

Central Administrative Tribunal
Jabalpur Bench

OA No.225/06

Jabalpur, this the 27th day of June 2006.

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

1. Suresh Kumar Malviya
S/o late G.L.Malviya
Sr.Auditor (ACP)
R/o Housing Board Colony
Near RTO Office, Civil Lines,
Jabalpur.
2. Balwant Singh
S/o late Sher Singh
Sr.Auditor
R/o Near Sai Mandir
Sector-5, VFJ Estate
Jabalpur.
3. Surendra Kumar Trivedi
S/o Shri G.P.Trivedi
Sr.Auditor (ACP)
R/o 103, Anmol Avas
South Civil Lines
Near Shimla Lodge
Jabalpur.

Applicants.

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Defence
New Delhi.
2. The Controller General of Defence Accounts
West Block-V
R.K.Puram
New Delhi.
3. The Principal Controller of Defence Accounts (Fys)

10-A SK Bose Marg
Kolkata.

4. The Controller of Finance & Accounts (Fys)
Vehicle Factory
Jabalpur
5. Deputy controller of Finance & Accounts (Fys)
Accounts Office
Vehicle Factory
Jabalpur.

Respondents.

(By advocate Shri M. Chaurasia
on behalf of Shri S.K. Mishra)

ORDER

By A.K. Gaur, Judicial Member.

The applicants have challenged the validity of the transfer and relieving order dated 31.3.2006 (Annexure A-1). All the applicants have been working as Senior Auditors in the office of Finance & Accounts, Vehicle Factory, Jabalpur. The applicants have challenged the legality, validity and propriety of the aforesaid order on the ground that all of them are above 54 years of age and they should not be subjected to transfer from Jabalpur to Bolangir, Chanda & Dehradun respectively. The provisions of Clauses 370 and 373 of the Departmental Manual have been relied upon by the applicants in support of their contention. As per the aforesaid Clauses, transfer should not take place after an employee attains the age of 54 years. The pith and substance of the aforesaid clauses of Departmental Manual are as follows:

- (a) Transfers should be made on the basis of seniority of stay at a particular station.
- (b) Persons above 54 years of age should not be subjected to transfer and such employees who are working elsewhere should be brought back to the station of their choice.

A perusal of the aforesaid provision, clearly indicates, that the transfers are to be made on the basis of station-wise seniority of the employees. According to the applicants, they are much junior and

there are a number of employees who are station-wise senior to the applicants and they have been retained at Jabalpur. It is urged on behalf of the applicants that as per ~~the~~ the transfer policy and the practice prevailing in the department, the respondents ought to have transferred the persons in accordance with station-wise seniority and not otherwise. It was also argued on behalf of the applicants that all the applicants are above 54 years of age and they should not have been transferred to Bolnagar, Chanda and Dehradun respectively. Such transfer order is clearly violative of departmental rules.

2. It is also alleged on behalf of the applicants that although the impugned order mentions the words "administrative exigency" but the applicants have not been transferred in administrative interest/exigency. Learned counsel for the applicants has vehemently contended that earlier, transfers were made in the respondent's department, strictly in accordance with station-wise seniority of the employees. The respondents have failed to deny the categorical pleadings of the applicants made in para 4.2 of the OA. It is submitted that the policy of pick and choose has been adopted, which is contrary to the settled legal position. It is also alleged that the impugned order A-1 has not been served upon the applicants.

3. Learned counsel for the applicants has further argued that the order dated 31.3.06 is unique in nature because in the transfer order, the applicants were directed to be relieved. The applicants have been transferred out of Madhya Pradesh. The Controller of Finance & Accounts, Vehicle Factory, Jabalpur has no authority or jurisdiction to transfer the applicants out of the State. The action of the respondent employer is not bonafide, fair or transparent and it is not in consonance with the policy guidelines of the Central Government. Learned counsel for the applicants has shown that on the top of Annexure R-1, it is mentioned "Strictly Confidential". This order has been issued by respondent No.4. It refers to some other order of competent authority and in the bottom of the order, references of two other orders dated 10.3.06 & 28.3.06 are mentioned. It is submitted

that in compliance of the aforesaid two orders, the applicants have been transferred. It is submitted that the transfer order has ^{not} been passed ~~in~~ in public interest and the same is arbitrary and against the professed norms. Shri S.Paul, learned counsel for the applicant, has relied upon two cases viz. (i) 1994 Vo.28 ATC 246 & (ii) 2002 (2) ATJ 370.

