

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 71/1990.

DATE OF DECISION: 23.7.1990.

Bhaskar Parsad Tewari Applicant.
Shri Jog Singh Advocate for the Applicant.
V/s.
Union of India & Others Respondents.
Shri M.L. Verma Advocate for the Respondent

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who was appointed as a Boiler Attendant in the office of G.E., Jhansi on 8.3.76 and was promoted as Charge Mechanic (now Senior Mechanic HS I) with effect from 22.6.85, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, in which he has challenged his transfer from the office of G.E., Jhansi to G.E. (West), Jabalpur and the Movement Order dated 29th November, 1988 (Annexure A-3) issued in that connection. He has prayed that the above Movement Order be quashed and a direction be issued to the respondents to allow him to join and perform his duty in the office of G.E., Jhansi; to pay the pay and allowances from September, 1988 onwards; and to treat the entire period from September, 1988 onwards as on duty.

2. The applicant's case, in brief, is that he has unblemished record of service at Jhansi and his work has been commended both by the departmental officers and the users. He is an active member of the local branch of the UP MES Workers Union in which there is an infighting between two rival groups. On arrival of Major B.D. Tatwawadi, G.E., Jhansi, the opposite group of the Union

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took advantage of the change and started making false allegations against him. He used to take leading role in the furtherance of the welfare of the workers on which G.E., Jhansi was not happy and adopted biased and prejudiced attitude and also started victimising the applicant. In regard to the act of victimisation, it is stated that on a false report made by AGE (E/M), the applicant was placed under suspension with effect from 5.9.88 (Annexure A-5); while prohibiting the entry of the applicant in some places during his suspension, he was ordered to report daily to G.E., Jhansi for attendance (Annexure A-6); during the period of suspension, the G.E. manipulated and got the transfer order of the applicant issued by the Chief Engineer, Jabalpur Zone (Respondent No.4) on 22.11.88 and issued Movement Order dated 29.11.88; the G.E. revoked his suspension on 28.11.88 with effect from 5.9.88, i.e., the date of suspension and also awarded the penalty of 'Stoppage of one increment with non-cumulative effect' (Annexure A-7 and A-8); evidently both these letters were signed on Tuesday, but given dates of 28.11.88 and 29.11.88 and the suspension order was revoked with retrospective effect with a view to making the applicant SOS on 30.11.88, but the revocation order was received by him on 2.12.88; the endorsement on the Movement Order to the effect that he had been paid pay and allowances upto 30.11.88 was incorrect inasmuch as he had been paid only upto 31.8.88; No orders for the payment of subsistence allowance had been issued by the G.E., Jhansi till 28.11.88; Memorandum of charge dated 5.9.88 quoted in Annexure A-8 was never issued to him; and that the penalty of stoppage of one increment awarded to the applicant by the G.E. was an act of victimisation by manipulation of documents. It is also stated that according to policy of transfer of Groups 'C' and 'D' civilian

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11

personnel under E-in-C, MES, transfer of these categories of persons ordered in the exigencies of service or administrative requirements can be done only with the prior personal approval of the Chief Engineer / Additional ^{of the} Chief Engineer/Command. In his case, the transfer had been effected under the orders of Chief Engineer, Jabalpur Zone, who was not competent to issue such orders. It is further stated that the transfer policy, referred to above, is itself defective as it does not specify the administrative grounds on which an employee can be transferred. He sent representations to C.E., Central Command (Respondent No.3) on 1.12.88 and 9.12.88, but no reply was received. He then submitted a representation dated 16.2.89 to Engineer-in-Chief, Army HQ, New Delhi. As no reply was received by him, he sent telegrams on 7.6.89, 10.6.89 and 13.7.89. He was communicated on 27.7.89 ~~to the effect~~ that he should join duty in GE (West), Jabalpur, and that this is an arbitrary and non-speaking order.

