

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.92/2000

Date of order: 20/4/2000

D.K.Agrawal, S/o Sh.S.C.Agrawal, Jr.Engineer, Central Public Works Deptt, Jaipur Central Divn.I, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary, Mini. of Urban Development & Affairs, Govt. of India, New Delhi.
2. Director General of Works, Central Public Works Deptt, Nirman Bhawan, New Delhi.
3. Supdt.Engineer, Coordination Circle(Civil), CPWD, I.P. Bhawan, New Delhi.
4. Supdt.Engineer, Jaipur Central Division-1, CPWD, Vidhachar Nagar, Sector No.7, Jaipur.

...Respondents.

Mr.V.K.Mathur - Counsel for the applicant

Mr.Manu Bhargava - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order of transfer dated 11.2.2000 by which the applicant was transferred from Jaipur to New Delhi.

2. The case of the applicant is that he was transferred against the transfer policy/guidelines framed by the Govt for this purpose. The wife of the applicant Dr.Smt.Sunita Gupta is a Lecturer and posted at Kancra Mahila Post Graduate Mahavidyalaya, Jaipur which comes within the purview of the State Govt. Therefore, as per the instructions issued by the Deptt.of Personnel & Training, if husband and wife both are Govt servant, they should be posted at the same station. It is stated that respondent No.3 adopted pick and choose method by transferring the applicant alone. The tenure of Jr.Engineer if in the field unit shall be 6 years and if in the planning unit, it shall be 2 years. But the applicant was transferred before completion of his tenure. It is further stated that the applicant's father is an old aged man having suffering from diabetic, asthmatic and incapable to work free therefore he requires immediate medical attention therefore the presence of the applicant at Jaipur is necessary and these facts were not considered by the respondents. Therefore the applicant files the O.A for the relief as mentioned above.

2. Reply was filed. In the reply, it has been stated that the order of transfer was issued in public interest and it was also

denied that the respondents have violated any rules/guidelines, laid down by the Govt. It is also stated that there was a departmental enquiry initiated and pending against the applicant, therefore, S.P, CBI has recommended that not to influence the official position to damage the prosecution case, applicant should be transferred in public interest. Therefore the transfer of the applicant is neither against any statutory rules nor based on malafides, therefore, this Tribunal should not be interfered in the impugned order of transfer and this O.A having no merits is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record, including the written submissions of the respondents.

5. No statutory rule appears to have been violated in transferring the applicant. The applicant has referred certain departmental instructions which appear to be only guidelines.

6. In Union of India Vs. S.L.Abbas, 1994 SCC(L&S) 330, it was held by Hon'ble Supreme Court that guidelines issued by the Govt do not confer upon an employee any legal enforceable right.

7. In , 1996(3) ATC 10, it was held by the Apex Court that it is settled law that a transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafides or infraction of professed norms or principle governing the transfer.

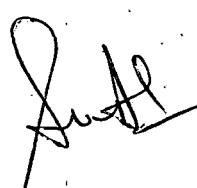
8. In Home Secretary U.T, Chandigarh Vs. Darshjeet Singh, 1993(4) SCC 25, it was held by Hon'ble Supreme Court that executive authority has a power to transfer an employee even if one has not completed normal tenure and can also be allowed to continue even after the said normal tenure.

9. In V.P.S.Panwar Vs. Union of India, High Court J&K 502, it was held that transfer order before completing tenure is only in violation of guidelines which are only executive instructions.

10. The learned counsel for the applicant also raised a plea that the wife of the applicant is posted at Jaipur which institution is under the jurisdiction of the State Govt, therefore, in view of the circular issued by the Govt of India, both husband & wife should have been posted at one station.

11. In Bank of India Vs. S.J.S Mehta, (1992) 1 SCC 306, Hon'ble Supreme Court held that the guidelines issued by the Govt for posting of husband & wife at one station do not give legal right to claim posting at one station if authorities consider such posting as not feasible.

12. In the instant case, the applicant was transferred as a major penalty charge sheet is pending against him, in order to



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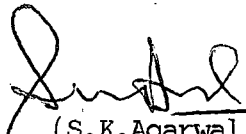
initiate free and fair enquiry, he was transferred in public interest.

13. In Ram Dev Singh Vs. State of J&K, SWP 1507/97, decided on 29.12.97, it was held that during the pendency of departmental enquiry, an official can be transferred from a particular place in order to ensure free and fair enquiry.

14. As regards personal difficulties of the applicant, applicant is free to approach the departmental authorities for redressal of his grievance. The department is the sole judge to decide where and when an employee is to be transferred. Therefore, regarding personal difficulties, the applicant may approach the departmental authorities who are supposed to consider sympathetically the grievances of the applicant.

15. In view of the above, I do not find any merit in the O.A and the same is dismissed as having no merit. However, this order does not preclude the departmental authorities to consider the case of the applicant sympathetically in case any representation is submitted by the applicant for redressal of his grievance.

16. No order as to costs.

  
(S.K. Agarwal)  
Member (J).