

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.185/2000.

Thursday, this the 6th day of April, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

S.Narayanan,
Assistant Foreman,
C.Q.A. (A),
Kirkee,
Poona - 3.

(By Advocate Mr.S.P.Saxena)

...Applicant.

Vs.

1. Union of India
Through the Secretary,
Ministry of Defence,
New Delhi - 11.

2. Director of Quality Assurance (ARM),
Department of Defence Production,
D.H.Q. P.O.,
New Delhi. - 11.

3 The Controller,
C.Q.A. (Ammunition),
Kirkee,
Poona - 3.

(By Advocate Mr.R.K.Shetty)

...Respondents.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the order of transfer. The learned counsel for respondents orally opposed admission of the OA and then the interim order. I have heard the learned counsels regarding admission and interim relief.

2. The applicant who is an Assistant Foreman at Kirkee has been transferred under the impugned order dt. 12.5.1999. In fact, applicant gave his willingness for this transfer. Subsequently, due to administrative exigencies, there was

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delay in issuing relieving order. In the meanwhile, applicant has attained 55 years on 3.1.2000 and therefore, he gave a representation to the administration stating that since he was 55 years as on 3.1.2000 he should be exempted from turnover posting, but there was no response from the administration. Therefore, the applicant has approached this Tribunal alleging that since he has completed 55 years he cannot be transferred in view of the transfer policy guidelines dt. 14.12.1992.

3. The learned counsel for the applicant contended that in view of the transfer policy mentioned in the letter dt. 15.12.1992 applicant cannot be transferred after he has completed 55 years. He further argued that some persons who have completed 55 years of age are not touched and it amounts to discrimination. He further argued that respondents have not given any reply to the applicant's representation dt. 1.3.2000. The learned counsel for the respondents contended that the letter dt. 15.12.1992 only mentions that the transfer policy or transfer guidelines and it is not a statutory rule and no case is made out legally for interfering with the impugned order of transfer.

4. After hearing both sides and going through the materials on record, I find that this circular dt. 15.12.1992 is only guidelines as far as transfers are concerned. It is well settled by number of decisions of the Apex Court that transfer guidelines do not create any vested right in any official to enforce the transfer guidelines in a Court of Law. I only refer to the leading case on the point in the case of Union of India Vs. S.L. Abbas

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(AIR 1993 SC 2444), where the Supreme Court has held that transfer guidelines providing for keeping husband and wife at the same place is only a guideline and it is not a statutory rule to give any legal right to any person to assert that he must be continued where his spouse is working and cannot be disturbed. The learned counsel for the applicant is right in his submission that the transfer guidelines cannot be ignored by the administration. The department is bound to follow the transfer guidelines and transfer policy and if in the exigency of administration some transfers ^{so be} are made they may depart from the guidelines. If in a given case particular officer has not followed the guidelines and has made transfers contrary to the guidelines the aggrieved official can make a representation to the higher officer in the department. But, it is not a matter which can be enforced in a Court of Law. Now, it is well settled that the Courts or Tribunals cannot sit as appellate forums for deciding the legality, validity or the necessity of transfers. It is only if the order of transfer is mala fide or the order is contrary to any statutory rules the Tribunal can interfere with the same. In this case, there is no allegation of mala fide, there is no allegation of violation of any statutory rules and therefore, in the facts and circumstances of the case, the present OA is not maintainable and hence question of granting interim order does not arise. The argument about discrimination also does not merit consideration. If this argument is accepted, then the government cannot transfer anybody after 55 years; and ~~most~~ transfer guidelines do not create any ^{legal} statutory rights.

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Therefore, the question of discrimination does not arise and it is in the administrative exigency transfers are done. Therefore, I find no merit in the application.

5. In the result, the application is rejected at the admission stage. The ex-parte status quo order dt. 24.3.2000 is hereby vacated. No order as to costs.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.