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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614
CAMP AT NAGPUR

OA.NO. 442/89

Shri D.R.Thool

... Applicant

V/S.

Quality Assurance Officer,
Q.A.E. (M.E.), Bhandara
AND OTHERS.

... Respondents

CORAM: Hon'ble Member (J) Shri A.P.Bhattacharya
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.B.P.Dharmadhikari
Advocate
for the Applicant

Date of hearing : 18.1.1990

Date of judgment: 19.1.1990

None appears for the
respondents.


JUDGMENT

(PER: A.P.Bhattacharya, Member (J))

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by Shri D.R.Thool against the Union of India, represented by the Secretary, Ministry of Defence and another.

2. In this application the applicant has challenged his order of transfer from Bhandara to Jabalpur passed on 15.5.1989 and his movement order passed on 19.6.1989.


3. The applicant is an employee in the Office of the Quality Assurance Officer, Bhandara. He started working at Jabalpur in June 1963. On his own seeking he was transferred to Bhandara on compassionate ground. On 30.1.1989 there was a small fire at Bhandara just behind Explosive Magazine. The fire was immediately extinguished by him with the help of one of his colleagues. Over the incident, a charge-sheet was issued against him. An inquiry was held and after that an order was issued on 17.4.1989

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imposing penalty on him by reducing him by 9 stages and by withholding his increments for three years. The applicant preferred an appeal to Respondent No. 2 on 9.5.1989. It is his case that just after his preferring the appeal Respondent No. 1 issued the order of transfer which was followed by the movement order. The applicant challenges the transfer order on the ground that it was not passed in any administrative exigencies. According to him the said transfer order was passed only in order to victimise him. The applicant had stated that he has some family difficulties for which he cannot go on transfer to Jabalpur.

4. The application has been opposed by the respondents.

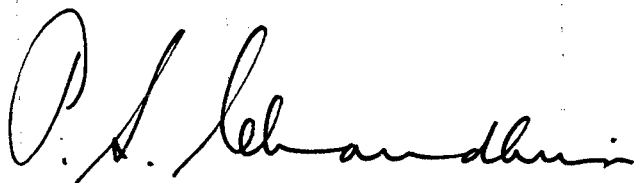
5. It is one of the grounds taken by the applicant that he will be in financial hardship if he is transferred to Jabalpur in maintaining two establishments, one at Bhandara and the other at Jabalpur. In that context, it can be said that it is quite well settled law now that transfer cannot be said to be an infringement on right to live including right to livelihood. When transfer in public interest is an incident of service and is also an implied condition of service, the concerned Government servant cannot oppose ^{it} on any of such grounds. Of course, the appointing authority has a wide discretion in the matter and such power should be exercised by it honestly, bonafide~~ly~~ and reasonably. In the instant case, the applicant has not been able to establish that with a view to victimising him only, the said order of transfer was passed and the movement order was issued. It is his surmise that his preferring the appeal had infuriated his appointing authority and as such the order of transfer was passed against him. We have no reason to believe that. It is true that a penalty was imposed on the applicant after holding a departmental inquiry against him. Under the rule he has

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the right to prefer an appeal if he feels aggrieved by the order of penalty imposed on him by his disciplinary authority. Merely because he preferred that appeal could not be the ground of passing the order of transfer when that was ^{made} ~~meant~~ in the interest of public service. So we have no materials before us to hold there was malafide in passing the impugned order of transfer.

6. It is also quite well settled principle of law that no court or Tribunal should interfere with the order of transfer unless it is a penal one. It is curious to note that in his application the applicant had no-where made out any such case. Such being the position, we have absolutely no business to interfere ^{with} ~~in~~ the matter.

7. In fine we may like to add that in compliance with the impugned order of transfer ^{applicant} ~~he~~ had joined his new posting at Jabalpur on 30.6.1989. In consideration of all what has been stated above, we hold that this application is not at all fit for adjudication by this Tribunal and as such we dismiss it summarily.



(P.S. CHAUDHURI)
MEMBER (A)


(A.P. BHATTACHARYA)
MEMBER (J)