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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 6<sup>th</sup> day of December 1996

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

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ORIGINAL APPLICATION NO. 785/96

Mohit Pradhan son of M. N. Pradhan,  
resident of 50-Tagore Town,  
City and District Allahabad.----- Applicant

C/A Sri B. D. Madhyan

VERSUS

1. Union of India through Secretary,  
Ministry of Finance, New Delhi.
2. The Chairman of Central Board of Direct Taxes,  
North block, New Delhi.
3. Chief Commissioner, Incometax,  
Lucknow.
4. Commissioner of Incometax, Allahabad.
5. Additional Commissioner of Incometax,  
Allahabad Range, Allahabad----- Respondents

C/R Sri Vijay Bahadur Singh

blc.

ORDER

By Hon'ble Mr. S. Das Gupta AM

This O.A. has been filed under section 19 of the Administrative Tribunals Act, 1985, challenging an order dated 15.7.1996 passed by the Chief Commissioner of Incometax, Lucknow (respondent no.3) whereby the applicant has been transferred from the office of the Commissioner of Incometax to the Incometax Appellate Tribunal, Allahabad. He has prayed that the aforesaid order be quashed and a direction be issued to the respondents not to interfere with the applicant's functioning as Incometax Officer, Ward No.6-Allahabad and to permit the applicant to function and discharge duties on that post as he had till 29.3.1996.

2. The applicant's initial appointment in the Incometax department was as an Inspector. In 1993, he was promoted to the post of Incometax Officer and was eventually posted in Ward No.6, Allahabad from 6.6.1996. He was continuing till 15.7.1996 on which date the impugned order was issued, transferring him as Junior Authorised representative (J.A.R. for short) in the Incometax Appellate Tribunal ( I.T.A.T. for short ) Allahabad. Thereafter, a consequential order no.13 dated 18.7.1996 was passed by the respondent no.3 i.e. Commissioner of Incometax, Allahabad, directing the applicant to hand over charge to Sri Bishan Lal, Incometax Officer, Ward no.1, Allahabad. However, on the next date i.e. 19.7.1996 the earlier order was superseded by order no.14 by which Sri Jokhan Ram Gupta was to take charge from the applicant. However, Sri Gupta proceeded on leave and on 19.7.96 itself the Asstt. Commissioner of Incometax (admn), Allahabad sent a letter to the applicant, directing him to comply with.

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the order dated 15.7.1996 and to hand over charge to Shri Bishan Lal, Incometax Officer.

3. The impugned order of transfer has been challenged by the applicant mainly on the ground of malafide. The circumstances on which, according to the applicant, created bias against him on the part of the respondents, requires to be stated in some detail.

4. According to the applicant, he had received several complaints regarding irregular functioning on the part of Sri R.K.Singh, Tax Assistant posted under him. On 20.2.1996, the applicant requested Sri R.K.Singh to supply the demand collection register pertaining to the ward for perusal of stock taking. The said person, however, not only declined to supply the register, but also behaved in an unruly manner with the applicant. The applicant issued a show cause notice to the said Shri R.K.Singh, directing him to submit his reply by 25.2.1996. Copy of this show cause notice also endorsed to the Addl. Commissioner of Incometax, Allahabad. The said Sri R.K.Singh, it is stated, instead of replying to the show cause notice, demanded a copy of the same in Hindi. On 25.2.1996 at about 2.30 p.m..while the applicant was holding hearing of certain matters posted before him, the aforesaid Sri R.K.Singh allegedly barged into the office room of the applicant, abused him and even physically assaulted him, while continuing to demand withdrawal of the show cause notice. Sri R.K.Singh was accompanied by <sup>-a/</sup> large number of persons belonging to the Employees Union of Incometax department and all these persons were indulging in slogan shouting outside the office room. The applicant gave intimation of the

