

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the 11th day of September 2020.

ORIGINAL APPLICATION NO. 330/00318 OF 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)**

Ravindra Kumar Pandey and othersApplicants.

VERSUS

The Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi and others.

.....Respondents

Advocate for the Applicants : Shri S. Narain

Advocates for the Respondents : Shri Shashi Prakash Singh, ASGI
Shri S.K. Om

O R D E R

DELIVERED BY HON'BLE MR. ANAND MATHUR, MEMBER (A)

Shri S. Narain, Advocate appeared on behalf of the applicant and Shri Shashi Prakash Singh, Additional Solicitor General assisted by Shri S.K. Om, Advocate appeared on behalf of all the respondents on advance notice.

2. Heard and perused the record.

3. The present Original Application has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"Relief Sought:

In view of the facts, mentioned in para 4 above, the applicant prays for the following reliefs:-

That this Hon'ble Tribunal be pleased to:

(a) allow this O.A and quash the impugned transfer order dated 19.02.2020 (Annexure No. A-1 to Compilation No.II with all consequential benefits, including release of the withheld salary of the applicant.

- (b) *Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the present case.*
- (c) *Award the costs of the Original Application in favour of the applicant".*

4. The facts in brief, as per the averments made in the OA, are as under:-

- (i) The applicant had joined the Intelligence Bureau (hereinafter referred to as the IB) on the post of Security Assistant on 25.09.1996, at the Subsidiary Intelligence Bureau (hereinafter referred to as the SIB). He has completely unblemished record of service and there have never been any complaint regarding his work, conduct, character, integrity or functioning from any quarter whatsoever. It can be verified that the records of ACR have throughout been of a high order and he has never been subjected to any kind of disciplinary proceedings. In fact he has been conferred various rewards, commendations and cash awards, including the prestigious Sukriti award for his outstanding services. He has received all his promotions on time and has never been superseded.
- (ii) The applicant has to perform some extremely critical and sensitive functions, not the least among them being gathering of information and intelligence about people who are being considered for being appointed to the office of the Judge of the Hon'ble High Court and submit his report on them, which is then used by the collegiums and the concerned authorities for making their recommendations. The applicant is under instructions from the highest sources to be absolutely objective, impartial, honest, fair and fearless in his reporting and has to steer clear of any kind of influence, pressure, threat or coercion from anyone.

- (iii) In the past there was one gentlemen lawyer (whose name the applicant is presently not revealing for reasons of official secrecy but would be ready and willing to disclose if the Tribunal so desires or requires), who was being considered for elevation as a Judge of the Hon'ble Allahabad High Court in whose respect the applicant, after following all established procedure and diligence, had submitted an unfavourable report which had probably resulted in his name being deferred, or dropped, from the final list of those who were recommended for elevation.
- (iv) On 19.02.2020, the applicant and the Assistant Director, IB, Allahabad Unit, were officially summoned to the SIB Varanasi, by the Joint Deputy Director for a meeting. It transpires that in the course of the said meeting, Smt. Parul Gupta, the incumbent Joint Deputy Director, SIB Varanasi, directed the applicant to file a fresh positive/favourable report in respect of the same lawyer referred to in the preceding paragraph whose name was perhaps being considered again for elevation. Upon being specifically, and pointedly asked to do so, the applicant, who had already submitted a detailed report earlier about the said lawyer that was unfavourable, politely, but firmly, expressed his inability to do the bidding since that would have been altogether improper and wrong. However, Smt. Parul Gupta who is an IPS officer of 2010 batch presently on deputation to the IB was infuriated at the applicant's refusal to the extent of becoming downright abusive and insulting. Even though the applicant was badly shaken and shell-shocked at being so badly insulted and humiliated by Smt. Parul Gupta, that too in the presence of so many persons attending the meeting, he maintained his composure and did

not react, except sticking to his stand that he would not give a report contrary to what he had given earlier since that would not just be an indefensible act but an illegal and criminal fraud upon his duty. In fact the applicant had also suggested and requested Smt. Parul Gupta that since she was the boss, she could always assign someone else instead of putting him to the shame and embarrassment of taking a 180 degrees turn from his previous report.

