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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A.No.1276/98

New Delhi, this the 23rd day of November, 1998

HON'BLE MR. N. SAHU, MEMBER(A)

Mr. Tej Kishan Kaul,
S/o Shri Kashi Nath Kaul,
R/o H.No.66, Munirika,
New Delhi.

....Applicant

(By Advocate: Shri G.D.Gupta)

Versus

1. Union of India,
through Secretary,
Ministry of Textiles,
Udhyog Bhawan,
Rafi Marg, New Delhi.
2. Development Commissioner(Handicrafts),
West Block No.7, R.K.Puram,
New Delhi-110066.
3. Additional Development
Commissioner(Handicrafts),
Office of Development Commissioner(Handicrafts),
West Block No.7, R.K.Puram,
New Delhi-110066.
4. Deputy Director(Administration & Committee),
Office of Development Commissioner(Handicrafts),
West Block No.7, R.K.Puram,
New Delhi-110066. Respondents

(By Advocate: Shri K.R.Sachdeva)

O R D E R

HON'BLE MR. N. SAHU, MEMBER(A)

Prayer in this O.A. is to quash and set aside order no.6/10/95-Admn.I dated 18.5.98 passed by respondent no.4 wherein the applicant has been transferred from Northern Region office, Delhi to Gwalior. The admitted facts are contained in the representation of the applicant. His grievance against the transfer is as under:-

"(i) That his wife is physically handicapped and is suffering from

tumour. She was operated twice but could not recover and was not cured. She requires continuous treatment in some cities.

(ii) His wife is employed in State Bank of India in the Central Region. He was posted in the Central Region from Northern Region in 1993 when he was posted in M&SEC, Almora. In the process of getting herself transferred from Northern Region to Central Region she had to forego her seniority of thirteen years as there was no post available of her rank in Almora or near Almora. In the meantime he was transferred to North East in 1994, so her whole exercise was wasted. Now she cannot be transferred back to Northern Region.

(iii) Under the Service Conduct Rules any employee putting two years of service in North Eastern Region, is to be posted at a place of choice and transfer order is to be issued in public interest."

2. It is further pointed out that after his posting as Junior Field Officer at Sopore on 5.1.76, the applicant had been transferred 13 times. The 14th transfer was to Delhi after several representations. The applicant pleaded that he had not been able to live a peaceful family life because of the frequent transfers. He pointed out that the Department of Personnel in the revised O.M. dated 12.6.97 referred to recommendations of the Fifth Central Pay Commission. The relevant paragraph of instructions is extracted hereunder:-

"The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in OM No. 28034/7/86-Estt. (A) dated 3.4.86 while deciding on the

requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence."

3. The transfer of the applicant is stated to be a deliberate harassment. Ld. counsel for applicant referring to the observations in the counter affidavit about the corruption charges against the applicant, relied on the following decisions:-

(i) Jindal's case - ATR 1986 (1) 304.

He referred to paras 23 and 24 of this case.

(ii) He secondly relied on the decision of the Full Bench in Kamlesh Trivedi's case - 1988(7) ATC 253.

4. As there are unilateral findings about applicant's alleged corruption (paras 7 and 8 of the counter) without giving him an opportunity of being heard, the order of transfer based on those findings is vitiated. Other cases relied by Shri Gupta are as under:-

(i) (1989) 11 ATC-326 - Devender Nath Bagh vs. Union of India & Others.

The transfer in contemplation of departmental enquiry held punitive and hence bad. (paras 9 and 10).

(ii) (1990) 13 ATC 532 - Uma Shanker vs. Union of India & Others.

The transfer held punitive and hence bad, as the enquiry was not held.

5. The principle laid down in the above cases is that a transfer cannot be a mode of punishment for a misconduct. A transfer made on the ground of alleged corruption charge of misconduct is a stigma and cannot be sustained.

6. The Full Bench laid down the following propositions in Kamlesh Trivedi's case:-

- (i) K.K.Jindal's case is not an authority for the proposition that when complaints are received and the exigency of service requires a transfer to be made, inquiry must necessarily be held into the complaint before transfer is ordered.
- (ii) Jindal's case did not also hold that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be punitive in nature.
- (iii) There is no question of double jeopardy if a transfer is ordered after holding an employee guilty of misconduct. The competent authority can certainly order transfer even if after a disciplinary inquiry, the official is punished.
- (iv) Transfer is an incidence of service and the instructions are mere guidelines. As long as the authorities are satisfied that transfer is in public interest, mere violation of guidelines is immaterial.
- (v) Transfer may be on administrative grounds and one of the ground could be the allegations themselves.

7. Shri K.R. Sachdeva, 1d. counsel for respondents relied on an order passed by me in the case of Roshan Lal vs. Union of India & ors. - 1998 (37) ATC 561. He referred to the following observations made by me.

