

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 348 of 1996

Allahabad this the 8th day of May

Hon'ble Mr. D.S. Baweja, Member (A)

Bharat Kumar Dubey S/o Sri Upendra Narayan Dubey
Electrician, Higher Scale Grade II, R/o House No. 1
Sadar Bazar, Jhansi (U.P.)

Applicant

By Advocate Sri K.P. Singh

Versus

1. The Union of India, through Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Head Quarter, Kashmir House, New Delhi.
3. The Chief Engineer, Central Command, Lucknow.
4. The Chief Engineer, Jabalpur Zone, Jabalpur.
5. The Commander Works Engineer, Rani Luxmibai Marg, Jhansi, Cantt. Jhansi.
6. Sri B. Sridharan, Commander Works Engineer, Rani Luxmibai Marg, Jhansi, Cantt. Jhansi.
7. The Garrison Engineer, Babina, Distt. Jhansi.

Respondents.

By Advocate Sri S.K. Anwar on behalf of
Sri N.B. Singh

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

The applicant while working as Electrician Highly Skilled Grade II under the Garrison Engineer, Babina, Jhansi has been ordered to be transferred to Meerut as per impugned order dated 19.12.1995 and taking the applicant relieved from 23.12.1995. The applicant has filed the present O.A., challenging the transfer order, seeking the following reliefs;

- (a) quashing the impugned transfer order dated 19.12.1995.
- (b) directing the respondents to allow the applicant to join and perform duty in the office of Garrison Engineer, Babina, Jhansi even if the applicant has been struck off the strength of the office
- (c) direct the respondents to pay the salary and other allowances from January, 1996 onwards.
- (d) direct the respondents to treat the period from December, 1995 onwards as on duty.

2. The applicant has challenged the impugned transfer order, advancing the following grounds;

- (a) The applicant is an industrial worker and his seniority unit ^{is} functions Chief Commander works wise. The applicant, however, has been transferred to Meerut in another seniority unit thereby effecting the promotion prospectus of the applicant.
- (b) The applicant is ^{and} an elected office bearer of the recognised union, therefore, entitled for protection against transfer as per the extant rules laid down as per letter dated 04.10.93.

(c) The transfer has been effected in the mid session disrupting the education of the children of the applicant. The applicant has been also put into problem of looking after the aged parents who were staying with the applicant.

(d) The applicant has made several complaints to the higher authorities, highlighting the corrupt practices of the Commander Works Engineer, ----- Sri B. Sridharan (respondents no.5 and 6). This has annoyed the respondent no.6 and he has managed the transfer of the applicant to punish the applicant and victimise the active worker of the trade union. The transfer ^{order} has been ~~passed~~, therefore, ^{passed} with mala fide intentions.

3. The respondents have contested the claim of the applicant through the counter-affidavit. The respondents have also filed supplementary counter-affidavit in reply to the rejoinder ^{reply} filed by the applicant of the counter-affidavit. The respondents contend that the transfer order has been passed in public interest on administrative grounds. The respondents have detailed the reasons in the counter-affidavit based on which the transfer of the applicant in the interest of administration was warranted. It has been brought out that the applicant has been indulging himself in unwarranted activities which was effecting the discipline in the entire area and causing unrest among the workers. The various incidents and other activities have been detailed in the note at C.A.-2. It is also stated that for want of witnesses, the administration was helpless to take action against the applicant. As regards the claim of

the applicant that he was a protected worker in the matter of transfer, the respondents submit that the Union was required to furnish the names of five office bearers to the concerned administrative authority and no such list was furnished by the Union. In view of this, at the time of transfer, the applicant was not a protected worker. As regards the plea of transfer in the mid session, the respondents contend that the academic session of 1995-96 is already over and there is no merit in the contention of the applicant. The respondents ^{have} denied the receipt of any of the complaints stated to have been made by the applicant against respondent no.5. The respondents ^{have} strongly refuted the allegations made against the Commander Works Engineer stating that the same have no relevance as the transfer order has been passed by the higher authority in the interest of administration due to criminal activities of the applicant.

4. The respondent no.6 has been made a party by name. He has filed a separate counter-affidavit, strongly refuting the allegations of malafide against him and ^{submitting} that the order has been passed on the administrative grounds. He also submits that he has no knowledge of any complaint having been made against him by the applicant. He further submits that due to criminal and unwarranted activities of the applicant, unhealthy atmosphere was created in the area under Garrison Engineer, Babina and he was no way left except to refer the matter to the higher authorities for transfer of the applicant on administrative grounds. The transfer has been ordered by the higher authority after considering all the facts. It is also ^{refuted} that at the time of.

transfer, the protection was available to the applicant being an office bearer of the recognised union.

