

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 274 of 2006

Jabalpur this the 23rd day of June, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Om Prakash Rawat, age 45 years, son of the
Late Vishwa Ram, working on the post of
Joint General Manager, in Gun Carriage
Factory, Jabalpur (MP)

Applicant

(By Advocate – Shri B.L.Nag)

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, Department of Defence Production, South Block, New Delhi-110011
2. The Director General of Ordnance Factories, Ministry of Defence, 10-A, S.K.Bose Road, Kolkata-700 001.
3. The Senior General Manager, Gun Carriage Factory, Ministry of Defence, Jabalpur (MP).

Respondents

(By Advocate – Shri S.K.Mishra)

O R D E R

Through this OA the applicant has prayed for quashing of order dated 31.3.2006 (annexure A/1) through which he has been

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transferred from Gun Carriage Factory, Jabalpur to Gun & Shell Factory, Cossipore, Kolkata

2. The applicant, who is a senior officer in the junior administrative grade has assailed the transfer order stating that the respondents have deliberately isolated and discriminated ^{against} the applicant in the matter of transfer and, therefore, the impugned transfer order is malafide and arbitrary. It has also been alleged that due to certain irregularities pointed out by him, in the course of his duties, the respondents are taking revenge by transferring the applicant to a far off place i.e. Cossipore, Kolkata, where the applicant has apprehension of danger to his life. The applicant has also cited certain instances to show that one of the members of the Ordnance Factory Board is not favourably disposed towards him and he had telephonically threatened him that he would be thrown out. The other grounds taken by the applicant are that the transfer has been ordered during mid academic term and does not conform to the guidelines laid down by the Full Bench of this Tribunal in the case of **Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another** (Full Bench Judgments of CAT (1986-1989) page 80). The applicant has also relied on the apex Court pronouncement that frequent, unscheduled and unreasonable transfer must be deprecated [B. Vardha Rao Vs. State of Karnataka and others, (1986) 4 SCC 131 = 1986 SCC (L&S) 750]. The applicant has claimed that being a scheduled caste officer, he should get protection of the instructions issued by the Department of Personnel & Training, Govt. of India in respect of harassment and discrimination against scheduled caste and



scheduled tribe employees. The applicant has also averred that out of 47 officers, who have been transferred by the impugned order, he is the only officer "who has been uprooted within a short period of two years".

3. Opposing the application, the respondents in their reply have taken a preliminary objection that the applicant has approached the Tribunal without exhausting the alternative remedy available with him i.e. by way of making a representation before the competent authority of the department. Responding to the grounds taken by the applicant, it has been stated by the respondents that the applicant has been in Jabalpur for almost 12 years and the transfer order has been issued in public interest taking functional requirement into consideration. It has further been stated that after issue of the transfer order the applicant was asked to intimate about the date of his choice by which he would like to be relieved. On receipt of the said communication, the applicant informed that he was not well and was, therefore, unable to decide about the possible date for getting relieved. Subsequently, he submitted medical certificates claiming that he was medically unfit to move out. As per his last application, he was advised to have 10 days bed rest, with effect from 08-05-2006. The respondents have taken note of the fact that the instant OA was filed by the applicant while he claimed to be sick and on bed rest; and that he did not ever make any representation against the impugned transfer order. The respondents have further stated that the services of the applicant are "functionally more required in GSF, Cossipore, Kolkata", and transferring an officer after 12 years of stay at a particular place

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can not be termed as being "uprooting". It has further been submitted that the transfer order was issued on 31-03-2006, keeping the academic session in view, and hence, it cannot be termed as a mid academic session transfer. The respondents have denied any connection between the transfer order and alleged irregularities, claimed to have been pointed out by the applicant, in the course of his duties. The respondents have stated that necessary action in respect of complaints made by the applicant and the irregularities pointed out by him have already been taken by the authorities, and these have no bearing on the transfer order.

4. Heard the arguments advanced by the learned counsel of both the parties.

5. It is a fact that the applicant has approached this Tribunal without making any representation to higher authorities of his department against the impugned order of transfer. However, since there is no statutory provision for redressal in respect of transfer orders, making representation before the higher authorities in his own department, can not be treated as a pre condition for making application to this Tribunal in terms of section 22 of the Administrative Tribunals Act, 1985. Hence, the preliminary objection taken by the respondents does not deserve any consideration.

