

2. Notice of this O.A. was given to the respondents who have filed their reply in which they have stated that the applicant was transferred in exigencies of service from one Unit to the another Unit of the said Corporation. The O.A. has no merits and it deserves to be dismissed.

3. The applicant has filed rejoinder to the reply filed by the respondents.

4. We have heard the counsel for the parties and gone through the record.

5. The applicant, who was initially appointed as Scientific Assistant 'B' at Narora Atomic Power Project, was subsequently promoted to Scientific Assistant 'C' on 1.5.1985. Thereafter, Nuclear Power Corporation (for short 'NPC') was set up and the staff of Atomic Power Project was sent on deputation to the N.P.C. That is how the applicant is serving the present N.P.C. in the capacity of a deputationists. The applicant has alleged that the N.P.C. had not absorbed him and all repeated requests to repatriate him to his parent department have remained in-effective. The applicant has been transferred from Rajasthan Atomic Power Project (for short 'RAPP') to Tarapur Atomic Power Project without the consent of his parent department. The transfer is, therefore, bad in law. This is a mid-term transfer and applicant's school going children would be affected. Since the

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applicant had never given his consent regarding transfer, therefore, the transfer orders deserve to be quashed. The learned counsel for the applicant has elaborated his arguments on these lines.

6. On the other hand, the contentions of the respondents are that the applicant has been transferred from one Unit of the Corporation to the other Unit of the same Corporation for which permission of parent department is not required. The scheme for absorbing the willing persons of Atomic Power Project is under process and as and when the scheme would be ready, willing persons would be absorbed in the respondents department. Till then, the deputationists can work as per the terms of deputation. The Atomic Power Project which are functioning all over India under the N.P.C. has the facility of Central Schools and as per the reply of the School dt. 27.12.1997 the wards of the employees who are transferred from one Unit to another Unit are admitted in such schools at the new station without loss of study because the syllabus is the same. Thus, the applicant is not affected by mid-term transfer. It has also been stated by the respondents that as per the Circular Annex.R/2 dated 3.1.1994, the transferred employees can retain the official accommodation up to the end of the academic session on the terms stated in the Circular. Therefore, even the family is not required to be disturbed till the end of academic session. The transfer has been ordered in exigencies of service and as per the requirements of the Project for enhancing the atomic power production. The learned counsel for the respondents has elaborated his arguments on these lines. He has also argued that this Tribunal has no jurisdiction to entertain the present application.

7. We have given our thoughtful consideration to the rival arguments. The applicant is on deputation with the Nuclear Power Corporation. He is being transferred from one Unit of the Corporation to another Unit

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of the Corporation. Therefore, in our opinion, permission or approval of the parent department in respect of the present transfer of the applicant, was not required to be taken before transferring the applicant from one place to another. No doubt the transfer order was a mid term transfer and looking to that position, the operation of the transfer order was stayed vide order dated 18.12.1997. The educational session has almost come to an end and, therefore, now the applicant can easily proceed on transfer in compliance of the transfer orders. Even earlier he could have requested the departmental authorities for retention of the Government accommodation till the end of educational session as per the Circular Annex.R/2 on the terms and conditions as enumerated in it.

8. From the O.A. it appears that applicants children are student of central school. They can as well be admitted in the central school at the new station. However, this is well known that students are well adjusted where they have started their studies from the beginning of the session and looking to this aspect it was also essential in the interest of children to allow them to complete the educational session. This was also one of the factors in ordering the interim direction. Presently, when the educational session has come to an end, the transfer order is no more required to be quashed. The only facility now which the applicant can be given is to stay at the Headquarter till 15.4.1998. By that time, the school session would come to an end in respect of applicant's youngest ward, ^{also} who is a student of VIII standard.

9. As per the facts alleged by the applicant he came on transfer to R.A.P.P. on 12.5.1988 and since then he is working in the R.A.P.P. Therefore, it cannot be said that transfer of the applicant is premature. The applicant has also alleged no mala fides against the

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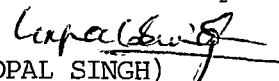
departmental authorities in transferring him from R.A.P.P., Kota to Tarapur Atomic Power Project, ~~Mumbai~~. No breach of departmental guidelines or the statutory rules, has been alleged against the respondents.

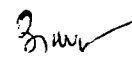
10. So far as the point of jurisdiction is concerned, we do not see any legal hurdle in exercising our jurisdiction in the matter. How this Tribunal is barred from exercising its power in the matter, has not been established by the learned counsel for the respondents. During the course of arguments, he had shown us the authorisation letter dated 20.12.1997 authorising Shri G.P.Sharma, Dy. Manager (P&IR) to defend the O.A. Accordingly, Shri G.P.Sharma has filed the reply in the instant case. Thus, it cannot be said that Shri G.P.Sharma is not authorised to defend the case by filing the reply. The objection as advanced by the counsel for applicant in this respect is rejected.

11. In our opinion, the Original Application deserves to be accepted in part. The operation of the transfer orders can be ordered to be operative on and from 16.4.1998. The transfer orders have not been found to be violative of any Rules, therefore, the prayer of the applicant for quashing the impugned transfer orders deserve to be rejected.

12. In conclusion, the Original Application of the applicant is accepted in part. The respondents are directed not to give effect to the transfer orders Annexs. A/1 and A/2 dated 2.12.1997 and 10.12.1997 till 15.4.1998. However, these orders shall be effective on 16.4.1998 and the applicant shall comply the same thereafter as per the direction of the authorities. Prayer relating to quashing of the transfer orders is hereby rejected.

13. The Original Application stands disposed of at the stage of admission. The parties are left to bear their own costs.


(GOPAL SINGH)
Administrative Member


(A.K.MISRA)
Judicial Member

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Part II and III destroyed
in my presence on 7-9-2004
under the supervision of
22/11/2003

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Squadron officer (Record).