5. The applicant has filed rejoinder-affidavit for the counter-affidavit of the respondents. However, he has not filed any rejoinder-affidavit for the counter-affidavit of the respondent no.6. The applicant has controverted the averments of the respondents and re-affirming his grounds advanced for challenge of the impugned order. The applicant has also filed a supplementary rejoinder, stating that some of the documents which were not available at the time of filing of main rejoinder ~~are~~ required to be brought on record. The applicant has again reiterated that the transfer has been manipulated by the Commander Works Engineer. He also contends that there was a C.B.I. raid at the house of the Commander Works Engineer and subsequently he was also ~~put~~ under suspension thereby confirming the effect of the complaints made regarding corrupt practices of the respondent no.6 to the higher authorities. The applicant also asserts that the note brought at C.A.-2 has been prepared under the pressure of Commander Works Engineer and all the details have been fabricated as they are not connected with the office of the Garrison Engineer, Babina which is located 30 k.m. away.

6. Heard, Sri K.P. Singh, learned counsel for the applicant and Sri S.K. Anwar proxy counsel to Sri N.B. Singh learned counsel for the respondents. The material brought on record has been also carefully examined.

7. During the hearing, the learned counsel for the applicant has sought reliance on the following judgments/orders;

- (1) State of U.P. and another Vs. Sheshmani Tripathi (1991) 2 U.P.L.B.E.C. 1303 (Allahabad High Court)
- (2) Pradeep Goyal Vs. Regional Manager, Region II Ind State Bank of India, Zonal Office, Meerut (1992) 1 U.P.L.B.E.C. 223 (Allahabad High Court)
- (3) State of U.P. Vs. Jagdeo Singh 1985 S.C.C. (L&S) 44
- (4) Chattoo Vs. U.O.I. (1989) 11A.T.C. 372 (Calcutta Bench)
- (5) E.P. Royappa Vs. State of Tamil Nadu A.I.R. 1974 S.C.C. 555.
- (6) Order dated 14.2.97 of this Bench in O.A. 1224/96 A.K. Shukla Vs. U.C.I.
- (7) Order dated 14.2.92 of this Bench in O.A. 1318/91, Sukhpal Singh Vs. U.O.I.
- (8) Order dated 05.6.97 of this Bench in O.A. 1150/96 Hamid Ahmad Vs. U.O.I.

8. The Hon'ble Supreme Court in catena of judgments has laid down the scope of judicial interference in the matter of transfer. In the case of 'State of M.P. and another Vs. S.S. Kaurav-- and others 1995 S.C.C. (L&S) 666', Their Lordships ^{have} held that the Court/Tribunal is not appellate forum to decide on transfers of officers --- on administrative grounds. ^{The} wheels of administration should be allowed to run smoothly and the Court/Tribunal is not expected to interdict the working of the administrative system by transferring the officers to the proper places. It is for the administration to take appropriate decision and such decision ^{shall} ~~was~~ stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundations. In the case of...pg. 7/-

Rajendra Roy Vs. Union of India and another 1993 S.C.C. (L&S) 138, it is held by their Lordships in para 7 that ^{often} the order of transfer ~~causes~~ a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post, an order of transfer is ^a normal consequence and personal difficulties are the matters for consideration of the department, unless such an order is passed malafidely or in violation of the rules of service ^{and} /guide lines for transfer without any proper justification, the Court/Tribunal should not interfere with such order of transfer. In the case of U.O.I. Vs. S.L. Abbas 1994 S.C.C. (L&S) 230, the Lordships have been observed that Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. Keeping in view the law laid down by the Hon'ble Supreme Court with regard to judicial interference when the transfer order is challenged, the various contentions raised by the applicant shall be examined to identify if any of the parameters ~~exist~~ exist warranting judicial interference.