- (v) The applicant was not willing to budge from his stand, Smt. Parul Gupta ordered him out of the room and threatened him with serious consequences including immediate transfer. The applicant, crestfallen and reeling under the impact of the wholly unwarranted and uncalled public humiliation suffered by him, went out of the room and sat down waiting for the meeting to be over. Shortly, thereafter, he came to learn that a proposal for his immediate transfer to Agra had been hastily drafted and dispatched to Lucknow for approval. Here it would not be out of place to mention that Joint Deputy Director, SIB, Varanasi, has jurisdiction over 27 Districts, but since Agra is not one of them, approval of transferring the applicant to Agra was required to be taken from the Additional Director, IB, Lucknow. Hence, the need for dispatching the proposal regarding the applicant's transfer to IB, Lucknow.
- (vi) Upon returning to Allahabad from Varanasi on the same day, namely, 19.02.2020, the applicant was taken seriously unwell and had to take emergent medical consultation on the very next day. Pursuant to such consultation, the applicant went on leave due to medical reasons from 20.02.2020 itself, since he had been advised rest by the doctors. This rest and, therefore, perforce the applicant's leave of absence, kept

getting extended from time to time, and the applicant on his part, kept sending his leave applications to his office promptly, from time to time.

(vii) The applicant was finally declared fit for duty w.e.f. 04.05.2020 and, therefore, after getting the fitness certificate (Annexure No. A-3). He reported at his work place on 05.05.2020 and attended office after signing his attendance. However, the following day i.e. 06.05.2020, the Assistant Director, IB, Allahabad Unit, did not allow the applicant to sign his attendance and told him to go away saying that he had been transferred to Agra by the Joint Dy. Director, SIB, Varanasi. But when the applicant asked to be furnished with the copy of the order transferring him to Agra saying that was beyond the competence of the Joint Deputy Director to transfer him to that station, the Assistant Director was unable to do so. Instead, he misbehaved with the applicant and said that the Joint Deputy Director had issued oral orders of transfer and that she had the power to transfer him to any place. It is pertinent to mention here that the name of applicant in the attendance sheet for 06th May 2020 has been scored out and his name struck off.

5. The legality and correctness of the impugned transfer order dated 19.2.2020 has been challenged by the Id. counsel for the applicant mainly on the following grounds:-

- i. It is a back dated order and has been issued purely because the applicant did not accede to the illegal order given by the Joint Deputy Director, SIB, Varanasi.
- ii. The transfer order of the applicant is transparently malafide as it has been used as a weapon of vengeance for disobeying the orders of Joint Deputy Director, SIB, Varanasi.

iii. The applicant had been verbally told by his office that he was being transferred to Agra, however, transfer to Agra was not within the competence of Joint Deputy Director, SIB, Varanasi therefore her proposal did not find favour with her senior at Lucknow and she had to resort to transferring him to Ballia which is within her own jurisdiction.

iv. It is rather unusual that a person who is being transferred on 19.02.2020 was called for a routine meeting at Varanasi and was spared on the same date. Normally one would not expect an employee to be called for an out station meeting on the date of his transfer.

v. The Tribunal may kindly appreciate that the applicant is very junior to Joint Deputy Director, SIB, Varanasi, who is an IPS officer. By filing this case and by highlighting the malafide intention behind issuance of his transfer order, the applicant earned the wrath of a very senior officer which may prove to be harmful to his future career. The applicant would have carried out the transfer order had it not been punitive in nature.

6. To the contrary, learned counsel for the respondents has put forth the following contentions :-

(i) The Joint Deputy Director, SIB, Varanasi has convened the meeting on 19.2.2020, which was to be attended by all the officers/staff from Allahabad as well as Ballia.

