

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

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D.A. No. 390/1990
OA. 515/90

(3)

Shri Satya Pal Singh

.... Applicant

Vs.

Garrison Engineer,
Kunjali and Others

.... Respondents

Appearances :-

Applicant by S.Y.Gupte.

Respondent by R.K.Shetty

JUDGEMENT

Date : 19-7-1990.

(PER Shri M.Y.Priolkar, Member (A)

The applicant in this case is working as a Superintendent in the Office of the Garrison Engineer, Kunjali, at Bombay and has been transferred from Bombay to Barmer by order of Chief Engineer, Southern Command, Pune dated 15.2.1990. The ~~grievances~~ of the applicant is that his request for postponing the transfer has been rejected by order of the Chief Engineer, Southern Command, Pune as intimated to him by ^{letter of} Garrison Engineer, Bombay dated 22.5.1990.

2. The applicant is a Diploma Holder in Civil Engineering and with a view to improving his career prospects, joined the Part Time (evening classes) Degree Course in B.E.(Civil) of an Engineering College in Bombay by obtaining permission of the competent authority. Though this is a 4 years course and permission was granted in 1985, the applicant who is stated to be a Scheduled Caste Employee has not still completed this course.

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3. After his request for postponing the transfer was rejected, the applicant applied to the Engineer in Chief, Army Head Quarters, New Delhi, who is stated to be the head of his department, to grant him 24 months study leave vide his application dated 21.6.1990. The relief prayed by the applicant ^{in this application before us} is that the order of transfer to Barmer should be stayed till the competent authority takes a decision on his application for his study leave dated 21.6.1990. This is based on the ground that if the applicant is relieved of his present post before decision on the said application, irreparable loss will be caused to him.

4. In their written reply, the respondents have opposed the application on the ground that the transfer is a management function and that there is no allegation of malafides in the transfer. It has also been stated that the applicant is being transferred from Bombay after a period of nearly 15 years.

5. The learned Counsel for the applicant contended that the applicant has still not handed over the charge, though the respondents have stated that the applicant has been struck off strength of Garrison Engineer, Bombay, by order dated 1.5.1990 to move to Barmer, Rajasthan. The applicant's counsel argued that the applicant has submitted medical certificates, asking for leave and he could not be struck off strength while on leave. We are, however, unable to accept this contention, since as the learned Counsel could not show us any rules or instructions which prohibit transfer of an employee or his relief, during his leave including medical leave. Admittedly, the applicant was informed about his transfer to Barmer on 5.3.1990 and was given time to move to Barmer till 1.6.1990. We are therefore, of the view that the applicant cannot be considered to have been illegally struck off the strength of the office of the

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Garrison Engineer, Bombay.

6. The applicant's Counsel relied on two earlier decisions of this Tribunal in support of his prayer for staying the transfer order until his application for study leave is decided. In the case of Nimai Chandra Panda V Union of India and others [(1987) 3 ATC 121], the Cuttack Bench of this Tribunal observed that "the transfer of an employee in the month of December would create a great hardship to the children of the concerned employee" and advised that the petitioner in that case should be retained at his old place till the end of the academic session. In the present case, ^{having been} the transfer ~~being~~ ordered in March and effective from May, it is evidently not a mid-session transfer nor is such a ground advanced by the applicant. This case will not, therefore, help the applicant. The second case cited by the applicant's Counsel [(1987) 2 ATC 576] will also not help the applicant since the relief prayed of cancellation of transfer was refused in that case notwithstanding the order being made during mid-session and causing inconvenience to the children's education.

7. It has been held by the Supreme Court in the case of Shanti Kumar V Regional Deputy Director, Health Services, Patna Division, Patna and others (AIR 1981 SC 1577) that transfer of a government servant may be due to exigencies of service or administrative reasons and the Courts cannot interfere in such matters. We are not, therefore, inclined to stay this transfer till the decision on his application for grant of study leave as prayed by the applicant,

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particularly when the respondents also produced before us the order dated 9th June 1990 showing that another official had assumed charge of the applicant's post on 8th June 1990.

8. According to the respondents, even the application for study leave has since been rejected by the department. The applicant's Counsel, however, stated that this is done only by the Garrison Engineer and not the Engineer-in-Chief, who alone, being the Head of Department, is competent to grant or reject his application for study leave. In any case, since the study leave can be granted only at the discretion of the competent authority and with due regard to the exigencies of public service, the question of transfer cannot, in our view, be linked with the decision on application of study leave. It is for the applicant to pursue his remedy separately if his application for study leave has been improperly rejected by the authorities.

9. The application is, accordingly, summarily dismissed as devoid of merit, with no order as to costs.

M.Y. Priolkar
19-7-90

(M.Y.Priolkar)
Member (A)

A.P. Bhattacharya
19-7-90

(A.P.Bhattacharya)
Member (J)