9. The first ground of challenge is that the applicant has been transferred in the mid session disrupting the education of the children and also putting the applicant in difficulty with regard to looking after the aged parents who are staying with him. As regards the education of the children, the contention of the applicant does not appear to be tenable as the applicant was transferred in December, 1995 and he filed the present O.A.

in March, 1996 when the school session would have been almost over. However, it is noted that the applicant has not made any prayer for seeking a relief for staying the operation of the transfer order till the completion of school session. Infact the main relief does not reflect that ^{the} purpose of filing this O.A. is to allow the applicant to complete the school session of his children. The applicant has challenged the transfer order with a prayer to cancel the same. Any transfer is bound to cause - difficulties to the employee but the same cannot be the ground for challenge seeking judicial interference. This is a matter within the domain of the administrative authority to consider the difficulties of the employee who have been transferred. In this connection reference is made to what has been held by the Hon'ble Supreme Court in the case of 'Rajendra Roy (supra)'. Keeping these observations in focus, this ground of challenge does not have any substance.

10. The second ground^{of} attacking the transfer order is that the applicant is protected worker being an elected office bearer of the recognised union in terms of the instructions laid down by the respondents as per letter dated 04.10.93 and, therefore, the applicant could not be transferred. The applicant has contended that he was elected as an office bearer in the election held on 10.2.93 and subsequently during the year 1994 and 1995. The applicant in the rejoinder-reply has brought on record the copies of the letters indicating the election of the office bearers. The respondents, have, however, denied the contention of the applicant, stating that no general body meeting was held in 1994 and no permission was also granted for conducting the election.

The applicant has brought one document on record dated 10.1.94, which indicates that approval was given by the respondents for protection of five office bearers against transfer based on the election held in 1993. However, no such document giving approval, has been brought ^{on record} for the year 1994-95 in the same way as was issued as per letter dated 10.1.94. As per letter dated 04.10.93, until and unless approval is given by the competent authority for protection of the office bearers, the presumption for protection cannot be made. In view of the absence of any documentary evidence, I am unable to accept the submissions of the applicant that he was a protected worker at the time when the transfer was ordered. Apart from ^{this} ~~this~~ ground of challenging the transfer order, is not maintainable before the Tribunal as the applicant has pleaded that he is entitled for protection against the transfer under the provision of Industrial Disputes Act. The challenge of the transfer order on this ground can be made only before the appropriate forum as provided under the Industrial Disputes Act. Therefore, this ground of challenge is not maintainable before the Tribunal.

11. The third ground for opposing the transfer order is that the applicant is an industrial worker and is not **subject** to transfer out of the control of ^(C.W.E.) Commander Works Engineer as the seniority is maintained Commander Works Engineer unit wise. In the present case, the applicant has been transferred to another seniority unit. The applicant submits that the transfer to another ^{Engineers} Commander Works ~~office~~ is not only against the extant rules but has also seriously effected his promotion prospects as he was at sl.no.4 in the seniority list

under C.W.E., Jhansi while under C.W.E., Meerut, he will be at serial no.10 of the seniority list. The respondents have not denied this but ^{they} submit that the transfer of the applicant was warranted to another ^{seniority} unit in the interest of administration. The applicant has brought on record the guide lines dated 31.8.94 concerning the transfer. On going through the same, it is noted that the transfer from one ^{seniority} unit to the another seniority unit can be done on administrative ground by the competent authority i.e. Headquarter, Commandant Engineer, Central Command Lucknow. The rules also provide that Central Command will keep Engineer-in-Chief Branch, Army Headquarter informed of such cases of transfer. The respondents in the counter-affidavit have confirmed that the transfer has been ordered by the Central Command, Lucknow and necessary intimation of the same has been given to the Engineer-in-Chief Branch, Army Headquarter, New Delhi. Keeping these facts in view it is established that the applicant has been transferred to another seniority unit. It is now to be seen whether the transfer of the applicant from one seniority unit to another in the interest of administration was warranted by the reasons advanced by the respondents in the counter-affidavit. This aspect ^{been} has been examined in detail in subsequent paras.

12. The thrust of the attack of the applicant challenging the transfer order is that the applicant being office bearer of the recognised union had made several complaints to the higher authority, highlighting the corrupt practice of the Commander Works Engineer, Jhansi-respondent no.5 and 6 and this annoyed the respondent no.6. The respondent no.6 has managed to

get the applicant transferred to punish the applicant and victimise the office-bearer of the trade union. Before going into the merits of this contention, it will be appropriate at this stage to review the various judgments/orders cited by the applicant to support his case.