6. It is an admitted fact that the applicant has been continuously at Jabalpur, in different capacities, since 17-11-1994. Before that, for 7 years of his service, he has been posted at three different places, namely, at Pune for about a year, at Bhandara for about two years and at Aruvankadu Nilgiris for about 4 years. It

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may be possible that many officers, in different capacities, might have been at Jabalpur for a longer period, but at such a senior level, merely the length of stay at a particular place, can not be the sole criterion for deciding about transfer. The individual suitability of an officer and his proper utility in a particular unit have to be taken into consideration while deciding about his posting.

7. I agree with the contention of the respondents that transferring the applicant after 12 years of stay at Jabalpur cannot be termed as uprooting him. The allegation of the applicant that he has been subjected to frequent transfers also is not correct as in about 19 years of service he has had posting at four places only. So far as allegation of transfer in mid academic session is concerned, I find that the applicant has three daughters, two of whom are students of professional courses and the third one has appeared in the 10th examination. Since one of the daughters is studying in Indore, the second one is doing a bachelor of engineering course at Jabalpur, and the third one has appeared in the final examination, the allegation of mid academic transfer, in respect of the transfer order which has been issued on 31st March, does not seem to be appropriate. In fact, this would be the right time for the applicant to move out if at all he is transferred out of Jabalpur. The applicant has claimed protection available to scheduled caste and scheduled tribe employees under Government instructions. The circular of the Department of Personnel & Training, cited by the applicant emphasizes that there should be no discrimination against members of scheduled caste and scheduled tribe

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communities on grounds of social origin. The applicant alleges discrimination on the plea that he has always been posted away from his home town. He has not given any case in which similarly placed officers of his category have been shown any consideration which was not made available to him. Merely because he has been posted away from his home town in a service which carries all India service liability cannot prove allegation of discrimination. Although the applicant has alleged that out of 47 officers transferred by the impugned order, he is the only officer, "who has been uprooted within a short period of two years", the applicant has not submitted any details in respect of the remaining 46 officers to show that he has been discriminated against in any manner.

8. The applicant has alleged that "the impugned transfer order is tainted with malafide intention and suffering from vice of arbitrariness" and it has been issued in order to get rid of an "inconvenient officer". In support of his allegation, he has given instances of certain irregularities, which have been reported by him in the course of his duties. The first instance that he cites is relating to purchase of certain spare parts. While dealing with the said case, the applicant alleges that he was subjected to threats about which he had made complaints to various authorities. Although the applicant admits that action was taken by the respondents on his complaints by way of instructing the vigilance officer to investigate into it, no action was taken to protect the family of the applicant. The respondents have denied that there was any danger to the life of the applicant and in their reply they have stated that



the firm concerned has been black-listed. The applicant has also made certain allegations of misbehaviour on the part of one of the members of the Ordnance Factory Board. Since the said member has not been made one of the respondents, in this case, the Tribunal can not go into these allegations.

9. There is a catena of rulings from the apex court establishing the principle that transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide [see **Union of India Vs. H.N.Kirtania**, JT 1989 (3)SC 131]. In the instant case, no violation of statutory rules has been substantiated. The ground of malafide, which the applicant has tried to show, has also not been proved, even to a small extent. In fact, the applicant has failed to establish any connection between so-called inconvenient action taken by him at Jabalpur and the transfer order. A couple of example, cited by him, of the instances, which occurred during his tenure at Jabalpur, do not, in any way, show that these could have resulted in his transfer out of Jabalpur. He has been in Jabalpur for almost 12 years. He is a very senior officer and he has an all India service liability. Even in his present position of Joint General Manager, he has already spent two years. I, therefore, do not find that transfer order suffers from malafide intention or vice of arbitrariness. In fact, the transfer order meets all the requirements which have been laid down by the full bench of this Tribunal in the case of **Kamlesh Trivedi (supra)**, which has been cited by the applicant himself purportedly in support of his case.



10. I, therefore, find no legal infirmity in the impugned order of transfer. The OA is devoid of any merit and is dismissed. No order as to costs.

Dr. G.C. Srivastava
 (Dr. G.C. Srivastava)
 Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जवलपुर, दि.....
 पत्रिलिपि उद्दीपना:-

- (1) सदिन, उच्च उदायदाय वा उच्च उदायदाय, जबलपुर
- (2) आदेश श्री/श्रीमती/कु. के काउसल
- (3) प्रत्यार्थी श्री/श्रीमती/कु. के काउसल
- (4) नियमाला, कोडाइ, जबलपुर प्राप्ति

B.C. 1003 } Dr.
 l.K. mishra } 2003

सूचना एवं आवश्यक वापिसी कु
 उप राष्ट्रसभा

Received
 23.6.06
 23.6.06