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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 360/1997
JODHPUR THE 19TH OF MARCH, 1998.

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Shri K.C.Pal S/o Shri Kamal Singh Pal, Aged about 41 years, R/o Block No. 8/43 Heavy Water Project, Colony, Rawat Bhata, Via Kota. (Presently working as Junior Store Keeper in Store Unit, Directorate of Purchase and Stores HWPK Plant, Anu Shakti, Via-Kota, Dist. Chittorgarh (Raj)).

.. Applicant.

Vs.

1. Union of India through the Secretary, Department of Atomic Energy, Anu Shakti Bhawan, Mumbai.
2. The Director, Directorate of Purchase and Stores, VS Bhawan, Anu Shakti Nagar, Mumbai.
3. The Stores Officer, Stores Unit, Directorate of Purchase & Stores, HWPK Plant, Anu Shakti, Via - Kota, Distt. Chittorgarh(Raj).

.. Respondents.

Mr. S.K.Malik, counsel for the applicant.

Mr. Vineet Mathur, counsel for the respondents.

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HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

BY THE COURT :

The applicant has filed this O.A. with the prayer that the transfer order dated 7.4.97 (Annex.A-1) be

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quashed and the respondents be directed to treat the applicant on duty from the date of his transfer till he is taken on duty, alongwith all consequential benefits.

2. Notice of this O.A. was given to the respondents who have filed their detailed reply to which a detailed rejoinder has been filed by the applicant.

3. I have heard the learned counsels for the parties and have gone through the case file.

4. The applicant has alleged that he has been transferred to Kalpakkam, vide Annex.A-1 due to malice and in colourable exercise of power. The applicant has also alleged that he being a General Secretary of the Union, has been transferred to a far^{off} place to get rid of him and his Union activities. He has also alleged that the impugned transfer is a mid-term transfer and the authorities had not taken into consideration the difficulties of the school going children of the applicant. They had also not taken into consideration the applicant's social obligation of looking after his aged and ailing parents. The applicant could have been adjusted at Rawatbhata on one of the posts which have fallen vacant due to promotion and transfer of few other employees. For all these reasons, he has prayed for the relief described above.

5. The respondents in their much detailed reply have stated that the applicant has been transferred to Kalpakkam, in exigencies of service and as per the

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requirement for an experienced person at that place. They have also stated that the instances of so called malice, as stated by the applicant, have no relevance in the matter because those incidents as per the description of the applicant relate to the years 1994, 1995 and 1996, whereas, the applicant has been transferred in April, 1997. Thus, the transfer order cannot be categorised as mala fide transfer. The applicant was relieved of his present post on 17.4.1997 in pursuance of the transfer order dated 7.4.1997. The applicant refused to accept the transfer and relieving order and is absenting from duty till now. He has not reported at his place of posting as per the transfer order, for which appropriate departmental action is being taken against him. There is nothing on record to show that the applicant has been looking-after and maintaining his aged parents. As per the representation dated 31.5.1997 (Annex.A-14), the parents of the applicant are residents of Mathura (U.P.). Since they are not residing with the applicant, therefore, his transfer does not affect them in any way. It is also stated in reply that it is the discretion of the employer to post a particular employee at a particular place. The applicant as of right cannot seek his adjustment at the very same place on the ground that few other posts are lying vacant. The applicant had remained posted at the present station since 1987. Therefore, this cannot be said to be a premature transfer. The applicant has All India transfer liability. Transfer is an

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incident to Government service, therefore, the applicant is not entitled to any relief, as claimed.

6. Both the learned counsel for the parties have elaborated their arguments on the lines mentioned in their pleadings.

7. I have given my anxious consideration to the rival arguments. The incident of malice on account of applicant's raising an objection regarding change of date of birth and retirement of Shri T.R. Yadav, relates to the year 1993, therefore, it cannot be said that applicant has been transferred on account of this incident. The applicant as per his allegation, has taken-up the matter of Shri M.L.Soni for removal of adverse remarks from the confidential report. This matter relates to October 1996. As a matter of policy, executive members of the Union can raise such questions which are of general importance to the employees and may help in upliftment of their working conditions. The Union leaders cannot raise the individual issue like expunging of adverse remarks from the ACR etc., therefore, this cannot be believed that applicant has been transferred because of this incidence only.

