

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2239/94

New Delhi this the *Tenth* day of October, 1995.

Hon'ble Shri B.K. Singh, Member(A)

Shri Nafe Singh,
Office Superintendent,
Office of the Directorate of
Marketing and Inspection,
Northern Region,
4/20 Asaf Ali Road,
New Delhi-2.

Applicant

(through Sh. K.B.S. Rajan, advocate)

versus

1. Union of India,
through Secretary,
Ministry of Rural Development,
Krishi Bhavan,
New Delhi-11.
2. The Dy. Agricultural Marketing
Adviser, Directorate of Marketing and
Inspection, Northern Region, Okhla,
New Delhi-20.
3. Shri R.C. Banerjee,
Deputy Agricultural Marketing
Adviser, In Charge Northern Region,
Okhla, New Delhi-20.

Respondents

(through Sh. Vijay Mehta, advocate)

ORDER(ORAL)

delivered by Hon'ble Shri B.K. Singh, Member(A)

This application No.2239/94 is directed against Order No.7/129/64-NR Pt.II dated 19.10.94. The applicant as per the impugned order was transferred and posted at Faridabad. This is annexure A-1 of the paperbook. The applicant has been relieved of his duties on 19.10.94 and joined at Faridabad on 14.11.94. No interim relief was granted to him and as such this application has actually become infructuous.

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The reliefs prayed for in the O.A. are to the effect that the impugned order should be quashed and set aside as invalid and not operative against the applicant and to declare that the respondent No.3 has no competence to relieve the applicant.

On notice the respondents filed the reply contesting the application and grant of reliefs prayed for.

I heard Sh. K.B.S. Rajan for the applicant and Sh. Vijay Mehta for the respondents and perused the record of this case.

The main ground on which the order was challenged was mala fides on the part of respondent No.2 who has already been impleaded as respondent No.3 by name. Respondent No.2 and Respondent No.3 is the same person having the same designation. The learned counsel for the applicant argued that Sh. R.C. Banerjee, Deputy Agricultural Marketing Adviser, In Charge Northern Region suffers from caste bias. The applicant is reported to be a member of S.C. community and Sh. R.C. Banerjee is reported to be a Brahmin by caste and as such on account of this caste bias, a warning was also issued to the applicant and no opportunity was afforded to him to state his case. A perusal of the record clearly shows that a non-recordable warning was issued to him for misbehaviour with lady workers in his office. He was the Superintendent and there were serious charges against him of indulging in obscene gestures in respect

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of the ladies. There are a large number of petitions filed by the lady workers whose work he was expected to supervise as Supervisor to various officers including Director of Marketing and Inspection, Deputy Agricultural Marketing Adviser and other senior officers. Not only this, these facts were also brought to the notice of the authorities by the recognised association of which the applicant is also a member. This recognised association also had wanted his immediate transfer because his continuance in Delhi office was not desirable in view of his misbehaviour with the lady workers. Annexure R-VI is a letter addressed by the Chairman of the Directorate of Marketing & Inspection, Employees Association (Delhi Branch) (Recognised by Govt. of India) wherein he has referred to his conversation with Deputy Agril. Marketing Adviser (VO) and has clearly mentioned that he should recall his meeting with the ladies staff of Group 'C' on 3.8.94 regarding certain genuine complaints explained to him about the Supdt's. behaviour, attitudes and indecent gestures in public, which is a shame on his part which had also created extremely uncongenial atmosphere in the whole office. On behalf of the Association the Chairman wanted his immediate transfer in order to facilitate smooth working and to restore congenial atmosphere in that office. In addition to this, there are a large number of petitions filed against him which are Annexure R-IV, Annexure R-V, Annexure R-VII and Annexure R-VIII. These all refer to the indecent behaviour of the applicant towards the ladies working in the office. The whole thing is summed up in the letter addressed by

the Chairman of the Association to Deputy Agril. Marketing Adviser (VO) of the Ministry of Rural Development.

The learned counsel for the respondents vehemently argued that the post at Delhi was abolished and the same was shifted to Faridabad which is the Headquarter of the Agricultural Marketing Division and in the past also a post of Superintendent was shifted from Faridabad to Madras Region. Thus the shifting of the posts is within the competence of the authorities and transfer is on administrative grounds.

The law has already been laid down by the Hon'ble Supreme Court in a catena of judgements beginning with Gujrat State Electricity Board Vs. Atma Ram Sungomal Poshani (AIR 1989 SC 1433) wherein it has been held that transfer is a condition of service and an employee has no choice in the matter. In case of hardship, the employee can file a representation and if the same is rejected, he has no option but to comply with the order. The same view was reiterated with greater force by the Hon'ble Supreme Court in case of U.O.I. Vs. H.N. Kirtania (JT 1989 (3) SC 131). The law was further clarified in the case of Bank of India Vs. Jagjit Singh Mehta (1992(1) SCC 306). The views expressed earlier were reiterated in case of Shilpi Bose Vs. State of Bihar (1991 Lab. IC (SC) 360). It was laid down that court should decline to interfere in transfer either on administrative grounds or in public interest. The latest law on the subject goes further and clarifies the position in case of U.O.I. Vs. S.L.



Abbas (1993(4) SCC 3577). In this judgement, the Hon'ble Supreme Court held that guidelines and instructions issued from time to time do not confer any vested right. These are merely directory and transfer being an incident of service, the court should decline to interfere unless mala fides are proved or there is a breach of statutory rules. The same view was reiterated by the Hon'ble Supreme Court in case of Chief General Manager Telecommunications Vs. Rajendra Chandra Bhattacharya (1995 Vol. 29 ATC P.553). In these judgements, the Hon'ble Supreme Court has categorically laid down the law that a person has no right to continue in a particular station. Who will be transferred where and when is not for the courts to look into. It is for authorities to decide who will be transferred where and when. The only exception has been made where transfer is based on mala fides or it is in breach of some statutory rules. The same view has been reiterated in case of U.O.I. & Ors. Vs. Ganesh Dass Singh (1995(30) ATC 629. It clearly lays down the law that transfer made by a competent authority on administrative reasons is not subject of judicial review. In the instant case, shifting of the post and the transfer of the applicant are both based on administrative reasons. There are concrete pleadings to show the misdemeanor or misbehaviour of the applicant with the lady workers. There are no specific instances, concrete pleadings or adequate proof to show that transfer was mala fide or in colourable exercise of power. There is not an iota of evidence that Sh. Banerjee suffers from caste bias because the learned counsel for the respondents stated

that there are several other members of the S.C. community who are happily working in Delhi office and none of them have ever made any complaint against Respondent No.2 who is also Respondent No.3 that he suffers from caste bias. I do not find any mala fide on record to justify interference by this court and accordingly O.A. is dismissed as devoid of any merit but without any order as to costs.

(B.K. Singh)

Member (A)

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