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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.965/99

DATE OF ORDER : 9.12.1979

Between :-

P..Appa Rao

...Applicant

And

1. Flag Officer Commanding in Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam.
2. General Manager, Naval Armament
Depot, Visakhapatnam.

...Respondents

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Counsel for the Applicant : Shri P:B.Vijay Kumar

Counsel for the Respondents : Shri B.N.Sarma, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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(Order per Hon'ble Justices Sri D.H.Nasir, Vice-Chairman).

Heard Sri P.B.Vijay Kumar, learned counsel for the applicant and Sri B.N.Sarma, learned senior standing counsel for the respondents.

2. By order dated 3.6.1999 several officials working as MT Drivers in the Eastern Naval Command, Visakhapatnam are transferred to the Units/Establishments indicated against each. The transfer is directed to be made effective from 14.6.1999. The applicant's name appear at Sl.No.12 under item (B) in order dated 3.6.1999. The transfers were made from Industrial Establishment to non-industrial establishment. Fifteen officials including the applicant were governed by the said transfer order as far as item (B) is concerned. Under item (A) of the same order dated 3.6.1999 fifteen officials were transferred. The movement order in respect of the above transfers were issued on 11.6.1999.

3. The applicant is challenging his transfer firstly on the ground that he is being made to shift from Industrial side within two years of service which was not in accordance with the transfer policy framed by the Respondent No.1 in pursuance of the directions issued by the Tribunal. On an earlier occasion also when the applicant was transferred contrary to the policy as alleged by the applicant, he approached this Tribunal by filing OA-1035/97 which was disposed of on 23.10.1997 by an order directing the respondents to consider the

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applicant's case in the light of the representation and the policy. However, it appears that the consideration of the applicant's representation was not in favour of the applicant and therefore the applicant again moved the Tribunal by filing OA 1625/97 which was disposed of on 11.12.1997 directing the respondents to continue the applicant as per the policy. The Respondents therefore issued proceedings dated 29.12.1997 ordering the applicant's continuance till his retirement when the age of superannuation was only 58 years. As a result of enhancement of age limit, the applicant is liable to retire only in July, 2001. Mainly on this ground that on account of extension of superannuation age, the applicant has now entered the phase of last two years of his service he ^{is} entitled to claim protection of the policy of abstaining from transferring any official if less than two years are left before his retirement. In spite of the same, as submitted by the learned counsel for the applicant Sri P.B.Vijay Kumar, the applicant was served with a movement order dated 11.6.1999 issued by Respondent No.2 on 19.6.1999. There is no reference according to Sri P.B.Vijay Kumar, to the earlier order of the Respondent No.1 ordering his continuance till his retirement.

4. The applicant's case is vehemently opposed by the respondents. The learned Standing Counsel for the Respondents submits that the applicant was endeavoring to stall his transfer under one pretext or other with an intention to continue in the industrial establishment after his initial transfer which was made in 1995, after the lapse of 19 years. It is further pointed out by him that the transfer order was

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issued on 3.6.1999 and at that point of time the applicant had more than 2 years of service. However, the applicant was attempting to take undue advantage of the transfer policy and the fact of extension of superannuation age, which was not legal and proper according to the respondents. It is submitted by the learned Standing Counsel that while issuing the present transfer order dated 3.6.1999 all aspects had been taken into consideration and in view of the fact that the applicant was continuing in the industrial establishment for the past 19 years depriving the benefit of transfer to his counter part MT Driver from non-industrial to industrial establishment and also in view of the fact that the applicant was having more than 2 years of service as his retirement on superannuation would fall due only on 31.7.2001. It is also submitted by the learned Standing Counsel that since the applicant was transferred from Industrial Unit i.e. Naval Armament Depot, Visakhapatnam to Virbahu, the applicant's name was struck off with effect from 12.6.1999 by movement order dated 11.6.1999. The applicant absented from duty on 11.6.1999 but later applied for leave with effect from 12.6.1999. The Movement Order was sent to the applicant at his home address by Registered Post but the same returned undelivered. However, on 19.6.1999 the applicant collected the movement order personally from Naval Armament Depot, but did not report to INS Virbahu.

5. On perusing and examining the facts of the applicant's case elaborately it does give us a reason to believe that the applicant is dodging his transfer under one pretext or the other. Transfer, as is well

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settled, is an incidence of service and ordinarily the transfers are made in government for administrative convenience. This presumption that the transfer in question is made for administrative convenience cannot be overlooked or under emphasized unless a case is made out by the official that his transfer has taken place on account of any malafide intentions against him by the concerned officers or that the transfer was punitive. No such allegations have crept into this case and therefore it would not be legal and proper for this tribunal to interfere with the transfer. More particularly when the Movement Order has also been served and accepted by the applicant.

6. Transfer in violation of policy is also a point to be considered in this OA. The policy envisages that ordinarily an official should not be transferred if less than 2 years are left before the concerned official attains the age of superannuation. In the instant case the transfer issued on 3.6.1999 was not hit by the aforesaid policy of refraining from transferring an official if less than 2 years of service was left before his superannuation. Today the position may be different. When the order was issued, it is not disputed that more than two years were left before his extended age of superannuation. In that view of the matter, therefore the applicant cannot be allowed to ^{elude} ~~dodge~~ his transfer on the ground that less than two years of service was left before his extended age of superannuation.

7. Efforts made in that direction for frustrating the transfer order cannot be allowed to confer any undue advantage to the applicant. More over the myth of the doctrine that the transfer is ordinarily made

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for administrative convenience is not broken by the pleas taken by the applicant in the OA and therefore I do not find it necessary to interfere with the impugned transfer order.

8. Hence the Original Application is dismissed. No order as to costs.

D.H.
(D.H.NASIR)

VICE-CHAIRMAN

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2nd*

DATED:

AVL/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

1ST AND 2ND COURT

COPY TO.

1. HDHND ✓
2. HRRN M (ADMN) ✓
3. HGSJF.M. (JUDL) ✓
4. D.R. (ADMN) ✓
5. SPARE ✓
6. ADV. DATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE DH. NASIR
VICE-CHAIRMAN ✓

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN) ✓

THE HON'BLE MR. B. S. JAI PARAMESHWAR
MEMBER (JUDL) ✓

DATE OF ORDER 9/12/99

MA/24/CP.NO.

IN
CA. NO. 965/99.

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

PA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