(ii) The transfer order dated 19.02.2020 was not for the applicant alone. There were two more staff, whose posting/transfer had been done:-

(i) *Rajeev Kumar, ACIO – II/G, who was awaiting posting and was posted to Jaunpur.*

(ii) *Daya Shankar Pandey, SA/G from Ballia Unit to Gyanpur Unit.*

It is worth mentioning that Rajeev Kumar has joined at Jaunpur on 25.2.2020.

(iii) The applicant claims that he has signed the attendance register at Allahabad on 5.5.2020 and 6.5.2020 but the attendance register shows his attendance only on 5.5.2020 and not on 6.5.2020. The original attendance register does not carry his name at Sl. No. 19. It stops at Sl. No. 18 and has two blank lines thereafter.

(iv) The applicant's representation dated 7.5.2020 was dispatched only on 19.5.2020.

(v) The claim of the applicant that his name should have been shown at Ballia, is not tenable as he has not yet joined at Ballia.

(vi) The applicant has displayed serious misconduct by making the attendance register public. The Names of staff borne on the attendance register of SIB is a strictly confidential document and is not supposed to be made public at all.

(vii) The applicant is trying to concoct stories to cover up his disobedience in not carrying out the transfer order and is trying to cover up the period of his unauthorized absence.

7. We have given our thoughtful consideration to rival versions of learned counsels for both the parties and have carefully gone through the record.

8. During the course of hearing, learned counsel for the respondents was asked to clearly state as to how was the transfer order communicated to the applicant as there is no proof of service of it on him before 30.05.2020, when he had received it by the registered post sent to him.

9. In reply, learned counsel for the respondents stated that the transfer order was communicated verbally over telephone to the applicant and that he was spared on 19.2.2020 itself.

10. It is worth mentioning here that the relieving order issued vide order No. V-2/Estt./2019 (6) INC.T and P-2197 dated 19.2.2020 specifically directs the applicant to join I/C Ballia without availing admissible joining time. Surprisingly salary of the applicant was charged for 02 months even after sparing him on 19.2.2020 itself.

11. It is an established procedure in the Government that once an employee has been spared from a particular unit, his salary is not charged thereafter. When asked, as to why when the administration had issued the transfer order on 19.2.2020 and had also spared the applicant on 19.2.2020, directing him to join the new place of posting without even availing admissible joining time, why was his salary charged at Allahabad for 02 months beyond the date of sparing ? Learned counsel for the respondents could not give any satisfactory reply to this question.

12. It may be seen from the above that there are incongruities in the arguments put forth by the learned counsel for the respondents. There is a need for detailed deliberation, inspection of records etc. before a final view is taken by the Tribunal. The applicant has already been granted partial interim relief vide order dated 31.7.2020, which reads as under:-

"In view of the facts and circumstances of the case, we direct the respondents not to take coercive action against the applicant in the meantime".

This relief was further extended by the order dated 17.8.2020.

13. Learned counsel for the applicant has prayed for the following interim relief:-

"Pending final decision in this OA this Hon'ble Tribunal be pleased to stay the effect and operation of the impugned transfer order dated 19.2.2020 (Annexure A-1)".

14. In view of the peculiar circumstances of the case and the arguments put forth by both the parties, we feel that a thorough in-depth examination of the issue is called for and for this purpose, detailed counter/rejoinder affidavits would be necessary to arrive at any conclusion.

15. We, therefore, direct that the impugned order dated 19.2.2020 be held in abeyance till the disposal of this O.A. Detailed counter affidavit may be filed within four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

16. List this case on 28.10.2020 before the registrar's court for completion of pleadings.

17. The attendance register produced by the respondents for our perusal be returned in a sealed cover to Id. counsel for the respondents.

**(ANAND MATHUR)
MEMBER-A**

**(JUSTICE VIJAY LAKSHMI)
MEMBER-J**

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