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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of order : 23.8.1999

O.A.No. 120/1999

N.K.Pathak S/o (Late)Shri P.L.Pathak, aged about 58 years, R/o 1070/2, Shaitan Singh Enclave, Jodhpur, Presently working on the post of Assistant Garrison Engineer (Technical) under Garrison Engineer(Army No.1), Jodhpur.

.....APPLICANT.

VS.



1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Engineer-in-Chief Branch, Army Headquarters, DHQ P.O. New Delhi.11.
3. Chief Engineer, Jaipur Zone, Power House Road, Bannie Park, Jaipur-6.
4. Garrison Engineer (Army No.1), Multane Lines, Jaipur.

.....RESPONDENTS.

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....  
Mr.S.K.Malik, Counsel for the applicant.  
Mr.Ram Narain, Advocate, Brief Holder, for  
Mr.P.P.Choudhary, Counsel for the respondents.

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PER HON'BLE MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that the impugned order dated 7.11.1998 (Annex.A/1) passed by respondent No. 2 and impugned letter dated 24.4.1999 (Annex.A/12), be quashed and the respondents be directed to

*Yours*

retain the applicant at Jodhpur as his last leg posting.

2. Notices of the Application was issued to the respondents. At the same time, operation of the impugned order Annex.A/1 and effect of letter Annex.A/12 was stayed, qua the applicant by this Tribunal.

3. The respondents have filed their reply to which a rejoinder was filed by the applicant.

4. We have heard the learned counsels and have gone through the record.

5. The applicant was working as G.E.(Army)No.1CWE, Jodhpur and was ordered to be transferred to Patiala vide impugned order Annex.A/1 as CWE (P), Patiala as ACWE-E/M with immediate effect. Thereafter, the applicant represented to the concerned higher authorities for his retention at Jodhpur till his retirement on account of heart-ailment and on account of his son being a student of MBBS at Jodhpur. During the pendency of the O.A., the higher authorities came to the conclusion that applicant cannot be retained at Jodhpur.

6. The applicant has challenged his transfer order on the ground of his own ailment and on the ground that his three sons are studying at three different places and if he is transferred to Patiala, he will have to maintain fourth establishment. The applicant has less than three years to superannuate and, therefore, his choice for last leg posting is required to be considered by the authorities. He has also challenged the transfer order as mala fide and colourable

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exercise of power on account of non observance of the guidelines as enumerated in the Policy Annex.A/13. The claim of the applicant has been refuted on the ground that the applicant remained posted at Jodhpur since 1994. The Guidelines of 1988 (Annex.A/13) have been superseded by another Scheme (Annex.R/6) which came in force in February 1991. It is also alleged by the respondents that the applicant has never opted Jodhpur as the last ~~and~~ leg posting. As and when the transfer order was passed, he prayed for Jodhpur posting as his last leg posting. The O.A. is without merits.

7. We have considered the arguments of learned counsel for the parties elaborated on the lines of their pleadings.

8. On going through the O.A., we do not find any fact relating to mala fide transfer or transfer due to colourable exercise of power, therefore, this ground does not help the applicant.

9. Applicant's two sons are studying at Meenut and Firozpur; one in Engineering and one in MBA respectively. Applicant's third son is said to be studying at Jodhpur in MBBS who is said to be staying with the applicant. Due to the impugned transfer, the applicant is to maintain the fourth establishment at Patiala but personal conveniences cannot be considered for purposes of transfer etc. Transfer is a necessary event in service carrier of a Government servant and cannot be interfered with unless mala fide and colourable exercise of power is established in making such transfer. The applicant is being transferred on a vacant

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at Patiala, therefore, it cannot also be argued that the transfer is not in public interest. A post cannot be allowed to be kept to/vacant indefinitely. If the post is kept vacant, the work and administration suffers; therefore, the argument of the learned counsel for applicant that nobody would be affected if the impugned transfer order, qua the applicant, is cancelled, does not carry weight. It is for the administration to consider as to at what place, a particular Government servant is required to discharge his duties and we do not want to substitute our wisdom and decision in place of that of the Administrative Officer.

10. There is nothing on record to show that much prior to the impugned transfer order, the applicant had exercised his option as per the Scheme / being retained at Jodhpur as on last leg posting. When the applicant was transferred earlier from one post to another at Jodhpur itself, the applicant preferred not to give any option relating to his choice station. This clearly goes to show that the applicant had never opted Jodhpur as his last leg posting. He is talking of Jodhpur as a last leg posting, only when he is transferred to Patiala. This cannot be termed as fair play on the part of the applicant. Before the recommendation of the Fifth pay Commission, enhancing the retirement age by two years, the applicant was to retire on superannuation at the age of 58 years. At that time, the applicant was at Jodhpur and was hopeful of superannuating only from Jodhpur. But when the age of retirement was enhanced, the applicant ~~had~~ given an option for Jodhpur as a last leg posting. Therefore, it is not open

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to the applicant to claim Jodhpur as his last leg posting. Vide letter Annex.R/l dated 15.5.1998, the applicant indicated Jalandhar as his native place where he was to settle his family and has claimed posting at Jalandhar and alternatively at Firozpur and Chandigarh. The impugned transfer order was passed on 9.11.98 and the applicant was given a posting at Patiala. It appears that applicant could not be adjusted at Jalandhar, Firozpur and Chandigarh, hence, he has been given the posting at Patiala which is also not far away from Jalandhar. Therefore, in our opinion, the applicant cannot claim the impugned transfer order as colourable exercise of power.

11. No other point has been canvassed at the time of arguments. The Application, in our opinion, is devoid of any force and is liable to be rejected.

12. The Application is, therefore, rejected. The Stay Order granted earlier on 28.4.1999 stands vacated.

13. The parties are left to bear their own costs.

Gopal Singh

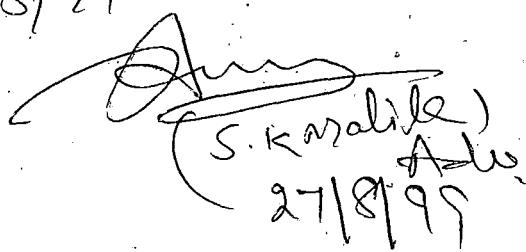
(GOPAL SINGH)  
Adm. Member

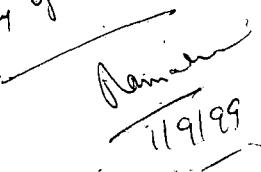
23/8/99

(A.K.MISRA)  
Judl Member

mehta

Copy of order dated  
23/8/99 received

  
(S. Karalile) A.W.  
27/8/99

copy of order received  
  
A.W.  
27/8/99

Part II and III destroyed  
in my presence on 14.7.2006  
under the supervision of  
Section Officer (1) as per  
order dated 16.7.2006

Section Officer (Record)