3. The case of the respondents, in brief, is that the transfer of the applicant has been made on administrative ground and has been ordered by the competent authority, i.e., Chief Engineer, Jabalpur Zone. It is stated that no Government servant is entitled to be retained at a particular place as the transfer is an incidence of service and the Government has the power to transfer him in the exigencies of service, administration and in the interest of public. The courts should not interfere in the same unless the power is exercised on extraneous considerations and that it should be remembered that the machinery of Government would not work if it were not allowed a little play in its joints. Various applications of the applicant for medical leave and extensions thereof could not be considered by AGE (MES) as he has been SOS w.e.f. 30.11.88.

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the basis of on/ the Movement Order ~~xx~~ dated 29.11.1988. It is stated that the applicant was aware of his Movement Order and posting to GE (West), Jabalpur and it is evident from his application addressed to CE,CC, Lucknow. The plea that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 has also been taken. As a background of the case, it is stated that the applicant was incharge of water supply installations when there were a number of complaints from various quarters regarding unsatisfactory water supply and that on 1.9.1988 at 9.00 a.m., he threatened his AGE to disrupt the Sub Divisional activities and water supply by making all the water supply installation staff to go on medical leave for a week during the impending visit of E-in-C to that station. The AGE was officiating as GE at that time in addition to his own duties as AGE as the GE was on leave at that time. On return of the GE from leave, the AGE reported to him the above matter and the applicant was placed under suspension on 5.9.1988. He was also asked to attend the office of GE to complete some official records, but he failed to obey the orders. The case was taken up with the higher authorities and the applicant was transferred from Jhansi to Jabalpur on administrative ground. It is admitted that he had been paid only upto 31st August, 1988 and that the endorsement on his Movement Order to the effect that he had been paid upto 30th November, 1988 was an inadvertent mistake; in fact, the payment due to the applicant upto 30.11.1988 had been claimed by the office, which was subsequently passed and remitted to GE (W), Jabalpur. An amount of Rs.1972/- on account of subsistence allowance for the months of September and October, 1988 is said to have been remitted to GE (West), Jabalpur through a Bank Draft dated 6.2.1989 vide letter dated 8.2.1989 and on revocation of

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the suspension order with effect from the date of its communication, an amount of Rs.2097/- on account of the difference between the pay and allowances due to the applicant and the subsistence allowance paid to him, had been remitted through a Bank Draft vide letter dated 17.1.1989. The allegations of malafide, victimisation, prejudice etc. have been denied as false and baseless. The suspension order dated 5.9.1988 is said to have been revoked vide orders dated 28.11.88 with retrospective effect due to audit objections raised in the past in the cases of others.

4. We have carefully perused the documents on record and have also heard at length the learned counsel for the parties at the admission stage itself. We are of the view that this case can be disposed of at the admission stage itself.

5. The learned counsel for the applicant, in his submissions before us, emphasised on three grounds of challenge to the impugned order. Firstly, that the impugned order of transfer has not been passed by the competent authority. In support of this contention, reliance was placed on paras 1 and 6 of the instructions/guidelines regarding transfer of civilian subordinates of the MES - Other than to tenure stations - which were issued as Appendix "A" to the letter dated 30th December, 1983 from Coordination & Personnel Directorate/EIC, Engineer-in-Chief's Branch, Army Headquarters, New Delhi (Annexure A-9). According to para 1 thereof, personnel in Groups 'C' and 'D' should not normally be transferred from one station to another except to meet the following contingencies: -