4. The case of the applicants was vehemently opposed by the respondents by means of filing a detailed reply and also by advancing oral submissions. The main plea of the respondents is that the order of transfer has mainly been challenged by the applicants on the ground of violation of the transfer policy as well as the competence of the authority. With a view to buttress the contentions that the applicants have been transferred and relieved purely on administrative ground and the order of transfer is within the competence of respondent No.4, the departmental guidelines have been relied upon. It is also specifically argued on behalf of the respondents that Clause 378 of the said transfer policy guidelines very specifically provides that Clauses 372 and 376 of transfer policy will not apply to transfer on administrative grounds, which will be effected at the direction of the administration.

5. Learned counsel for the respondents has argued that it is, well settled, position of law that courts/tribunals cannot interfere in the matter of transfer on the ground of violation or breach of transfer guidelines or circulars and this view gets fortified from the decisions rendered by Hon'ble Supreme Court in AIR 1993 SC 244 S.L.Abbas Vs.Union of India. The Hon'ble Supreme Court has clearly laid down that the guidelines and the instructions issued by the Departments are not binding and the same may not create an obstacle or impediment in transferring an employee. The guidelines of the department are merely directory and not binding.

6. While considering the scope of interference in the matter of transfer, the Hon'ble Supreme Court, in the case of State of U.P. & Others Vs. Gobardhanlal, reported in 2004 11 SCC 402, has held that

"transfer is the prerogative of the employer and the authorities concerned and courts should not normally interfere therewith, except when the transfer order is shown to be vitiated by malafides or is in violation of any statutory provision or passed by an incompetent authority". In the instant case, the applicants have utterly failed to show as to how the order of transfer is malafide. No specific person has been impleaded as one of the respondents in the case. No specific allegation of malafide has been alleged against a particular officer. The argument of the learned counsel for the applicants that the transfer order is malafide is devoid of merit and force and the same is not sustainable in law. The view taken by the Hon'ble Supreme Court in the case of *State of U.P. & Others Vs. Gobardhanlal (supra)* in para 7 of the judgement is that administrative guidelines or policies regulating transfer or containing transfer policies at best may afford an opportunity to the officers or servants concerned to approach their higher authority for redressal, but cannot be looked into by the court and the courts may not interfere in the matter of transfer on the ground of violation or breach of administrative guidelines or policies. Moreover, such guidelines and policies do not confer any legally enforceable right.


7. Learned counsel for the applicants has utterly failed to demonstrate as to how the transfer order was passed by an incompetent authority. No provision or rule has been mentioned by the applicants in this regard.

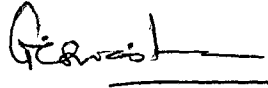
8. In the case of Union of India & Others Vs. Janardhan Debnath and another, reported in 2004 (4) SCC 245, it has been held that courts while exercising its power under Articles 226 and 227 of the Constitution may not examine such a question of fact by exercising its writ jurisdiction and exercise of such a jurisdiction is impermissible in law. No government servant or employee of public undertakings has any legal right to be posted forever at a particular place of his choice.

9. As the applicants have failed to demonstrate malafides or any violation of statutory rule, warranting our interference in the transfer

order dated 31.3.2006, we decline to interfere with the same. We accordingly dismiss the Original Application, parties to bear their costs.

10. Before parting, we would like to observe that since the applicants are more than 54 years of age and are at the December of their career, it would be desirable that the respondents consider the representation dated 4.4.06 of the applicants (Annexure A-4) and pass a reasoned and speaking order.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

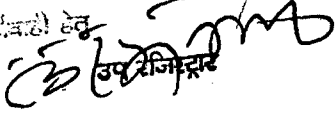
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पृष्ठंकन सं ओ/न्या..... दि.....
पतिलिपि अर्थात् पत्र:

- (1) सचिव, उच्च न्यायालय का एग्रेसिवेशन, जयपुर
(2) आवेदक श्री/श्रीमती/शु..... के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/शु..... के काउंसल
(4) वरिष्ठपाल, कोर्ट, उच्च न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु

Shri S Paul. 2 H C 2 B N
Shri S K Mishra

Issued
3/7/06


उप-निर्देश