

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITION BENCH

ALLAHABAD

Dated: This the 14th day of February, 1997

CORAM : Hon'ble Mr. S. Das Gupta AM
Hon'ble Mr. T. L. Verma JM
- - - - -

ORIGINAL APPLICATION NO.1224/96

A. K. Shukla aged about 42 years,
son of Sri R. N. Shukla,
resident of 586-Triveni Vihar,
New Cantt. Allahabad- - - - - Applicant

C/A Sri R. C. Sinha

Versus

1. Union of India through
The Director, General (Adm),
Defence Estates, Govt. of India,
Ministry of Defence, West Block-IV
Sector-1, R. K. Puram, New Delhi.
2. The Director, Defence Estates,
Ministry of Defence, Headquarter
Central Command, Lucknow Cantt.
3. Shri Sujay Das Gupta,
Defence Estates Officer,
Allahabad Circle,
Allahabad Cantt- - - - - Respondents

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G/R Sri N. B. Singh

ORDER

By Hon'ble Mr. S. Das Gupta AM

This application has been filed by Shri A. K. Shukla, a peon in the office of Defence Estates Officer (D. E. O.), Allahabad challenging the order dated 22.10.1986 by which he has been transferred from D.E.O., Allahabad to D.E.O., Mhow vice Shri Sukh Nandan who has been transferred from D.E.O., Mhow to D. E. O., Allahabad vice the applicant. He has prayed that the said order be quashed and respondent nos. 2 and 3 be directed not to interfere in the smooth functioning of the applicant at Allahabad.

2. The applicant was initially appointed as peon in 1983 in the office of D.E.O. Jabalpore. In July, 1985 he applied for transfer to Allahabad on personal grounds. This however was not responded to. He again represented in June 1987 for transfer to D.E.O. Allahabad or to Lucknow if transfer to Allahabad was not possible. His request was accepted and he was transferred on 7.2.1988 from D.E.O., Jabalpur to D.E.O. Allahabad. The applicant claims that since his posting at Allahabad he has been doing all his allotted duties sincerely and even the work of L. D. C. which was given to him. However, He incurred displeasure of the respondents on account of activities as Vice-President of All India Defence Employees Association-Allahabad branch. In this capacity, it is stated, he had been taking up the cause of the workers with the respondent no.3. Some of the grievances of the workers relate to the alleged threatening and torture by the respondent no.3 and as Vice-president of the association, applicant

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had to take up these matters. As a result, it is alleged, respondent no.3 started harassing the applicant and requested the respondent no.2 to transfer him from Allahabad. This, it is alleged, has resulted in the issuance of the impugned order by which has has been transferred from Allahabad to Mhow, which is more than 1000 Km from Allahabad.

3. The impugned order of transfer has been challenged on several grounds. In the first place it has been pleaded that it was passed on the ground of mis-conduct without giving the applicant any opportunity of being heard. The second plea is that the order has been passed in contravention of the guide-lines. The third plea is that the order has come in the mid ~~of~~ academic session without considering the problems of the applicant whose parents are very old and ill. Lastly the order has been challenged on the ground of malafide. It has been alleged that the order of transfer has been passed in colourable exercise of power on the applicant's refusal to do private work of respondent no.3 and also trade union activities. It is also alleged that the order has been issued to accomodate Sri Sukh Nandan.

4. The respondents have appearad and contested the case by filing counter affidavits. One C. A. has been filed by the Joint Director, Defence Estates on behalf of the respondents 1 and 2 while separate C.A. has been filed by the respondent no.3 who has been impleaded by name. In the Counter affidavit filed on behalf of respondents 1 and 2, it has been submitted that the applicant represented for transfer from Jabalpur to

Allahabad on the ground that his father was ill and he wanted to be posted near his home station. Applicant's request was accepted and he was transferred to Allahabad where he joined on 7.2.1988 and thus by the time of ^{Issue of} ~~impugned~~ order of transfer he had completed more than 8 years' service at Allahabad. It has been further stated that Sukh Nandan had requested for his posting at ~~Allahabad~~ Jabapur as his wife is suffering from heart disease. On a consideration of his request, the department considered his posting at Allahabad. There was no vacancy at Jabapur or nearby. The further submission is that the applicant had expressed his willingness for being posted anywhere in India through his letter dated 18.1.1990 (CA-1) and therefore, he should have no grievance if he is posted to Mhow, which is in his home state Madhya Pradesh. It is stated that tenure of a group 'D' employee is 3 to 5 years and the applicant having completed 8 years cannot have any grievance. Copy of the relevant guide-lines has been placed at annexure CA-3.