"It is the sacred duty of the respondents to weed out any official who is even remotely suspected of malpractice. There may be cases where there would not be enough evidence to implicate a person but in an organisation like the Public Service Commission which rests on foundations of probity and secrecy, any employee suspected of being remotely involved in leaking question paper should immediately be transferred. The guidelines of the Home Ministry no doubt exist to keep husband and wife together but those guidelines cannot be observed in every case. They are certainly not justifiable. Those guidelines cannot come in the way of a decision to transfer in the light of public interest and the interest of the Organisation."

8. He also relied upon S.K. Parmar's case reported in AISLJ, July issue - 1998 (2) CAT 371 and the following decisions:-

(i) 1997 (3) SCC 87 -
Laxminarayan Mohan vs. Union of India

(ii) J.T. 1989 (3) SC 131 - UOI vs. H.N. Kirtania

9. A transfer should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on ground of violation of statutory rules or malafide.

10. I have examined the files submitted by the respondents. There is a letter addressed by the Director to his Deputy dated 21.7.98. He stated that

the organisation received a number of complaints relating to the sponsoring of craft persons for Dilli Haat. The applicant was looking after Dilli Haat and he was the authorised signatory for nominating craft persons from northern region office. As the applicant was misutilising his assignment, the Director withdrew the applicant's power for signing any letter for sponsoring craft persons for Dilli Haat. It was stated that the applicant sponsored craft persons from the Kashmir Valley, settled now in Delhi for extraneous considerations. The Director later found on a personal visit that some craft persons were sitting in Dilli Haat without the official permission of Regional Director. Accordingly the powers of an authorised signatory were withdrawn by the competent authority. The complaints referred to, were addressed to the Secretary by a number of persons on 1.5.98. Accordingly a decision was taken to transfer him to Gwalior.

11. I have carefully considered the submissions of the ld. counsel for applicant Shri G.D.Gupta. When complaint of corruption exists and certain irregularities are noticed, it becomes a sacred duty for the competent authority to react immediately to the situation. It is a grave threat to the functioning of an organisation if specific irregularities or complaints of corruption brought to the notice, are not looked into and remedied. The remedy can be an inquiry, transfer or making the concerned official functus officio. The controlling authority is free to adopt any other method.

12. I have quoted the guidelines of the Ministry of Personnel above. The instructions of the Ministry of Personnel are certainly expected to be implemented by all other departments of the Govt. of India unless the situation warrants a radical treatment. It is expected of the respondents to apply their mind and to record a note as to why and how they are unable to implement these instructions. The applicant's wife has suffered considerably. She lost her seniority in the Banking organisation in which she served before her transfer to Delhi but the transfer from Delhi again would amount to uprooting the family. The question at issue is whether in the circumstances of the case, the respondents could not have thought of removing the applicant from Dilli Haat and putting him in any other equivalent post in Delhi itself and how does it help the respondents to transfer a person from one place to another in setting right their organisation. It is necessary to bear in mind that the courts cannot dictate to the competent authority as to whose services should be placed where. The law on the subject has been laid down by the Hon'ble Supreme Court in the case of State of Punjab vs. Joginder Singh Dhatt - AIR 1993 SC 2486. Relevant portion of the order is extracted hereunder:-

"It is entirely for the employers to decide when, where and at what point of time a public servant is transferred from his present posting." In Union of India v. S.L. Abbas the Court held that the authority should keep in mind the guidelines issued by the Government on the subject but the said guidelines do not confer upon the govt. employee a legal enforceable right. In Union of India v.

N.P.Thomas 'the transfer is upheld even though it is against the policy of the Government posting the husband and wife in the same station'. In N.K.Singh v. Union of India the Court held that 'the only realistic approach is to leave it to the wisdom of the hierarchical authorities to take a decision on transfer because they have to consider several factors including suitability of the person for a particular post and exigencies of administration.'

13. Thus the courts cannot direct why the applicant could not be accommodated in Delhi and why he was transferred when persons senior to him are still working in Delhi. The courts cannot bind the hands of the administrative authorities particularly when it is a case of checking or controlling complaints of abuse of office. The courts should endeavour to assist or support any effort of the competent authority whereby transferring an official exposed to allegations of misconduct and irregularities, it tries to protect the image and improve the efficiency of the Organisation. While in any other situation, this court could have compelled the authorities to consider the alternatives in order to implement the categorical instructions of the Ministry of Personnel for keeping wife and husband together in an equivalent post, yet in a case of alleged corruption which was found to be not entirely baseless by the competent authority and which called for more inquiry, such general guidelines cannot hinder a decision to transfer the applicant from the sensitive post of Dilli Haat.

14. As observed above, it is not for the courts to say as to where and in what post the official should be posted. I am satisfied after going through the records that, the transfer was not made either as a colourable exercise of power or as an arbitrary exercise of power. Repeated complaints were considered by the competent authority. The authority was satisfied that continuing the applicant in the seat would not be in public interest. I am therefore of the considered view that the transfer was ordered in the public interest and in the exigency of service, on administrative grounds.

15. The O.A. is dismissed. No costs.

16. Interim stay orders are hereby vacated.

Narain Sahu
(N. Sahu)
Member (A)

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