State of U.P. and another Vs. Sheshmani Tripathi: In this case, the petitioner was transferred because the complaint was made against him by his subordinate against whom action had been taken by the petitioner. It is held in this judgment that the transfer order passed merely on the ground that the ~~complaint~~ had been made by the subordinate officer, cannot be sustained. In case the complaint is made and if it is found to be correct, it is open to the government to take action against the official concerned but transfer is no solution to the problem. Such a transfer has been held arbitrary and without any basis.

2. Pradeep Goyal Vs. Regional Manager, S.B.I., Meerut; In this case, the petitioner was suspected to have been involved in fraudulent transaction. The petitioner was ^{not only} charge-sheeted for the alleged act of misconduct but was also transferred for the same reasons indicating in the transfer order. It is held that the transfer of the petitioner having been made due to alleged misconduct of suspected involvement in fraudulent transaction, without finalising the disciplinary proceedings, was obviously by way of punishment and such an order cannot be sustained.

3. State of U.P. Vs. Jag Deo Singh; Here the petitioner was transferred with the findings of misconduct of negligence which resulted in loss of special pay which he was getting. The Hon'ble Supreme Court has held that the transfer amounted to reversion by way of punishment which cannot be inflicted without complying with the provisions of Article 311.

4. Chattoo Vs. U.O.I. & Others; Here the applicant was transferred from one seniority unit to another seniority unit. Based on the facts disclosed by the respondents, it is inferred that the transfer was punitive in nature and could not be done without affording opportunity of representation, and, therefore, the transfer order was set aside.

5. E.P. Royappa Vs. State of Tamil Nadu and another ;

This judgment of the Hon'ble Supreme Court has been cited by the applicant to support his contention that the State action was not be actuated by extraneous and irrelevant consideration. The applicant has draw^{ing} attention to para 85 of the judgment where the Hon'ble Supreme Court has held that Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. Any decision ba^{se}d on ^{the} extraneous considerations and outside of the area of permissible considerations, would amount to malafide exercise of power.

6. A.K. Shukla Vs. U.O.I. & Others; In this case it is held that from the pleadings in the counter-reply, it emerges that the foundation of the transfer order is alleged misconduct or misbehaviour and the transfer order is, therefore, p^{er}sonal in nature in the garb of administrative interest.

7. Hamid Ahmad Vs. Union of India ; In this O.A. the respondents failed to disclose the reasons for transfer warranting transfer in the public interest. Based on the facts disclosed, it has been viewed that the transfer was not actuated in the interest of administration but by other consideration.

8. Sukhpal Singh Vs. U.O.I. ; Here it is held that though the transfer order is passed by the competent authority but the same was not in the public interest and was by way of punishment caused due to trade union activities. The transfer was resorted to as a remedy to get rid of an undesirable employee.

As indicated earlier, the Hon'ble Supreme Court has laid down the parameters for judicial interference in the matter of transfer. The scope of judicial interference ~~is~~ is limited when the transfer order is challenged on account of violation of statutory rules or alleging malafide or colourable exercise of power due to extraneous consideration. From the review of the various judgments/orders cited by the applicant ^{above}, it would be seen that ^{the} individual cases of challenge of the transfer have been examined based on

the law laid down by the Hon'ble Supreme Court. Keeping in view what is held by the Hon'ble Supreme Court, each case of challenge of transfer order has ^{therefore,} to be considered on its ^{own} merits to find out if any of the grounds exist for judicial interference. The decision of the various judgments/orders cited, therefore, cannot be applied directly to the case of the applicant. The present case has to be examined on its own merits based on the facts disclosed by either parties to identify whether the grounds advanced for challenge, call for judicial interference.

13. The applicant has alleged malafide against the respondents no.5 who has been also made a party by name alleging that he has managed ^{the} transfer of the applicant with the higher authorities. The applicant has averred that he had made several complaints to the higher authority bringing out the irregularities and corrupt practices of the respondent no.6. The applicant has also submitted that subsequent to these complaints there was a C.B.I. raid at the residence of the respondent no.6 and he was also put under suspension, proving that the complaints made by the applicant with regard to corrupt practices, were genuine. The applicant asserts that these complaints made to the higher authority annoyed ^{and he got him transferred} the respondents no.6 to punish the applicant and victimise the active worker of the trade union. The official respondents have denied the receipt of any of the complaints said to have been made by the applicant. The respondent no.6 has also refuted that he has arranged the transfer of the applicant on account of the complaints being sent to the higher authority. The official respondents have also taken a plea that the suspension of respondent no.6