5. Denying allegation of malafide, it has been stated in the C.A. filed on behalf of respondents 1 and 2 that the applicant was charge-sheeted for consuming liquor within the premises in August 1989. On 12.9.1996 he was directed to deliver some official letters to certain persons at Kydgunj. The applicant declined to deliver the same on the ground that he has no cycle/vehicle with him and in the process misbehaved with the respondent no.3. A cycle was provided to him and he left office at about 3.00p.m. alongwith the letters, but did not ^{re-}turn at all on

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that day. On the next day he returned the letters undelivered and submitted leave application for the date. He was present in the office on the next working day i.e. 16.9.1996 but still refused to deliver the letters and such refusal was tantamount to dereliction of duty and gross insubordination. He again absented himself from 17.9.1996 onwards. Letters could be delivered through another person only on 18.9.1996. The respondents have alleged that the applicant is rude, insubordinate, arrogant and he has misbehaved with the respondent 3. The further allegation is that he leaves office without permission and has often been found reading newspaper and sleeping during office hours in gross breach of office discipline. The applicant showed no improvement despite being verbally cautioned (emphasis supplied).

6. The further submission of the respondents is that the applicant's transfer to Mhow is an administrative measure in public interest and consequently the applicant's claim of being Vice-president of All India Defence Employees' Association cannot be a bar on his transfer to any place in India in the exigency of service nor he can claim any privilege on this ground.

7. In the C. A. submitted by the respondent no.3 personally, he has denied that he ever asked the applicant to do any personal work and that the allegation made against the respondent no.3 regarding malafide are totally false and concocted. He has also narrated the incident of the alleged refusal on the part of the applicant to deliver certain letters on 12.9.1996 and thereafter. He has also stated that the applicant is,

W.L.C. rude, insubordinate, arrogant and misbehaved with the respondent 3.

rude, insubordinate, arrogant and he misbehaved with the respondent no.3. He leaves office without permission and even found reading newspapers and sleeping on duty. hours (emphasis supplied). He has denied that applicant had ever approached him in the matter of grievance of the workers and that he had been mentally torturing or harassing the applicant or the workers of the office.

8. In the rejoinder affidavit filed by the applicant, it has been pointed out that although his home district lies in Madhya Pradesh, he belongs to REWA which is only 120 Km from Allahabad and that is why he had requested for transfer to Allahabad so that ^{he} could look after his parents who were seriously ill. He also pointed out that his willingness to be posted ~~to~~ anywhere in India was against the post of L.D.C. and not on the post of Peon. He has also brought out that one Nand Lal ^{Jabalpur} has been posted at ~~Allahabad~~ who had completed eight years, but has not been shifted. Sri Sukh Nandan could have been posted at ~~Allahabad~~ by transferring out Nand Lal and there was no need to post him to Allahabad as he had not requested for transfer to Allahabad. He also denied the allegation regarding his mis-conduct as alleged by the respondents in counter affidavit.

9. Both the parties have filed several supplementary affidavits, averments of which do not have much bearing on the controversy excepting one letter dated 3.6.1983 issued by the Director, Defence Lands and Cantt. Ministry of Defence laying down guid-lines for ~~the~~ transfer, which has been brought on record by the applicant through a supplementary rejoinder affidavit.

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10. It is well settled through cantena of decisions of Hon'ble Supreme court that transfer is an incident of service of a government employee and an order of transfer issued in the exigency of service in public interest cannot be challenged except on the ground of malafide or being in contravention of statutor rules.