- (a) Adjustment of Surpluses/Deficiencies.
 - (b) Promotion.
 - (c) Compassionate grounds/^{mutual} basis.
 - (d) Exigencies of service or administrative requirements.
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It was argued that since the case did not fall in any of the first three categories, it is a case of transfer on the grounds of exigencies of service or administrative requirements. For such transfers, according to para 6 of the instructions / guidelines *ibid*, no individual will normally be posted to tenure stations or other normal stations on administrative grounds. When it is considered that such a step is absolutely essential prior personal approval of the Chief Engineer/Additional CE Command will be obtained. It is the violation of these instructions that has been made one of the grounds of challenge to the impugned order of transfer, as the impugned transfer order (Annexure A-3) cites Chief Engineer, Jabalpur Zone, Jabalpur letter No. 111130/CH Mech/254/EIB, dated 22.11.88 as the authority. The applicant has also filed with his rejoinder-affidavit copies of three Movement Orders in pursuance of posting/transfers on administrative grounds (Annexure I(a), I(b) and I(c), in which authority for transfer is cited as letters from Chief Engineer Central Command, Lucknow. The learned counsel for the respondents argued that the applicant has been transferred from one unit to another within the jurisdiction of the Chief Engineer, Jabalpur Zone and he is competent to make such transfers. The learned counsel for the applicant did not dispute the authority of the Zonal Chief Engineer in ordering transfer from one unit to another within his zone, but contended that such an authority is not applicable to transfers on administrative grounds for which, as per the instructions in para 6 of the instructions/guidelines issued by the Headquarters, prior personal approval of the Chief Engineer / Addl. CE Central Command is essential. The question, therefore, arises whether the instructions/guidelines alone would determine the legal position in regard to the competence of an authority to approve

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a proposal for transfer of a Government servant. This matter had come up before a Full Bench of the Central Administrative Tribunal and the following observations were made in para 17 of the judgement of the Full Bench in the case of Shri KAMLESH TRIVEDI Vs. INDIAN COUNCIL OF AGRICULTURAL RESEARCH AND ANOTHER (Full Bench Judgements (CAT) at p. 93): -

"17. It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the Government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny."

6. In the case of STATE OF ASSAM AND ANOTHER , ETC. Vs. BASANTA KUMAR DAS, ETC. ETC., (1973) 1 SCC 461, it was held that Government memorandum extending the age of retirement of its servants from 55 to 58 years was a mere executive instruction and not a rule made under Article 309 of the Constitution and that it did not confer any legal rights on the persons covered by it and no legal action could be founded on it. It was also held that the general rule is that administrative orders confer no justiciable right. This rule is, however, subject to exceptions. Admittedly, there are no statutory rules applicable to this case. The administrative

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instructions cannot be taken to have been issued to supplement the statutory rules. Had it been so, these instructions could have been considered for being taken as having statutory force.

7. It may be stated here that in his representation dated 1.12.1988 addressed to the Chief Engineer, Central Command, Lucknow, which, inter-alia, relates to the impugned transfer / movement order, the applicant himself stated in para 5 thereof as below: -

"He (referring to GE Jhansi) requested CNE Jhansi to get me posted out on administrative grounds. On the request of GE, CNE Jhansi talked to CE JZ Jabalpur Office on telephone and discussed the matter. As I could know your goodself was on visit to the CE JZ Office and my case for posting was also included in the list of points for discussion with CE CC Lucknow. The case was put before your honour one sided by setting aside the actual facts and get your concurrence. Accordingly CE JZ Jabalpur has issued my posting order under his letter No.111130/Ch Mech/254/EIB dated 22 Nov' 88 which is quoted as authority in GE Jhansi Movement Order."

This shows that on the applicant's own admission, his transfer order had the approval of Chief Engineer, Central Command, Lucknow. Thus, the ground taken by the applicant that his transfer order had been issued without authority is not established.

8. The other ground of challenge urged before us was that no administrative grounds existed for the transfer of the applicant. A Division Bench of the Central Administrative Tribunal at Allahabad observed in the case of HARISH CHANDRA SRIVASTAVA Vs. UNION OF INDIA AND OTHERS, (1987) 4 ATC 638, as below: -

"The responsibility of good administration is that of the Government and the courts would not judge propriety or sufficiency of such opinion by objective standards except

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where subjective process is vitiated by mala fide, etc. Transfers are the exigencies of service and outside the purview of examination by a court of law. Transfer being an implied condition of public service, the appointing authority is the best judge to decide how to distribute manpower. A variety of factors may weigh with the authorities in this connection, viz. reputation, period of stay, someone proceeding on leave and then filling in that post for the time being and a number of other grounds which may be clubbed under the head 'exigencies of service'. It is not for us to adjudicate the feasibility or propriety of transfer, but the power of transfer must be exercised honestly, in a bona fide manner and reasonably....."

