

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 20.8.92

DA 1572/92

S.S. KAPOOR

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI R.C. AHUJA.

For the Respondents

... SHRI M.L. VERMA.

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

J_U_D_G_E_M_E_N_T_

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

The applicant is aggrieved by the order dated 1.4.92 by which the applicant was transferred from Faridabad to New Delhi. He also made representation but to no effect. He has claimed the relief that the impugned transfer order be quashed and the respondents be directed to retain the applicant in the same post and work at the office of respondent No2 as UDC.

2. The applicant is UDC and is working at Faridabad in the office of Directorate of Marketing and Inspection

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which is under the Ministry of Rural Development, Krishi Bhawan, New Delhi. The case of the applicant is that since he extended some help to one of the employees Smt. Savitri Devi so out of that motive in order to harrass him he has been transferred. The respondents have also transferred by the order dated 7.5.92 one post of UDC from Faridabad to the Ministry of Rural Development, New Delhi. It is also stated that the order has been issued by Agricultural Marketing Adviser in a malefide manner. It is therefore stated that he is not competent to issue transfer orders of the applicant from the Directorate to the Ministry at New Delhi. According to the applicant, no such order can be issued by respondent No.3. He has also stated that he will be inconvenienced by the said transfer order and his family will be disturbed.

3. The respondents contested the application and stated that the transfer has been effected in public interest. The applicant stand transferred from the DMI, Faridabad on his receiving the order on 2.4.92. It is stated that the orders concerning reversion of Smt. Savitri Devi has nothing to do with the applicant. The said employee has filed an application before the Tribunal, which is pending there. The Head of the Department, the Agricultural Marketing Adviser (respondent No.3) was competent to prescribe the Headquarter of the

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applicant. Before passing the orders the concerned authority in the Ministry of Rural Development was also consulted. All the posts of UDC in the Head Office and Branch Head Office of the Directorate of Marketing and Inspection are from Central Secretariat Clerical Service and are controlled by the Ministry of Rural Development. The Ministry of Rural Development is competent to shift any post under their control. In the exigencies of the public service any employee could be transferred to any place. The applicant is liable to serve anywhere in India. In the rejoinder filed by the applicant he has reiterated the averments made in the OA.

4. I have heard the learned counsel for the parties at length and have gone through the records of the case. Though the transfer order of the applicant is dated 1.4.92 and has been passed by the Agricultural Marketing Adviser but there is a subsequent order issued by the Ministry of Rural Development that one post of UDC has been transferred from Directorate of Marketing and Inspection (Headquarters) Faridabad to Ministry of Rural Development proper w.e.f. 1.4.92. The applicant has also made a representation dated 10.4.92. The Ministry of Rural Development has also endorsed this transfer order and he was directed to join his duties at the transferred place. The ground taken by the applicant

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is that respondent No.3 is not competent to pass a transfer order, therefore, has no basis. The Ministry of Rural Development have duly endorsed this order and there is also an averment to this effect in the counter itself. The contention of the applicant is that the transfer has been effected in the malafide manner and the allegations of malafide are levelled against respondent No.3. The basis of this allegation is that the applicant has taken active part in getting the grievance of the co-employee's redress and agitated the matter. However, the applicant had no such grievance with respondent No.3 then he could have very well represented the same under JCM and CA Scheme of the Government. In the representation made by the applicant dated 10.4.92 there is no mention of any such allegation against respondent No.3. However, it is admitted to the applicant that if there was any administrative reason then junior-most or senior-most UDC should have been transferred. Thus, the allegation of malafide is only averred in the application for the first time and has no document to support this fact. Even Smt. Savitri Devi has not filed any affidavit to support ^{of} the applicant.

5. The post of UDC has already been transferred to the Headquarters at New Delhi in the Ministry of

Rural Development. The applicant has been asked to join at Delhi. Delhi is nearer to Faridabad. The applicant cannot question the right of the respondents in posting him to New Delhi as he has all India service liability. Moreover, he has been shifted to the Ministry of Rural Development proper. The applicant cannot say that he should be posted at a particular place. It is for the respondents to find who is the person best suited and the seniority at the station is not to be counted in the matters of transfer. The scope to interfere in the matters of transfer is very limited unless and until the transfer has ^{been} effected in a malafide manner. When the allegation of malice in law or fact are not substantiated, the transfer cannot be said to be malafide. The Hon'ble Supreme Court has considered the matter of transfer in a number of cases in the case of Gujarat Electricity Board Vs. Atma Ram Sungomal Poshani (AIR 1989 SC 1433) and State of Andhra Pradesh Vs. Sadanandan (AIR 1989 SC 2060) specifically laid down that transfer has to be least interfere with unless it is arbitrary or malafide. The transfer cannot be said to be arbitrary because the applicant has been transferred. The applicant has to establish something more to show hostile discrimination against him and further that there is a violation of established guidelines or rules with regard to transfer from one Headquarter to the Ministry. In fact, there is

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now no post of UDC in the Headquarter at Faridabad. The post has been recalled by the Ministry of Rural Development. Thus, the applicant cannot assail such an order because it is a part of service conditions to serve anywhere in India.

6. The respondents have alleged that the transfer is in public interest and what is public interest is to determine from the facts and circumstances of the case. The employee cannot judge the same from his own angle as held in Manmohan Dass Vs. UOI (1990 (1) ATR 69).

7. The representation made by the applicant has been duly considered by the Ministry of Rural Development and they have rejected the same. The posts of UDC are from CSCS and are controlled by the Ministry of Rural Development. The Ministry of Rural Development is competent to shift any post under their control. The order of transfer dated 7.5.92, therefore, is not open to challenge by the applicant as it is for the respondents to utilise the post at a place where work is required. The applicant is not being lower^{ed} down in his status or pay.

8. Taking all these facts into account, I find that there is no force in this application and the same is dismissed leaving the parties to bear their own costs.

J.P. Sharma
20/8/92
(J.P. SHARMA)
MEMBER (J)