

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

D.A.No.471/2002

Date of order: 1.11.2002

Jaibir Singh, S/o Sh.Kapoor Singh, R/o Village Balam,
Distt.Rohtak, working as Civilian MT Driver (O) at 706,
Tpt.Coy.ASC(Civ.GT) C/o 56 APO), Jaipur.

...Applicant.

vs.

1. Union of India through Secretary, Mini.of Defence, Govt of India, New Delhi.
2. Director General of Supply & Transport, Army HQ. DHQPO, New Delhi.
3. Chief Record Officer, ASC Records (MT), Bangalore.
4. Officer Commanding, 706, Tpt.Coy.ASC (Civ.GT) C/o 56 APO at Jaipur.

...Respondents.

Mr.Ajay Gupta - Counsel for applicant.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

An order of transfer dated 10.11.01 (Annex.A3) was passed against the applicant transferring him from 706 Tpt.Coy.ASC Jaipur to 5121 ASC Bn. Pathankot is the subject matter of challenge in the instant application.

2. The applicant is working as Driver, at 706 Tpt. Coy. ASC Jaipur. Vide impugned order Annex.A3, he has been transferred to 5121 ASC Bn. Pathankot and asked to move by 30.11.02. The applicant has challenged the order of transfer, inter alia, on the ground that such order of transfer has been passed in violation of para 4 of Army Head-quarters letter dated 28.11.97 (Annex.A1). He further pleaded that his wife is suffering from

le

chronic R.A and is ^{under} ~~under~~ continuous treatment and the applicant is passing through great mental tension and apart from his duty he has to lookafter his children as there is no one to lookafter them. He further pleaded that there is no medical facility at Pathankot and there are 6 persons who are working since last 8 to 10 years at Jaipur but ignoring this fact, the respondents has transferred him out of Command with a short tenure as the applicant was posted at Jaipur only in August 1998. He has also placed on record representations dated 21.12.01, 16.7.02 and 7.9.02 (Annex.A4, A5 & A6) ventilating his aforesaid grievances but was no avail. It is, on these grounds, the applicant has prayed that the order Annex.A3 be quashed and direction may be given to the respondents to allow him to work at Jaipur.

3. We have heard the learned counsel for the applicant and perused the material on record.

4. It has been repeatedly held by the Apex Court that court can interfere in such matter only if the transfer order is vitiated by malafide or there was infraction of any professed norms or principle governing the transfer. In other cases, matter was left to the departmental head in the public interest. A Govt servant holding a transferable post has no vested right to remain posted at one place or the other. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. It has further been held by the Apex Court that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed malafide or in violation of the rules of service and guidelines

Lb

for transfer without any proper justification.

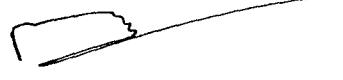
5. Now let us consider the contention of the counsel for the applicant ^{The light} in view of the law as settled by the Apex Court in such matter. The main contention of the counsel for the applicant is that he has been transferred in violation of para 4 of order dated 28.11.97 (Annex.A1) which provides that as far as possible posting of employees should be considered within Command. The counsel for the applicant submitted that there are many vacant posts within the Command but ignoring this fact, the applicant has been transferred out of Command. Further contention of the counsel for the applicant is that there being at least 6 persons who have 8 to 10 years stay at Jaipur has not been transferred but the applicant who was only posted in the year 1998 has been transferred. We do not consider any force in the contention raised by the applicant in view of the law laid down by the Apex Court. It is for the administration to decide who has to be transferred and where he should be posted so long as the order is not vitiated on account of malafide, infraction of any professed norms or in violation of any rules. It cannot be reasonably contended by the counsel for applicant that the applicant should have been spared and some one else having longer stay would have been transferred. As already stated above, it is a matter to be decided by the appropriate authority and this Tribunal cannot act as appellate forum to decide the transfer of official made on administrative ground. Similarly, further contention of the counsel for the applicant that his wife is suffering from chronic R.A and transfer order is causing hardship to his family and there is no medical facility available at Pathankot, is a matter to be considered by the competent authority. The applicant has already made representations Annex.A4, A5 and A6, which

according to the applicant, has not been considered by the authorities. On this score alone the order of transfer cannot be quashed and set aside. There is no bar for the authorities to transfer the applicant back to Jaipur or any other suitable place after he joins at Pathankot, in case the representation of the applicant is considered favourably.

6. We do not wish to express any opinion about the merit of the grievances made by the applicant in his representations and the respondents department will be at liberty to decide such representation on its own merit and it is expected that the respondents authorities shall consider such representation as expeditiously as practicable. With this observation, the O.A is dismissed at the admission stage as the applicant has failed to make out a case for interference by this Tribunal.


(M.L. Chauhan)

Member(J).


(H.O. Gupta)

Member(A).