Similarly, in the case of V.R. DATANIA Vs. UNION OF INDIA AND OTHERS, (1989) 9 ATC 211, a Division Bench of the CAT at Ahmedabad, held that the respondents do not have any liability or obligation to be put to strict proof the administrative exigency or public interest which actuated them to decide the transfer. The applicant has been at Jhansi since he joined the service of the respondents in 1976. The respondents, in their reply, have stated the reasons which necessitated the transfer of the applicant. We cannot go into the question as to how far the reasons are really valid. The matter of transfer of the applicant had been processed upto a very high level. We are, therefore, in no position to say that there were no administrative grounds for passing the impugned orders.

9. The next ground of challenge is of mala fides allegedly on the part of GE Jhansi, who is respondent No.6. We have already mentioned in brief the alleged acts of victimisation as stated by the applicant. The applicant states that his work in regard to supply of water was commended both by the departmental officers and the users and copies of the certificates filed by

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him do support his contention. The respondents, on the other hand, have stated that there were various complaints in this regard. They have not filed copy of any such complaint. In any case, this does not seem to be the sole reason for the transfer of the applicant. The certificates produced by the applicant were issued in the years 1985 - 1986 and are not very relevant in regard to the impugned order, which was passed in November, 1988. He has already been assigned different duties, vide order dated 1st August, 1988 (copy at page 51 of the paper book).

10. The applicant's case is that the AGE E/M made a false complaint against him in regard to the threatened disruption of water supply because he had asked him to get his horoscope prepared from his father, but the applicant replied to him that it would take two - three days as his father was busy.

11. It is difficult to accept that on this ground, the AGE would have made a complaint about the threatened disruption of water supply, which obviously was a very serious matter. It was on the basis of this complaint that the applicant was placed under suspension. If it were only a case of refusal to do some private work, the matter would not have been taken up at such a higher level. The applicant has not been able to establish any nexus between the GE and the other Union leader Mr. Bharat Kumar Dubey. Therefore, what the rival Union leader did vis-a-vis the applicant is not relevant in regard to the impugned order.

12. The applicant had been the Secretary of the U.P. MES Workers Union (Jhansi Branch) since 1981 till 3rd May, 1987; Secretary of the Works Committee from 1978 to 1988; and Secretary of the Joint Consultative Machinery from 1981 till July, 1987. He was made Area Joint Secretary of the U.P. MES Workers Union with effect from 10th July, 1988. These facts are disclosed in para

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4 (c) of the rejoinder-affidavit. Mr. Bharat Kumar Dubey, Ex-President of the Babina Branch was transferred from Babina to Jhansi in the month of March, 1987. The applicant states that immediately thereafter, he developed a union rivalry with the applicant and in fact it was a conspiracy on the part of Shri Bharat Kumar Dubey and the management, particularly respondent No.6, to transfer the applicant to Jabalpur with the mala fide intention of isolating him from the lawful trade union activities. The contention of the applicant is that his transfer order is a mala fide act and has been issued with the sole intention "of diluting the lawful Trade Union activities of the Applicant". Trade Union rivalries between two rival Union leaders is not uncommon in the Trade Union scene in India. That this rivalry is the basis of the impugned transfer order is, however, not established. The contention of the applicant that because he is an active member of the Trade Union ^{and as} he has been agitating the grievances of the employees which had annoyed the authorities also cannot be accepted, because, as stated above, the applicant has been an active Trade Union leader in various capacities for more than 10 years, but this fact did not result in his transfer earlier.

13. The revocation of suspension order with retrospective effect has, in fact, benefited the applicant inasmuch as instead of getting subsistence allowance for the period of suspension, he became entitled to the full pay and allowances. This, therefore, cannot be considered as mala fide. Even if all the acts of victimisation are considered together and not in piecemeal, as held in the case of STATE OF HARYANA AND OTHERS Vs. RAJINDRA SAREEN, 1972 (7) SLR SC 112, we find that the applicant has not been able to establish the case of mala fides against any of the respondents. Moreover, none of the respondents has been made a party by name so as to enable

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him to file a separate affidavit to counter the allegations of mala fide against him. The allegations of mala fide against the rival Union leader are not relevant because he has neither made him a party to the case, nor is he in any way connected with the hierarchy of authorities which had processed the case of the applicant's transfer.

