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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

14.05.1992

OA 1996/90

SHRI GOPAL SARAN SHARMA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SH.MALIK B.D.THAREJA

FOR THE RESPONDENTS

...SH.P.P. KHURANA WITH
SH.J.C. MADAN

1. Whether Reporters of local papers may
be allowed to see the Judgement? *Yg*
2. To be referred to the Reporter or not? *Yg*

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant in this case has been working as Office Superintendent in TRA unit of Telecom District Manager, Ghaziabad. He is facing a trial under Anti Corruption Act before the Anti Corruption Judge, Dehradun. Earlier the case was said to be pending before the Anti Corruption Judge, Lucknow. Because of that anti corruption case, the applicant was put under suspension under sub Rule 1 of Rule 10 of the CCS (CCA) Rules, 1965 by the order of Telecom Divisional Engineer dt.25.6.1987. While suspending the applicant, the headquarter of the applicant was fixed at Ghazibad in the TRA unit.

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The applicant, however, has been transferred by the order dt.6.12.1989 in compliance of the order contained in CGMT, Lucknow dt.5.12.1989 after having been struck off from the strength of the office of Ghaziabad w.e.f.6.12.1989 and attached to Sri Nagar, Garhwal (UP) under the administrative control of PDE Sri Nagar, Garwal. The applicant made a representation against this on 14.12.1989 narrating inconvenience likely to be caused to him and it is argued by the learned counsel that there has been no response from the respondents and the present application has been filed in September, 1990 after obtaining necessary permission under Section 25 of the Hon'ble Chairman for the relief of quashing the order of transfer dt.6.12.1989 with the direction to the respondents to pay the future subsistence allowance and the arrears ^{with} interest at 18% p.a.

During the course of the arguments, the learned counsel for the applicant has taken up three grounds for assailing the aforesaid transfer, i.e., it is arbitrary, malafide, against rules and vindictive. It is also stated that the applicant can be transferred only after having been reinstated as there is no rule where a person under suspension can be transferred from the headquarter where he is attached during the suspension period. It is also stated that the applicant has been a worker of the All India Tele Communication Class III Employees' Union, Ghaziabad and also an office bearer. The applicant in the application also

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stated certain facts which have also been pressed by the learned counsel for the applicant that false cases have been registered against the applicant by the District Manager ^{through} Khan by entering into conspiracy with Shri Ram Dass, Junior Engineer. The applicant has to be confined to jail for all three weeks as there was strike of lawyers at Ghaziabad and he could not obtain release under Section 323, 452, 353 IPC. At the time the applicant was transferred, a ground was also available to the applicant of mid term transfer, but that ground has not been pressed now.

The learned counsel for the respondents, Shri J.C.Madan, on the basis of the reply filed to the Original Application argued that the applicant has been transferred in the exigency of service on administrative grounds and there is no malafide act on the part of the respondents in attaching the applicant with TDE, Sri Nagar, Garwal. The learned counsel has referred to para 4.7 of the counter wherein it is stated that the applicant along with some other outsiders came to Raj Nagar Telephone Exchange and beat Shri Ram Dass, JTO for which the complaint was lodged by DP, Ghaziabad. CGMT, Lucknow was apprised of the incident. The headquarter of the applicant was, therefore, changed by the order dt.5.12.1989 of the CGMT from Ghaziabad to Sri Nagar Garhwal. The learned counsel has also referred to para 4.9 of the counter where there are other allegations against the applicant of mishandling other employees of TOA office. He also referred

to the fact that the applicant has also abused Chief Accounts Officer. It is also stated that the applicant also threatened one JTO, Shri Sharma in the office. The learned Counsel for the applicant referring to the rejoinder in paras 4.8 and 4.9 did not specifically deny these averments and only referred to the statement of facts stated in this rejoinder that the cases were lodged because of conflict of union and the administration ^{with} the respondents, the applicant being an office bearer of the union as said above. In any case, the ^{F.i.} reports and ^{the} registration of the cases against the applicant are not specifically denied in the rejoinder.

Having considered the whole matter and having gone through the various annexures annexed to the application and that to the reply of the respondents, I do find that there was an administrative exigency with the administration to change the headquarter of this applicant from Ghaziabad. The administration has to maintain discipline among its own employees without impairing working and efficiency of the staff in the particular office. It is not to find out who is at fault or who should be made first to move out as it is the concern of the administration. Nor it can be said that the applicant is guilty unless the same is held by a competent court. In any case there are allegations of such a nature which may ^{give} ^{to an impression} arise a ~~necessity~~ in the mind of a reasonable person to act in a manner to shift the headquarter of the applicant in order to keep the working discipline in the office of ATO. The learned counsel has stressed ^{Administrations, again} ~~malafide~~ for the applicant. But in this background, it cannot be said that the

respondents, particularly CCMT, Lucknow had any prejudicial notions against the applicant. The learned counsel for the applicant has pointed out that during suspension, the applicant should not have been transferred. Here the case of suspension is by virtue of the pendency of anti corruption case before the Anti Corruption Judge and not because of any departmental enquiry against the applicant. The case is still pending and it is admitted to the applicant. Thus it cannot be said that during the pendency of the criminal case, the applicant cannot be made to change his ^{Headquarters} transfer which was fixed at the time of his original suspension in June, 1987. By suspending an employee, the relationship of Master and Servant does not come to an end. The overall control remains that of ^{the} employer and in the administrative exigency, the applicant can be shifted to a place in a manner which may not raise a finger or an impression about having acted in an arbitrary or malicious manner. Thus as said earlier, the order having been passed in administrative exigency in the interest of public is not motivated by any malice or prejudice against the applicant. The transfer order, therefore, during the suspension period can also be effected in the case of the present nature.

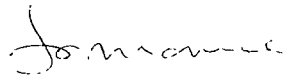
The learned counsel for the applicant has further argued that the applicant is an office bearer of the union. He has also averred in the rejoinder that because of the conflict of the union activities and the administration,

transfer has been effected. As far as possible, the office bearers of the union are not normally posted beyond the region which they represent in the All India Union activities, but this guideline is not mandatory. Exceptions are there where cases warrant any administrative exigency and an office bearer of the union can also be shifted if there is a sufficient background in the interest of public and administration.

Thus the learned counsel for the applicant could not make out a case that the transfer in the present case is against the rules or it is motivated or is arbitrary or mala fide.

However, one thing remains. The applicant is still facing criminal cases and is under suspension. He is posted to hill region and from there, he may take sufficient time to reach the places where he has to appear in the criminal cases pending against him, particularly at Ghaziabad and Dehradun. In view of this, the learned counsel for the respondents has given a statement at the Bar that he will advise the respondents that the headquarter of the applicant, during suspension instead of Sri Nagar, Garhwal be changed to Lucknow to which place the learned counsel for the applicant on the instructions of the applicant has also agreed.

In view of the above facts, the present application is disposed of as dismissed with cost on parties. Of course, giving the liberty to the respondents to consider the case of the applicant to change his headquarter from Sri Nagar, Garwal to Lucknow, U.P. and if Lucknow is not possible, then to any other place, i.e., Moradabad or Dehradun.


(J.P. SHARMA) 14.5.92

MEMBER (J)

14.05.1992

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