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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2876 of 1997

New Delhi, this the 14th day of January, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Shri Jang Bahadur, S/o Shri Surjan Lal, R/o E-282, Kidwai Nagar, New Delhi. Presently working as Metrological Attendant, at Palam Airport (Since under transfer to Sri Ganga Nagar).
- APPLICANT

(By Advocate Ms. Anamika Aggarwal)

Versus

Union of India, through

1. Secretary, Govt. of India, Ministry of Science & Technology, Mehrauli road, New Delhi - 110 003

2. Director General of Meteorology, Mausam Bhawan, New Delhi - 110 003

3. Deputy Director General of Meteorology, Regional Metrological Centre, Lodhi road, New Delhi - 110 003
- RESPONDENTS

(By Advocate Shri Mohar Singh)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv) -

This Original Application is directed against an order dated 30.1.1997 transferring the applicant from Metrological office, Palam, New Delhi to W.R.S. Sri Ganga Nagar.

2. The admitted facts are that the applicant misbehaved with the officer on duty on 4.12.1996 when he was posted at Metrological Office at IGI Airport, New Delhi. It is stated in the counter that he "assaulted the duty officer physically by hitting him on the head by his chappal". A preliminary investigation was conducted. The applicant was found prima facie to have committed breach of discipline and made himself liable for suspension. The disciplinary

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authority thought that they have also an option under the rules to transfer him from Delhi in lieu of suspension. It was apprehended that the applicant could also influence the witnesses in the contemplated disciplinary proceeding being an active leader in the association. They have, therefore, transferred him in accordance with the Government of India's instructions contained in item 3-C of the General Principles in the matter of suspension occurring in Chapter 3 of Swamy's compilation of CCS(CCA) Rules (page 204 of 21st edition -1995). The transfer order was passed as mentioned above, on 30.1.1997 but the charge-sheet was issued on 6.3.1997.

3. The learned counsel for the applicant urged that the applicant's transfer order, while the departmental enquiry was pending, was not proper and was more as a punishment than as a transfer on administrative exigencies. There was no public interest involved in the transfer. The applicant belongs to a scheduled caste community and it is stated that he should not have been posted to a place far away from his native place.

4. I have carefully considered the submissions of both the counsel. The applicant is liable to transfer anywhere in the country. The learned counsel for the respondents cited a decision of this Tribunal in O.A.No.1768 of 1994 in the case of S.C.Jain Vs. Union of India and others. In that case under similar circumstances the transfer order was upheld.

5. The learned counsel for the applicant has cited a decision of the Hon'ble Supreme Court in the case of **State of M.P. Vs. S.S. Kourav**, 1995(2)SLR 16. Unfortunately, Kaurav's case (supra) does not help the applicant in any manner. It is settled law of the Hon'ble Supreme Court in **Rajendra Roy Vs. Union of India & others**, AIR 1993 SC 1236 that it is not open to a Tribunal to interfere with any order of transfer unless there is violation of any statutory rule or any mala fide is attributed. The transfer is an incident of service. Their Lordships have given only one avenue of redressal and that is by filing a representation. In this case the said representation has been filed and vide Annexure -A-1A by an order dated 12.5.1997 the representation was considered and rejected. The applicant has been transferred also on the additional ground that his presence in Delhi in Palam area would not be conducive to the processing of his disciplinary proceeding as he might influence the witnesses.

6. I am of the considered view that there is no merit in this Original Application. The transfer order was issued before the proceedings were initiated and charge-sheet was issued. The CCS(CCA) Rules, 1965 give a clear option to the administrative authority to transfer a person in lieu of suspension. In this matter it is the discretion of the administrative authority that has to be exercised properly. I do not see any reason to interfere with the exercise of the said discretion. He is not transferred when the charge sheet was pending. The exercise of discretion is in the interest of discipline of office; is not

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vitiating by malafide; and cannot be interfered with. However, the applicant belongs to a Group 'D' post. As and when the disciplinary proceedings are concluded and if the applicant is found not guilty of any of the charges, the respondents may consider his case sympathetically on a representation to be made by him to bring him back to Delhi. The O.A. is dismissed with above observations. No costs.

(Signature)
(N. Sahu)
Member (Adminv)

rkv.