14. The applicant cited judgements in the following cases in support of his case: -

- (1) Niladri Chandra Mahanta Vs. State of Orissa and Others - SLR 1983 (3) p. 310 - Orissa High Court (D.B.).
- (2) C. Ramanathan Vs. Acting Zonal Manager, Food Corporation of India, Mount Road, Madras and Others - SLR 1980 (1) p. 309 - Madras High Court (D.B.).
- (3) Prakash Chandra Saxena Vs. State of M.P. and Others - SLR 1980 (1) p. 788 - Madhya Pradesh High Court.
- (4) State of Haryana and Others Vs. Rajindra Sareen - SLR 1972 (7) SC p.112.
- (5) G. Suresh Kumar, R. Srikumaran Nair Vs. Union of India and others - A.T.R. 1988(2) CAT 245.
- (6) N. Vishwanathan Vs. Union of India & Others LLJ 1983 (2) p. 36 - Madras High Court.

15. The learned counsel for the respondents also cited the following authorities in support of their case: -

- (1) Union of India Vs. H.N. Kirtania 1989 (2) SLJ (SC) 44.
- (2) Gujrat Electricity Board Vs. Atma Ram Sungomai Poshani - Judgement Today 1989 (3) S.C. 20.
- (3) Kamlesh Trivedi Vs. ICAR & Another - 1988 (8) ATC (PB) 253.
- (4) Madan Lal Kapil Vs. Union of India 1989 (1) ATR (Jodhpur) 10.
- (5) S. Apparao Vs. D.R.M. SE Railway (Hyderabad) 1989 (2) ATLT 33.
- (6) Harish Chandra Srivastava Vs. Union of India and Others - 1987 (4) ATC 638.
- (7) Shri Hari Singh Vs. Union of India & Others - SLJ 1990 (2) (CAT) (Jodhpur Bench) p. 283.
- (8) Man Mohan Das Vs. Union of India & Others - A.T.R. 1990 (1) C.A.T. 68.
- (9) P.P. Dhanka Vs. Union of India & Others - 1988 (8) ATC 901.

16. It is not necessary to go into details about the citations referred to by both the parties. It is well settled proposition of law by now that transfer of a Government servant, who is posted to a transferable post, is an incidence of service and that the employer is the best judge of utilizing his services. Transfer is not a punishment as it is not included as one of the penalties in the CCS (CCA) Rules, 1965. The scope of interference is limited inasmuch as the courts should not interfere in the judgement exercised by the administrative authorities unless the impugned transfer order has been passed in violation of the statutory rules / instructions or having been passed by an authority ^{which was} ~~who~~ was not competent to pass such order or it has been passed on extraneous or collateral grounds or suffers from the vice of mala fides on the part of the authority who had passed or approved the order.

17. In the case of UNION OF INDIA Vs. H.N. KIRTANIA (Judgement Today 1989 (3) S.C. 131) decided on 12.7.1989, the Hon'ble Supreme Court held:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on grounds of mala fides."

18. In GUJARAT ELECTRICITY BOARD AND ANOTHER Vs. ATMARAM SUNGOMAL PUSANI (Judgement Today 1989 (3) S.C. 20), the Hon'ble Supreme Court observed as under: -

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No Government servant or an employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to the other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary

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in public interest and efficiency in public administration. Wherever a public servant is transferred, he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance of the transfer order, he would expose himself to disciplinary action under the relevant rules as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

19. In view of the above latest decisions of the Hon^{ble} Supreme Court and the fact that the charge of mala fides has not been established and there is no violation of any statutory rules or instructions having statutory force, we see no merit in this application, which is accordingly rejected at the admission stage itself. Parties will, however, bear their own costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER(A)

23.7.1990.