

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 812 of 2003

Jabalpur, this the 2nd day of January 2004

Hon'ble Shri G. Shanthappa, Judicial Member

S.S. Dave, Senior Auditor,
No. SA/8308599, O/o DCDA
I/C PAO (ORS), Corps of
Signal, Jabalpur.

... Applicant

(By Advocate - Shri P.K. Tiwari)

V e r s u s

1. Union of India,
(Ministry of Defence),
Through - Secretary
(Ministry of Defence)
South Block, New Delhi.

2. The Controller,
Defence Accounts,
Jabalpur.

3. The Pay & Accounts Officer,
(ORS) Corps of Signal,
Jabalpur M.P.

... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R

The said Original Application is filed seeking the relief to quash the impugned order dated 22.10.2003 (Annexure A-1).

2. The brief facts of the case are that the applicant joined the services on 02.12.1972 in the office of PAO (ORS), Jabalpur. At present he is working as Senior Auditor under the Controller of Defence Accounts, Jabalpur. During the year 2002 and 2003, he has been transferred from different places. The details are as under :

"AAO GE(W), Jabalpur to PAO (ORS) ABC, Pachmarhi on public interest,

PAO(ORS), Pachmarhi to DCDA I/C, PAO(ORS), Corps of Signals on own request, and

DCDA I/C, PAO(ORS), Corps of Signal, Jbp to PAO(ORS),

Sagar on public interest."

3. Posting the applicant from 25.11.2000 to 19.07.2002 in the office of AAO GE (West), Jabalpur was a sensitive posting. Normally this sort of posting is not disturbed within a period of 3 years. From the above facts mentioned it is clear that the applicant has been transferred thrice within a short span of 1 year 3 months. Such frequent transfers are illegal. In order to circumvent such illegality, the respondents have issued an order in the kind of ^{temporary} attachment. The order/attachment (Annexure A-5), clearly shows malafide on the part of the competent authority, who has issued the same. The case of the applicant is that such kind of transfers is punitive in nature and it violates the rights of the applicant under Article 21 of the Constitution of India. The applicant had already submitted his representation to the respondents ^{to consider his case} on the ground that he has his ailing aged mother and he has to look after her. Even then the respondents have not considered the same and they have issued the impugned order of transfer, which violates the guidelines of transfer issued by the Government. Hence the impugned order at Annexure A-1 is liable to be quashed.

4. The applicant has referred the judgment of the Hon'ble High Court of Karnataka in the case of Varadha Rao and others B. & A. Versus State of Karnataka reported in 1986(2) SLR Page 562. The case of the applicant is that the impugned order of transfer is malafide in nature and the frequent transfers are not permissible under the guidelines for transfer. The applicant has admitted that he has not impeded the person who has been transferred to the place of the applicant. Even then on the ground of malafide the impugned order is liable to be cancelled.

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5. Per contra the respondents have filed their reply contending the averments and allegations made in the application are denied. The Defence Accounts Department is an integral part of the Ministry of Defence (Finance) under the Government of India. The employees of Defence Accounts Department are liable for all India Service and Transfer liabilities. Thus they are required to serve anywhere in India and even beyond geographical boundaries of the country. The Departments cannot give guarantee to any official for their permanent posting at a particular station for indefinite period according to their own wish on administrative ground and exigencies of service. The services of the applicant are not disputed. The present order of transfer of the applicant has been issued strictly on the grounds of the seniority of the applicant in the station and this transfer is purely on administrative ground. The respondents have their administrative powers and orders to post the officials according to their seniority. The order of transfer has been issued on 22.10.2003. He stands relieved of his duties on 31.10.2003 (AN), posting at Saugar. The period he spent in Pachmarhi had been converted into temporary attachment on his own request, as such the same cannot be said to be transferred at out station. His inter-office transfer within the same station also does not amount to a transfer to outstation. Thus he has now been transferred to outstation for the first time during his service period of 31 years at Jabalpur. The office order notifying the applicant's transfer at Pachmarhi as temporary attachment is at Annexure R-1 and the same is also produced by the applicant at Annexure A-5. The applicant's claim that no medical facilities for treatment of epilepsy at Saugar is incorrect and misleading. Sagar is the district headquarter and facilities