has no relevance with the transfer of the applicant which has been ordered by the competent authority in the interest of administration. Keeping in view the facts brought by the either side, I am not inclined to accept the contention of the applicant that respondent no. 6 has managed the transfer of the applicant. It is admitted fact that the transfer has been ordered by the Commandant Engineer, Central Command, Lucknow. The applicant has not alleged any malafide against him. If the respondent no.6 has been able to manage the transfer of the applicant with the respondent no.3, then it is obvious that respondent no.3 is also involved in the malafide action and he has transferred the applicant without application of his own mind. Since no malafide has been alleged with the authority who has transferred the applicant, the ground taken by the applicant ^{challenging the order} transfer based on the malafide action of respondent no.6 is not sustainable.

14. The respondents have disclosed the reasons prompting the transfer of the applicant in the interest of administration. The details have been brought out in the note at C.A.-2. I have carefully gone through the note and find that it covers the various incidents which had taken place several years before the transfer under the reference. The only latest incidents to highlight the criminal activities of the applicant have taken place on 11.7.95 and 23.7.95. From the facts brought out, it is noted that the incidents took place at Jhansi while the applicant was posted at Babina. The note has been prepared by the Garrison Engineer, Babina. It is not clear as to how he has prepared the note giving the details of the incident which had taken place beyond his jurisdiction. The incidents mentioned, have taken place out-side the office and are criminal in nature for

which it is stated that F.I.R. had been lodged. It appears that these two incidents have formed the basis for the transfer of the applicant. However, keeping in view the facts as has been brought on record, I am unable to accept the contention of the respondents that the transfer based on these incidents, was in interest of administration. If the applicant is involved with the criminal activities and F.I.Rs have been lodged, law has to take his own course. In fact the note under reference conclude that the applicant is guilty for the incidents without conducting any inquiry and giving opportunity to the applicant. In fact there is no whisper of averment whether even a fact finding inquiry was conducted. The respondents have further submitted in the note that for want of witnesses, the administration was helpless to take any action against the applicant. However, the note does not bring out as to what action had been proposed and how the same could not be progressed. It is also not stated whether any disciplinary action was initiated against the applicant which could not be progressed due to witnesses not coming forward. On careful consideration of the note, I am inclined to hold the view that by the transfer has been used as a tool to get rid of away from the Babina/Jhansi instead of taking disciplinary action against him. Further, it is also noted that the note under reference had been prepared on 25.5.60 after the transfer has been ordered. It is also noted that the report was sent on to the higher authority which he formed the opinion that the transfer was warranted to maintain the discipline and to prevent any unrest amongst the workers. It appears that the note has been prepared as an after thought after the transfer has been filed by the applicant. Keeping in view, I am unable to persuade myself to accept the contention of the respondents that the transfer has been in the interest of administration. If the applicant was required to be shifted from the present

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was not considered advisable and his continuing at Babinal in the interest of administration, the contention of the respondents could have been accepted if the necessary disciplinary proceedings had been initiated against the applicant and then transferred to another place. ^{As stated earlier} the note does not bring out that any disciplinary proceedings ^{were proposed or} had been initiated against the applicant. In consideration of these facts and circumstances, the transfer order is not sustainable and deserves to be quashed.

15. ^{also} The applicant has made a prayer, seeking the relief to direct the respondents to allow the applicant to join and perform the duty in the office of Garrison Engineer and to pay the salary and other allowances to the applicant from January, 1996 onwards. The applicant has also sought the relief of directing the respondents to treat the entire period from December, 1995 onwards on duty. I am unable to find any merit in these reliefs prayed for. It is noted that no interim order was granted. Once the applicant has been transferred, he is expected to join the place of posting incase the interim order is not granted or the representation of the applicant had been not favourably considered by the respondents. Under these circumstances, the the salary and treating the intervening period ^{governed} to be on as per the extant rules. In this con-
reliance is placed on the judgment of the Court in the case of 'Gujarat Electricity Atma Ram Sungoinal Poshani A.E.R. 1989 S.' wherein it is held that in the absence of the public servant has no justification to evade the transfer order. In view of this, is proposed to be passed in respect of the

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16. In the result of the above, the O.A. is partly allowed and the transfer order dated 19.12.95, passed by the respondent no.6 at Annexure A-1, is quashed. No order as to costs.

Member

A. H. G. S.
(A)

/M.M./