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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 566/87 198
T.A. No.

DATE OF DECISION 29-7-1987

Shri P.N. Mishra **Petitioner** Applicant

In person **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondent**

Shri M.L. Verma **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO.
2. To be referred to the Reporter or not ? NO.
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO.
4. Whether to be circulated to all the Benches ? NO

29/7/87
(BIRBAL NATH)
MEMBER (A)
29.7.1987

J.D. Jain
(J.D. JAIN)
VICE CHAIRMAN
29.7.1987

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DATED OF DECISION: 29.7.1987.

REGN. NO. D.A. 566/1987

Shri P.M. Mishra ... Applicant

vs.

Union of India & Ors. ... Respondents.

CORAM: Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: In person.

For the respondents. Shri M.L. Verma, counsel.

JUDGMENT

(delivered by Mr. Birbal Nath).

The applicant, Shri P.M. Mishra, who was working as Tradesman 'A' in the Aerial Delivery Research and Development Establishment (hereinafter called 'A.D.R.D.E.') Agra Cantt., was transferred vide R & D Hqrs. letter No. RDHQ/24708/ADRDE/Pers.9 dated 23rd July, 1986 to the Research & Development Establishment, Pune and was relieved of his duties with effect from 1st August, 1986. The applicant has challenged this transfer by filing this application under Section 19 of the Administrative Tribunals Act, 1985 on the grounds that the transfer order was punitive and mala fide, he being an industrial worker who was declared permanent in his post at ADRDE, Agra Cantt., - a defence installation registered under the Factories Act, 1946 - and that he is a protected workman under the Industrial Disputes Act and, therefore, he could not be

transferred from his place of posting.

2. We have given careful thought to the arguments advanced at the bar and the documents placed before us. From the documents placed before us, it is found that the applicant, Shri P.N. Mishra was posted to 'ADRDE' Agra with effect from 3rd November, 1973 from SPL, Delhi on administrative grounds. The Administration had preferred an allegation of indiscipline against the applicant and Wg. Cdr. I.S. Gupta, Director, ADRDE, ^{had} placed him under suspension on 27.9.1982. In support of the challenge to the order being punitive, the applicant has maintained that in the period from 1982 to 1985, as General Secretary of the Trade Union, he had made several allegations against the Director of the Establishment, Wg. Cdr. I.S. Gupta, who was reportedly involved in corrupt practices causing heavy loss to the Government. The Director had, therefore, ordered his permanent transfer to Pune as a measure of vindictiveness and that he had been denied all his pay and allowances since this order of transfer. It was admitted that Wg. Cdr. I.S. Gupta had also been transferred from Agra to New Delhi during the same month, i.e. August, 1986. The applicant made a representation dated 6th August, 1986 and preferred an appeal dated 3rd December, 1986 against his transfer which were rejected.

Though it is a fact that the applicant had been making some allegations in the capacity of the General Secretary, Aerial Delivery Research & Development Establishment Karamchari Sangh, Agra Cantt. as well as in his individual capacity as Tradesman 'A', to the higher authorities and the Director, ADRDE Agra was called upon to send his comments on them, this itself cannot be said to be the basis of the transfer. It has to be noted that there was rivalry between the Trade Unions and in the game of one upmanship, there had been a

a vitiated atmosphere due to various squabbles in which the Administration was put to a hard test. It is true that the Director ADRDE, Agra had recommended to post the applicant out of Agra, the applicant's transfer was not ordered by the Director, ADRDE but by the Director-General, Research & Development. The following order of the Director-General, Research & Development, is extracted below to show the origin of the order of transfer of the applicant:-

"Bharat Sarkar
Raksha Mantralaya
Anusandhan Tatha Vikas
Sangthan, DHQ Dak Ghar,
New Delhi.

RDHQ/24708/ADRDE/Pers-9

The Director
Aerial Delivery Research &
Development Establishment
Station Road, Agra Cantt.

Posting/Transfer - Shri P.N. Mishra, Tradesman 'A'

Reference your letter No.ADRDE/CON/49 dated 05 Jun 86.

2. The following posting is ordered with immediate effect:-

<u>Name & Designation</u>	<u>From</u>	<u>to</u>	<u>Remarks</u>
Shri P.N. Mishra, Tradesman 'A'	ADRDE, Agra	R&DE(E) Pune	Against the post of Tradesman 'A' being transferred from ADRDE to R&DE (E).

3. The above named individual will be entitled for TA/DA and joining time as per existing rules. However, he will remain on the seniority roll of ADR&DE for further promotion and confirmation.

Sd/-
(S.LONGANATHAN)
Asstt Dir (Pers-9)
for Director General Research & Development

It is, therefore, clear that the transfer of the applicant was not ordered by the Director, ADRDE, Agra, Wg. Cdr. I.S. Gupta, but by the Director-General, Research & Development, who must have taken into account all the pros and cons as he had been receiving various allegations both against the Director, ADRDE as well as on the activities of the applicant. As such, it cannot be held that the impugned transfer

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arises out of malafides and is punitive in nature.

3. The next contention of the applicant that he is a protected workman under the Industrial Disputes Act and being the General Secretary of the Organisation, he could not be posted away from the place of his posting, needs to be examined. The stand of the applicant that he is a workman under the Industrial Disputes Act is un-rebutted. He is a Tradesman 'A' category and is definitely an industrial worker. However, the dispute revolves ^{around} the point whether he is a protected workman or not. To support his claim for being a protected workman, the applicant has relied upon the letter dated 10th Decr, 1985 issued by the Registrar, Trade Unions, Kanpur, wherein it has been held that he was elected Secretary in the election held on 28.2.1981. However, the same officer, vide his letter dated 17th April, 1986, intimated that the intimation regarding Shri P.N. Mishra being the Secretary of the Union was a typographical mistake and instead, the name of Shri Agan Lal should be substituted. Whereas the status of the applicant as a workman under the Industrial Disputes Act has to be accepted in toto, he cannot be held to be a protected workman, being the office bearer of the Trade Union as the Registrar, Trade Unions, Kanpur has, vide his letter of 17th April, 1986, stated that the applicant was not ^{the} Secretary of the Union and ~~had been replaced by~~ ^{has been elected Secretary of the Union} Shri Agan Lal. There is nothing on the documents to show that this letter of the Registrar, Trade Unions suffers from any lacuna.

It was argued on behalf of the applicant that under Section 25-E of the Industrial Disputes Act, he could not be transferred beyond a radius of five miles from the establishment

to which he belonged. We find no force in this argument because this Section deals with the entitlement of workmen to compensation in certain cases, i.e. if a workman is transferred to any other establishment in the same town or village or situate within a radius of five miles from the establishment to which he belonged. This section has to be read in continuation of Section 25C which deals with the rights of workmen laid off for compensation. Whereas Section 25C creates right to lay-off compensation in favour of laid off workman, Section 25-E enumerates the circumstances which will dis-entitle him to lay-off compensation. This Section, therefore, does not help the applicant. Therefore, we find that neither the applicant is a protected workman whose transfer cannot be effected in view of the rights under the Industrial Disputes Act, nor the provisions of Section 25-E of the Act are applicable in this case. It was also argued that the duties at ADRDE, Agra Cantt. and R&DE Pune are not the same. This is a matter of detail which the applicant cannot press into service since he has never joined his duties at Pune.

4. In view of the foregoing discussion of facts and law, we find the Application to be without merit and dismiss the same, with no order as to costs.

29/7/87
(BIRBAL NATH)
Member (A)
29.7.1987

J. D. Jain
(J.D. JAIN)
Vice-Chairman
29.7.1987