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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4517/2016, CM APPL. 18848/2016**
RAJU BISWAS

..... Petitioner

Through: Mr. A.K. Trivedi with Mr. Abhishek
Tiwari and Mr. Vaibhav Trivedi,
Advs.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr. A.K. Gautam, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
18.05.2016

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1. Learned Counsel for the parties submit that the entire reasoning of the Tribunal in the impugned order dated 18.4.2016 is to be found in paragraph 4 and 5. Paragraph 5 holds that transfer of an employee is an incidence of service and right to transfer is within the domain of the employer. Normally Courts/Tribunals do not interfere and quash a transfer order, unless it is shown that there has been violation of statutory rules or the transfer made was actuated by malafides.

2. It is accepted that the respondents have a transfer policy communicated vide letter dated 26.5.2008, namely Guidelines on Management of Group 'C' and 'D' posts of MES (Military Engineer Services). A seniority list has to be maintained for transfer to a tenure station. Tenure stations are those stations where facilities/basic

amenities are lacking.

3. In paragraph 4 of the impugned order, the Tribunal observes that the petitioner had alleged violation of the letter/policy dated 26.5.2008 but except for making bald assertions, no specific details were highlighted. The Tribunal therefore was inclined to accept the statement of the respondents that the seniority list, as per the policy, was circulated and no objection was raised.

4. Learned counsel for the petitioners, on the other hand, submits that the petitioners had given details and particulars of several seniors, 52 in number (in fact 58 persons) in Annexure-I. The said list, it is submitted, is of officers senior to the petitioners and who have not been given tenure posting from 1991 onwards.

5. It is apparent that the said aspect has escaped notice and examination of the Tribunal. It is not adverted to and examined. Reasons and grounds mentioned in paragraph 4 of the impugned order, therefore are factually incorrect and cannot be sustained.

6. In these circumstances, we set aside the order dated 18.4.2016 with an order of remand for fresh adjudication. At the time of adjudication, the aforesaid assertions will be taken into consideration and examined. We clarify that we have not expressed any opinion on the question of seniority list or the averments or assertions made by the petitioners with respect to the said aspect as far as Annexure-I is concerned.

7. To cut short the delay, we direct the parties to appear before the Tribunal on 26th May, 2016, when a date of hearing will be fixed.

8. It will be open to the petitioner to press for interim relief before

the Tribunal on 26.05.2016.

8. The petition is disposed of in above terms.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 18, 2016/acm