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CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR

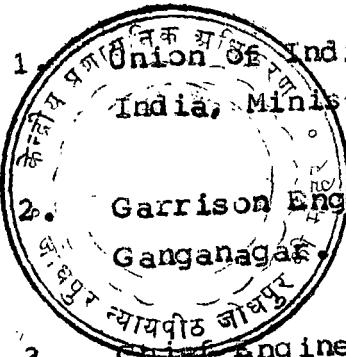
ORIGINAL APPLICATION NO. 269/2002

DATE OF ORDER: 05/12/2002

B.M. Gulati son of Shri Inderjeet Gulati, aged 54 years,  
Draftsman Grade II, In the Office Garrison Engineer, Army,  
Suratgarh, R/o MES Colony, Suratgarh, District Shri Ganga-  
nagar.

...APPLICANT.

V E R S U S

1.  Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. Garrison Engineer, MES Army, Suratgarh, District Shri Ganganagar.

3. Chief Engineer, Western Command, Chandimandir.

...RESPONDENTS.

Mr. Vijay Mehta, counsel for the applicant.

Mr. Kuldeep Mathur, Adv. Brief holder for

Mr. Ravi Bhansali, counsel for the respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

PER MR. J.K. KAUSHIK, JUDICIAL MEMBER:

Shri B.M. Gulati has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing therein the impugned order dated 18.10.2002

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(Annexure A/1), movement order dated 12.09.2002 (Annex. A/2) and order dated 14.09.2002 (Annex. A/3).

2. The brief factual matrix necessary for adjudication of the controversy involved in this application is that the applicant is holding the post of Draftsman Grade II. He has been transferred from Suratgarh to Chandigarh vide order dated 30.03.2002 in the interest of service. He was ordered to be relieved only vide movement order dated 12.09.2002 for joining at Chandigarh and was also called upon to hand-over the charge by 20.09.2002. He submitted a detailed representation for requesting the deferral of his posting till the end of the academic session. The representation was made in view of the fact that his daughters are pursuing their education in class IV and III in Kendriya Vidyalaya, Suratgarh. Beside this he has also submitted that the applicant is also suffering from heart disease and is remaining under constant treatment. He filed an Original Application no. 250/2002 before this Hon'ble Tribunal which came to be disposed of vide order dated 18.09.2002 with a direction to the respondents to consider his representation and dispose of the same through a speaking order within stipulated time period.

3. The respondents have disposed of his representation vide letter dated 18.10.2002 and have rejected his claim. The rejection letter has been issued by second respondent. The Original Application has been filed mainly on the ground of mid-term academic session and rejection of his representation by respondent no. 2 and not the respondent no. 3 who was the competent authority and to whom the representation was addressed. The other grounds are humanitarian grounds.

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4. An interim order was issued on 22.10.2002 directing the applicant to continue at Suratgarh with further observation that the applicant could be kept at Suratgarh maximum upto 31st December, 2002 since he had requested for defferment of his posting order upto that date.

5. The case was listed for admission. The respondents have not filed the reply to the Original Application and have consented for its final disposal at the stage of admission even in absence of the reply, since a very small controversy remain to be resolved.

6. We have heard the learned counsel for the parties and have carefully perused the records of this case.

7. The learned counsel for the applicant has fairly submitted that the applicant would be able to manage the affairs of his children after 31st December, 2002 since by that time half yearly examination of his children may be over and he has very specifically submitted in the representation for deffering his transfer upto 31st December, 2002. He has also submitted that there is no urgency of sending <sup>him</sup> to Chandigarh and this fact is evident from the very sequence of events in as much as the transfer order was issued of 31st March, 2002. The movement order was issued on 12 Sept. 2002. Had the respondents been having any urgency the transfer would have been effected in April or May itself which would not have given rise to the ground of mid-academic session. He has also submitted that the law position is also settled by the Apex Court in such matters. The learned counsel for the respondents did not seriously dispute the position.

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8. Insofar as the impugned order of transfer is concerned, it would be pertinent to notice that it is well settled that the question of transfer of a public servant and the further question that it is in the exigencies of service or in the interest of service or public interest to transfer a particular public servant is to be decided by the competent authorities. The Court will not sit in judgment over the satisfaction of the competent authorities on the point that a certain public servant has to be transferred in the exigencies of service and replace the judgment of the administrative authority by its own findings. This is, however, not to say that there is no scope for judicial intervention in the cases of transfer. The Court or a judicial forum can intervene and set aside the transfer order if the same is found to be malefic or in breach of the constitutional provisions/ or binding administrative instructions/statutory rules or is capricious and based on extraneous considerations or is a colourable exercise of powers.

9. In the present case, the impugned orders do not suffer from any infirmity or illegality as such the same do not call for any interference.

10. On the other hand, the contention of the applicant that it is a mid-academic transfer and would cause undue hardship to him as well as damage the studies of his children has force especially when there is no urgency of his instant move to Chandigarh on transfer. We are fortified of our view with the verdict of Apex Court in Director of School Education V/s D. Karuppa Thevan, 1996 (1) SLR 225 (SC) wherein their Lordships have

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that "although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of service are not urgent."

11. In this view of the matter, the ends of justice would meet if the applicant's transfer order is kept in abeyance and he is allowed to continue at Suratgarh upto 31.12.2002.

12. In the premises, the Original Application is partly allowed and the applicant is ordered to be retained and treated as continued at Suratgarh till 31st December, 2002 and he shall be entitled to all consequential benefits.

The other relief stands rejected. No order as to costs.

  
( J.K. KAUSHIK )

Judl. Member

  
( A.P. NAGRATH )  
Adm. Member

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Kumawat