for such treatment are available at Sagar. From the date of appointment the applicant is trying to make him junior to his counter parts with a view to mislead the Tribunal. The services of the applicant was continuously at Jabalpur, since the date of his appointment except a few days he was on a temporary attachment at Pachmarhi, which is not treated as a Transfer. The period spent by the applicant and some other employees at Pachmarhi was converted into temporary attachment and they were posted back to Jabalpur at their own request. Sagar and Pachmarhi are treated as Tenure stations and some of the officials serving there, have already completed their tenure of service in those stations. In order to accommodate their request for transfer to choice stations and also to rotate the transfer within the sub-offices of the respondent No. 2, it became necessary to replace them by the staff serving at popular stations like Jabalpur. As such the counter parts which includes senior and junior to the applicant including Shri BD Gotia and Shri KR Armo have been transferred to Pachmarhi. The period spent by the applicant at Pachmarhi from 05.08.2002 to 10.12.2002, i.e. about 4 months has been converted into temporary attachment at his own request. This attachment cannot be construed as a transfer to Pachmarhi and the applicant very much retained his station seniority at Jabalpur. The transfer of the employee is an incidence to the service. All the transfer orders are only administrative in nature and the Tribunal shall not interfere in the case of the administrative matters.

6. The applicant had submitted a representation dated 16.10.2003 (Annexure A-7) to the respondents. Before communicating the decision on his representation by the respondents, the applicant has approached this Tribunal.

Therefore the applicant has not exhausted the remedies available to him. Hence there is no illegality or violation of the guidelines of the transfer in issuing the order of transfer as per Annexure A-1. Accordingly, the application is liable to be dismissed.

7. After hearing the advocate for the applicant and the advocate for the respondents, after perusal of the pleadings and the documents and also the decisions referred by the advocate for the applicant, I decide the said Original Application finally.

8. According to the pleadings no malafides are urged against any of the officials. The applicant has not made persons as party who has been transferred to his place in this case. The transfer order issued is administrative in nature. The applicant has submitted his representation to cancel the order of transfer for retaining at Jabalpur, on his personal grounds. The respondents have stated that the alleged frequent transfers are not transfers. The services of the applicant he has been transferred and the same is not punitive in nature. The valuable services of the applicant is required where he has been asked to work. The request of the applicant by way of the representation has been received by the respondents but the applicant has not reported for his duties where he has been transferred. The applicant is dis-respecting the executive instructions of the respondents. Mere seeing the impugned order, no malafides are found. The impugned order has been issued by the competent authority. Since the impugned order is an administrative order, the judicial interference in cancelling the administrative instructions is not permissible in view of the judgment of the Hon'ble

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Supreme Court reported in 2002 SCC (L&S) 21, National Hydroelectric Power Corporation Limited versus Shri Bhagwan and another. The Hon'ble Supreme Court has held that the applicant has no legal right to challenge the administrative instructions. Hence I do not find any merit in this case. Accordingly, the Original Application is dismissed.

9. However as the respondents have received the representation at Annexure A-7 dated 16.10.2003, they shall consider the same according to the personal difficulties of the applicant. This order of dismissing the Original Application will not come in the way of the respondents to take an independent decision and pass a modified order, transferring the applicant either to Jabalpur or nearby places. The respondents are directed to decide the said representation of the applicant within a period of one month from the date of receipt of copy of this order. No costs.

Experience app

(G. Shanthappa)
Judicial Member

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प्र० शंकरचार्य P. Shankaracharya

(6) विवरण दें।

1(a) *Explain the following terms:*

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for 1970

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