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

O.A. NO. 98 of 1994.
T.A. No.

DATE OF DECISION 31.3.1995.

Shri Bhabesh Bhatta.

PETITIONER(S)

Mr K.K.Dey

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr G.Sarma, Addl.C.G.S.C.


ADVOCATE FOR THE
RESPONDENT (S)

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

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 (A).


31/3/95

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 98 of 1994.

Date of Order : This the 31st Day of March, 1995.

Shri G.L.Sanglyine, Member (Administrative)

Shri Bhabesh Bhatta,
son of late Karuna Kanta Bhattacharjee,
Base Hospital-III,
C.R.P.F., Guwahati-23 . . . Applicant.

By Advocate Shri K.K.Day.

- Versus -

1. Union of India
represented by the Secretary,
Govt. of India, Department of Home Affairs,
North Block, New Delhi.
2. The Deputy Director (Medical)
Office of the Director General,
C.R.P.F., C.G.O.Complex,
Lodi Road, New Delhi.
3. The Chief Medical Officer,
Base Hospital-III,
C.R.P.F., Guwahati-23. . . Respondents.

By Advocate Mr G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE,

The applicant is a Radiographer in the CRPF Base Hospital III, Guwahati as a civilian employee. He has been transferred to the G.C. NMH, vide transfer order No.T.IX.1/94-Med dated 10.5.1994. On 12.5.1994 he had submitted a representation to his higher authorities making a request to defer his transfer. In this representation he has mentioned family problems as well as personal problems as reasons justifying his request. No reply seems to have since been received by him from the respondents. He has

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submitted this application on 20.5.1994 without waiting for the result of his representation dated 12.5.1994. In this application he has impugned the aforesaid order of transfer alleging that it is malafide, arbitrary and unjust and is not warranted by administrative exigencies. In this application the applicant has also given the story of his illness, namely, defective vision due to exposure to radiation which had driven him to a decision to retire voluntarily by taking medical invalidation but this was refused by the authorities. The applicant contends that the order of transfer is bad in law and is liable to be quashed and set aside and the respondents be directed not to implement the order. The respondents have resisted the application and have submitted written statements. They have denied the allegations of the applicant. They maintain that according to the conditions of service the applicant has an all India transfer liability and he is liable to be transferred anywhere in India according to administrative necessity. The applicant has no legal right whatever to claim his post in Guwahati. He has been working in Guwahati for about 16 years at a stretch and his present transfer is in the normal course.

2. The contents of the application and of the written statement as well as the submissions of the learned counsels of both sides are taken into consideration in disposing of this application. I do not find that any malafide on the part of the respondents in issuing the transfer order has been established by the applicant. In order to establish malafide the applicant has narrated the story regarding the condition of his health and has pointed out to the fact

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that he was not allowed to retire on Medical invalidation and inspite of these facts the respondents had with malafide intention transferred him to a far off place Neemuch. I do not consider that the transfer made despite the respondents having knowledge of the condition of his health would constitute malafide in the facts and circumstances of this case. The case of defective vision due to radiation is not of very recent origin but the applicant was going on with his work. He would have continued in the work in Guwahati had he not been transferred. Since the refusal of the request for invalidation dated 22.10.1993, in fact, the applicant has continued in the work without further representation for invalidation to higher authorities. In the absence of malafide the order of transfer is not to be interfered with. Moreover, the applicant is transferable. The application is liable to be dismissed.

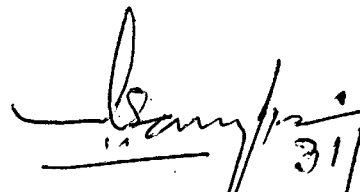
3. The respondents are fully aware of the complaints of the applicant regarding the condition of his health, namely, defective vision due to exposure to radiation. They have also more than once referred his case to the All India Institute of Medical Sciences, New Delhi. The applicant had submitted the aforesaid representation dated 12.5.1994 against his transfer to G.C NMH stating his problems. Whether such transfer would facilitate his treatment is not known. Since the applicant is to continue to be their employee and has stated his problems in the representation it is hoped that while disposing of the representation the respondents would take a sympathetic view. The

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respondents are directed to dispose of the representation dated 12.5.1994 and till such order is passed they are not to move the applicant out of his present posting on the basis of the impugned transfer order.

4. The application is dismissed subject to the direction given above. No order as to costs.


31/3/95
(G.L.SANGLYINE)
MEMBER (A)