

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

X

O.A. NO. 81/94
T.A. NO.

DATE OF DECISION 15.12.1995

Shri R.S.Jaiswal

(PETITIONER(S))

Mr. B.K.Sharma and Mr.B.Mehta.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr.A.K.Choudhury, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN)
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

NO

Judgment delivered by Hon'ble MEMBER (ADMN)

Ganguli
15/12/95

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.81/1994.

Date of Order: This the 15th Day of December 1995.

Hon'ble Shri G.L. Sanglyine, Member(A)

Shri R.S.Jaiswal,
Presently working as Senior Auditor
in Pay & Accounts Office(Qrs)
58 Gorkha Training Centre,
Shillong-793007. Applicant.

By Advocate Mr. B.K.Sharma and Mr.B.Mehta.

-Vs-

1. Union of India,
represented by the Secretary,
Ministry of Finance(Defence),
New Delhi.
2. Controller General of Defence Accounts,
R.K.Puram, West Block-5
New Delhi-22
3. Controller of Defence Accounts(Ors.).
North Meerut, U.P.
4. Asstt.Controller of Defence Accounts,
Pay & Accounts(Ors.).
58,Gorkha Training Centre
Happy Valley, Shillong-7.
5. DCDA/IC,PAO(Ors),
58,G.T.C. Shillong-7 Respondents.

By Advocate Mr. A.K.Choudhury, Addl.C.G.S.C.

O R D E R.

G.L.SANGLYINE, MEMBER(A):

1. The applicant was transferred to Allahabad from Shillong on 31-5-93 and he was ordered to be relieved on 29-10-93(A.N.). He approached this Tribunal in O.A.No.224/93 and by order dated 26-10-1993, the respondents were directed to dispose of the representation dated 16-6-1993 submitted by the applicant. In that representation the applicant requested for change of Station to either Patna, Danapur, Varanasi or Gaya instead of Allahabad. These are the places of his choice as indicated in his representation

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dated 16-6-93. The respondents No.5 ^{the applicant} vide impugned letter dated 7-4-1964 that his request contained in his representation dated 16-6-93 was not acceded to by the CGDA and that the applicant would be relieved of his duties in Shillong with effect from 29-4-1994(AN). Earlier Respondent No.4 had informed the applicant vide letter dated 17-11-93 received by the applicant on 30-11-93 that after careful consideration of the representation dated 16-6-93 CGDA(Respondent No.2) had not acceded to the request of the applicant for transfer to Patna, Varanasi or Gaya. The applicant is aggrieved with these Communications as no speaking order supported by reasons for rejection of his representation was communicated to him. Further, in this application he has against impugned the transfer order dated 31-5-93 which was the subject matter in O.A. No.224 of 1993. The applicant is working in the North Eastern Region since 7-12-1989. He claims that after completion of his tenure posting in the Region he is entitled to be posted in one of the places of his choice, namely, Patna Danapur, Varanasi or Gays. He was instead transferred to Allahabad. He contends that this ^{order} ~~only~~ of transfer was issued without application of mind and in a high handed manner. According to him, he has been treated with discrimination in denying posting to a place of his choice when others were allowed their respective choice. Further, he contends that the order of transfer is malafide and punitive as it was made following some false and frivolous complains against him. The respondents have contested the claim of the applicant. According to them in compliance of the order dated 26-10-93 of this Tribunal in O.A.224/93 the applicant was informed on 30-11-93 vide letter dated.

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17-11-93 that after careful consideration the prayer of the applicant as made in the representation dated 16-6-93 could not be acceded to by the Controller General of Defence Accounts. This intimation is in itself sufficient and speaking and cannot be bad in law. Further, they maintain that the transfer of the applicant is within the framework of transfer policy and his transfer was made on administrative grounds. They state that there is no discrimination in transfer of the applicant because he was transferred on administrative grounds whereas the officials referred to by the applicant in the application had been transferred in normal course an completion of their tenure in the Station covered under the ~~general~~ transfer policy. It is also their contention that there is no malafide in the transfer of the applicant and the transfer was made in the exigency of service and public interest.

2. Counsels of both sides have been heard. The main contention of the learned counsel of the applicant is that the impugned letters No. AN/7/VI/PART dated 7-4-94 and letter No. AN/7/VI/PART dated 17-11-93 do not contain any reason why the representation of the applicant was rejected and therefore the order of rejection is not sustainable and as such, the prayer of the applicant for posting in place of his choice needs further consideration. In addition he supported the various contentions of the applicant mentioned in this application. Learned Additional C.G.S.C., Mr. ^{A.}K. Choudhury, vehemently opposed the contentions put forward on behalf of the applicant and maintained that there is no

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illegality, ~~Malafide~~ or any violation of policy of transfer in issuing the order of transfer of the applicant. He also contended that there is no legal infirmity in the impugned letters mentioned above which contain the information to the applicant that his prayer was rejected after careful consideration.