11. The stand taken by the respondents is that the tranfer of the applicant is in public interest and in exigency of service. Had that been so, the application must fail as the ground taken by the applicant relating to his personal problems would be of no avail to him. The respondents have referred to the guidelines for transfer contained in the letter dated 12.6.1951 issued by the Ministry of Defence on the subject of transfer of Class III and Class IV personnel. In these guidelines, it has been inter-alia laid down that transfer would not ordinarily be made before the official has completed 3 years in an office. The applicant on the other hand has brought on record a copy of the letter dated 3.6.1983 ^{issued} by the Director, Defence Land Cantt. of Ministry of Defence, which has specifically stated that group 'D' employees should not normally be transferred from one station to another except in very special circumstances, like adjustment to achieve deficiencies, promotion and exigency of service or as an administrative requirement(emphasis supplied). It would thus appear that 1951 circular relied upon by the respondents is no longer extant and that under the revised guidelines issued through letter dated 3.6.1983, no tenure has been prescribed for goup 'D' employees and they are to be transferred only in special circumstances.

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12. One of the special circumstances for transfer of group 'D' employee enumerated in the aforesaid letter dated 3.6.1983 is exigency of service or the administrative requirement. Thus, if the applicant, who is a group 'D' employee has been transferred in exigency of service or in administrative interest, the order of transfer cannot be held as irregular merely because group 'D' employees should not normally be transferred in accordance with the guidelines issued by the department. It is settled law that a transfer order cannot be quashed merely because certain guidelines have been contravened, though the employers are expected to comply with their own guidelines. The question before us is, therefore, to see whether the order of transfer of the applicant is genuinely in exigency of service in administrative interest or it is in a colourable exercise of power by the respondents, as alleged by the applicant.

13. The respondents have themselves made a number of allegations in their counter affidavits regarding mis-conduct and misbehaviour of the applicant. Various relevant portions of the counter affidavits have been emphasised by us. We are of the view that proper course of action to deal with a delinquent employee who is guilty of insubordination or dereliction of duty is to proceed against him departmentally imposing appropriate penalty including dismissal or removal from service on the basis of proven charges. Transfer of such employee from one office to another like shifting a rotten egg from one basket to another serving no useful purpose. It would appear from the averments of the respondents themselves that they are adopting an easy way out to deal with an undesirable persons by merely shifting him to another office

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xxxxxxthe xxxxx office. If the applicant is of such a nature as alleged by the respondents, such move would be wholly counter productive as he may indulge in similar behaviour in the office he has been transferred to.

14. The transfer of a public servant does not constitute penalty unlike the disciplinary action which is subject to the provisions contained in Article 311 of the Constitution of India. Transfer is an administrative action which is ~~not~~ subject to such provision. However, no administrative action will bear judicial scrutiny if it is in colourable exercise of power. In that case, it would be violative of Articles 14 and 16 of the Constitution of India. While a transfer is not a penalty, it can be penal in nature. Power to impose penalty under the disciplinary rules and the power to order transfer of an employee are normally vested in the same authority and in such a case whether the impugned order of transfer is by way of penalty ^{which} calls for ~~an~~ interference or it is for an exceptional administrative reason becomes difficult to determine. The question, therefore, is to be answered with reference to the pleadings on record and after examining the reasons provided by the respondents themselves for the transfer of the employee.

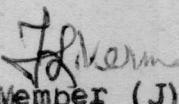
15. From the pleadings in the CA it is crystal clear that the foundation of the order of transfer of the applicant is alleged misconduct / of misbehaviour, details of which have already been referred to supra. We, therefore, come to

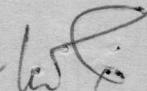
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an irresistible conclusion that the transfer of the applicant is really a penal measure though the order has been issued in the garb of administrative interest. This is violation of the law laid down by the Hon'ble Supreme Court in the case of State of U.P. Vs. Jagdeao Singh 1984 SCC(Suppl) P.413 in which it was held that a transfer by way of punishment is not tenable in law. It is apparent that the authorities concerned, for reasons not disclosed, are not willing to initiate disciplinary action against the applicant for misconduct and misdemeanour and have, therefore, resorted to the subterfuge of transfer to get rid of ^{an} undesirable employee. The order of transfer is clearly punitive in nature.

16. In view of the foregoing, we held that the impugned order of transfer is not in genuine administrative interest but is a colourable exercise of power by the respondents ~~by the respondents~~ and is punitive in nature. The impugned order is, therefore, quashed with all consequential benefits. Nothing in this order, however, shall preclude the respondents from initiating appropriate action against the applicant for the alleged misconduct and misdemeanour and to take appropriate action on the basis of proven charges.

17. The parties shall, however, bear their own costs.


Member (J)


Member (A)

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