8. Earlier the applicant was transferred to Kota due to pendency of an inquiry. That transfer order was cancelled after the inquiry came to an end. In my opinion, there is no material on record which may go to show that the applicant has been transferred due to cancellation of his previous transfer or due to interference by the Tribunal. The applicant was transferred

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in the month of April 1997. By that time, the education session had come to an end, therefore, by no stretch of imagination, it cannot be argued that the transfer order is a mid term transfer. That is absolutely a different matter that the applicant himself prolonged the issue by making representation after representations to various authorities. The applicant could have represented in the same way after having carried out the transfer order but he did not carry out the same even after being relieved from the present post.

9. It was argued by the learned counsel for the applicant that due to non availability of transfer benefits, the applicant could not carry out the transfer order. But I am not impressed by this argument. Applicant never claimed transfer T.A. & D.A. etc. as per rules to which he was entitled. Therefore, he cannot say that he was unable to carry out the impugned order. The order Annex.A/1 clearly mentions that officials are eligible for transfer T.A. & D.A. as per rules. Therefore, the applicant has nobody else to blame for it if he himself has not claimed the same. From the averments of the respondents it is cleared that Central School education facilities, residential facilities and even medical facilities are available at the new station, therefore, in my opinion the applicant cannot be said to have been deprived of these facilities at his new place of posting. As per the letter Annex.A/14 which was

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written by the applicant's father to the authorities, it appears that the parents of the applicant are residing at Mathura. Therefore, it cannot be successfully argued that due to the transfer of the applicant, his parents would be deprived of applicant's care.

10. From the facts as pleaded and the documents as presented, it appears that applicant had tried to get the impugned transfer order cancelled by making representations to the various authorities including the Hon'ble Prime Minister. Even the President and other office bearers of "अन्यपुस्तकालय संस्था" Rawatbhata, had taken up the cause of the applicant in this matter. This in my opinion, clearly goes to show that the applicant had resorted to and tried all sorts of means to get his transfer order cancelled on various other considerations. All these activities cannot be approved. Needless to say that the applicant remained posted at this station for almost 10 years. No employee can insist to continue at the same place when his departmental authorities think that he could be better utilised at a different place. The applicant has all India transfer liability, therefore, his transfer to Kalpakkam cannot be viewed as an act of victimisation.

11. The applicant has not mentioned any detail of the outstanding payments to be made by the respondents, therefore, a bald assertion that the respondents have not settled his dues, does not help the applicant in any manner. Moreover, he can always claim

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his outstanding payment from the new place of posting.


12. It has time and again been decided by the Hon'ble Supreme Court that mala fide transfer or transfer in colourable exercise of power, or exceptionally a mid-term transfer, can only be interfered with. In my opinion, no instance of mala fide and colourable exercise of power has been brought on record in the instant case. The incidents which have been mentioned in the application do not in my opinion, form the basis of mala fide and colourable exercise of power in transferring the applicant. This is also not a mid term transfer.

13. It is alleged by the applicant that number of vacancies are available at Rawatbhata where the applicant can be adjusted but he has been transferred to Kalpakkam irrespective of this situation. I have considered this aspect. It is not for the applicant to choose and for the Tribunal to decide, as to at which place, the applicant should be allowed to work. In my opinion, it is the privilege of the respondents-employer to consider as to at which place, the services of an employee can be better utilised and if the applicant has been considered to be an experienced worker for being posted at Kalpakkam then the Tribunal would not substitute its view for that of the authorities. Therefore, the argument based on the above fact, does not help the applicant.

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14. From the photo copy of Notification dated 28.10.1992 it appears that the Administrative Officer is one of the authorised officers who can represent and defend the case. Therefore, the reply which has been signed and verified by the Administrative Officer No. 3 on behalf of the respondents, cannot be discarded, as argued by the learned counsel for the applicant.

15. The case reported in 1982 (2) SIR Page 390, relates to arbitrary transfer and transfer based on extraneous reasons. Likewise, case reported in 1997(2) ATJ Page 608, relates to transfer on disciplinary grounds to ease out an inconvenient staff. They are, therefore, not applicable in the instant case and the applicant cannot be benefitted by the principles laid down in these rulings.



16. From the foregoing discussions, I come to the conclusion that no case has been made out by the applicant for interference in the impugned transfer order dated 7.4.1991 (Annexure A-1). The Original Application, deserves to be dismissed.

17. The Original Application is, therefore, dismissed. The parties are left to bear their own costs.


(A.K.MISRA)
Judicial Member

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