3. As already mentioned earlier in this order, the respondents were directed by this Tribunal in the order dated 26-10-93 to dispose of the representation dated 16-6-93 submitted by the applicant in which he had requested for his posting in Patna or any of the other places of his choice instead of in Allahabad. The respondents had disposed of the representation accordingly within 30 days as directed and the applicant was informed vide letter dated 17-11-93 which he had received on 30-11-93. No direction was given by this Tribunal as to the manner in which the respondents should dispose of the representation of the applicant. Therefore there is no valid ground for the applicant to have stated that the respondents have "failed to ignore the direction of this Hon'ble Tribunal and have acted contrary to the direction. The letter dated 17-11-93 issued by the A.C.D.A. shows that the Controller General of Defence Accounts had carefully considered the representation dated 16-6-1993 submitted by the applicant and thereafter rejected the request of the applicant as contained in the representation. A careful consideration could not have been made without application of mind to the facts of the case and without following proper procedure. As such, the allegation of the applicant unsupported by any evidence that the Controller General had acted improperly cannot be entertained. The respondents have not also committed any illegality by

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not mentioning detail reason of the rejection in such administrative communications such as the letter dated 17-11-93 and letter dated 7-4-94.

4. The order dated 31-5-1993 transferred the applicant from Shillong to Allahabad on administrative ground with a direction to relieve him forthwith if nothing adverse is noticed against him. The applicant claims that as per the guidelines in O.M. dated 14-12-83 (Annexure 1) referred to in the application he is entitled to posting in a place of his choice after completion of his tenure posting in the North Eastern Region. He also asserts that he is entitled to remain in Shillong until he is posted in a place of his choice. The applicant has however, no such rights. On the other hand the above mentioned O.M gives discretion to the authorities concerned to accomodate the employees in a place of their choice after completion of thier tenure posting in the North East as per as possible subject to administrative constraints and recessities. The O.M. does not confer any right on an employee to remain in the North Eastern Region until he is given a posting in a place of his choice. Moreover, the respondents in in this case have framed their own transfer guidelines on 7-1-1993 and had allowed the employees including the applicant to make their choice of places of posting. They have also provided exception to the effect that the guidelines will not apply to transfer on administrative grounds which may be affected at at the discretion of the Administration. The transfer of the applicant from Shillong to Allahabad falls under this exception as revealed by the order of transfer dated 31-5-1993 itself. His prayer for transfer on the basis of places of

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his choice was rejected earlier on 5-2-1993. Thus the case of the applicant is not comparable with the cases of the employees he had cited as instances. The applicant had however persisted and reiterated his request for his transfer to a place of his choice and had also requested to post him in one of them in place of in Allahabad. Whatever may be the administrative grounds under which the applicant was transferred from Shillong to Allahabad are best known to the respondents. In this case, however, it is apparent that there was no administrative ground adverse to the applicant which prompted his transfer as the respondents were eager to release the applicant in terms of the respondents the transfer order. From the contentions of it is gathered that one of the reasons was that there was adequate number of staff in Shillong. No material has been furnished by the applicant to show that the order of transfer was not issued on account of administrative necessities and exigency of service but it was issued malafide or as a punitive measure. The applicant cannot gain advantage from the promise made in the letter dated 5-2-93 intending the order of rejection of his request for a transfer to a place of his choice as that promise was not in connection with a transfer to a place of his choice but in connection with a general transfer which does not necessarily mean that the transfer of the applicant would be to any of the places of his choice. The applicant had expressed various personal problems in support of his request for a transfer to a place of his choice. These are no doubts facts which deserve consideration but such consideration it to be done by only the competent authorities of the respondents and not by this Tribunal.

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The respondents had carefully considered his request according to him and their action cannot be interfered with unless it is shown that it was arbitrary. The contest of the applicant against the order of his transfer has also lost force. In this letter dated 6-4-1994 (Annexure 9) he had stated that his case of transfer to Allahabad was sub judice before the Central Administrative Tribunal and, if there was any decision received from the higher authorities in this regard he may be informed at least 30 days in advance so that he could prepare for proceeding to Allahabad. This statements in this letter are not correct. O.A. No.224/93 was disposed of on 26-10-93 and on 16-2-94 it was also ordered that there was no further order on that matter. The applicant had submitted this present application O.A.No.81/94 on 25-4-94. Therefore there was no pendency of any O.A. as on 6-4-94 and the question of his impugned transfer was sub judice before this Tribunal did not arise. The decision of the authorities on his representation dated 16-6-93 was already intimated to him on 30-11-1993 vide letter dated 17-11-93 after disposal of the O.A. 124/93.

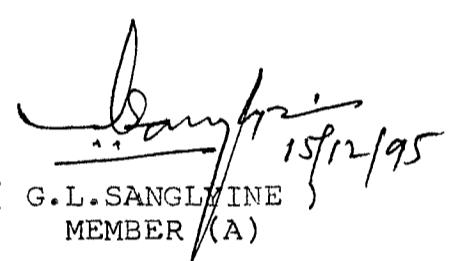
5. In the light of the discussions above I am of the view that the respondents had not violated any transfer policy or guidelines in transferring the applicant from Shillong to Allahabad. There is also no material to hold that there was discrimination or malafide in the order or that it was punitive in nature. On the other hand, it is apparent that the order of transfer was issued on administrative grounds and in exigencies of service. I find no sufficient reason therefore to interfere with the order of transfer. The fact however remains that more than $2\frac{1}{2}$ years had passed since the impugned order of transfer was issued.

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The administrative necessities might have changed. It is therefore hoped that the respondents may consider on merit the request of the applicant for posting in one of the places of his choice if the applicant will submit a fresh request within 30 days from today. Subject to this observation, the application is dismissed. No order as to costs.

Interim order dated 27.4.94 stands vacated on the disposal of the fresh representation, if any, to be submitted by the applicant as indicated above or the expiry of 30 days from today if no fresh representation is submitted.


15/12/95
(G.L.SANGHVI
MEMBER // (A)