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incident to the Addl. Commissioner of Incometax, Allahabad by a written communication and also made a request for lodging F. I. R. against Sri R.K. Singh apart from departmental action. It is alleged that no action was taken on the aforesaid communication, whereupon the applicant proceeded to lodge F.I.R. himself under intimation to the Addl. Commissioner of Incometax, Allahabad. On 25.3.96. On the same date, he also got himself examined at Motilal Nehru Hospital, Allahabad and obtained a medical certificate of injury indicating the medical advice. A copy of the injury report was also sent to the Police Station. On 26.3.1996. The applicant was informed through communication dated 26.3.1996 by the Addl. Incometax Commissioner that the applicant should have obtained a written permission prior to lodging of F.I.R. in accordance with the conduct rules. He was also advised to inform the police not to proceed further in the matter until further communication. On 27.3.1996, further communication was received by the applicant permitting him to hold the office at his residence on 27th, 28th and 29th of March, 1996. He was also informed that the police authorities have been requested to post two armed guards at his residence. On 2.4.1996, an order was passed by the respondent no.4, directing the Incometax Officer, Ward no.1 also to exercise jurisdiction with regard to Ward no.6, which was in the applicant's charge. Thereafter, although the applicant remained present in the office, no official work was allocated to the applicant nor any file pertaining to his Ward was placed before him. Meanwhile, with effect from the evening of 25.3.1996, The Employees' Union of Incometax department, Allahabad proceeded on strike, which continued for a few days and normal function of the department could be resumed only with effect from 2.4.1996. After negotiation was held by -

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the respondent no.3 with the office bearers of the employees' Union assuring acceptance of all valid demands of the Union. An order dated 29.3.1996 was also issued by the respondent no.4 referring to the negotiations and the agreement arrived at in which there was a mention regarding initiating disciplinary proceedings against the applicant for having lodged F.I.R. without prior permission and also a statement that the applicant could not be transferred in view of the direction of the Election Commission of India, and failing this all his powers pertaining to ward no.6 were being taken over and vested in another Officer. There was a mention in that order that no proceeding would be undertaken against Sri R.K.Singh and efforts would be made for concluding the matter pertaining to the F.I.R. amicably.

5. Challenging the order dated 2.4.1996 by which the jurisdiction of Ward No.6 was given to another Incometax Officer, the applicant had filed an O. A. No. 412/96 before this Tribunal. At the time of admission, an interim order was passed directing the respondents to distribute the work of Ward No. 6 equitably between the applicant and the Incometax Officer, Ward no. 1. The applicant, thereafter filed a contempt application also for the alleged non-compliance of the aforesaid interim order. The Incometax Officer, Ward no.1 retired on 31.5.1996 and thereafter, respondents moved an application before the Tribunal seeking its permission to consider transfer of the applicant as a part of general routine transfer. The Tribunal, however, declined to give any permission in this regard and stated that it was for the respondents to decide what they should do, after considering the pros and cons and the illegality of such action. Thereafter, the impugned order of transfer was

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issued, which is under challenge before us.

6. Apart from the plea of malafide, the other plea taken by the applicant is that his posting to the Incometax appellate Tribunal is in contravention of the instruction contained in the circular dated 15.4.1988 issued by the Chairman, Central Board of Direct Taxes in terms of which, a group 'B' Officer could not have been posted as J.A.R. which is a group 'A' post.

7. The respondents have filed a counter affidavit through Sri R.K.Srivastava, Commissioner of Incometax, Allahabad (respondent no.4). It has been stated therein that in April, 1995, when the applicant was working as a Tax Recovery Officer, a quarrel took place between him and one Sri Ballabh Shukla, ~~the~~ Tax Assistant which resulted in considerable commotion and disruption of peace and harmony amongst the employees of the department and the senior Officers restored peace and harmony with a lot of difficulty. However, again on 25.3.1996, there was an unfortunate incident involving the applicant and Sri R.K.Singh another Tax Assistant - following which - ~~when~~ a crowd comprising class III and class IV employees assembled and gheroed the applicant in his office chamber and the atmosphere became surcharged with noisy slogans and free exchange of abuses. This was followed by a lightning strike resorted to by the employees. There were allegations and counter allegations against the applicant and Sri R.K.Singh regarding the <sup>xxx</sup> misbehaviour and physical assault. It became extremely difficult for the senior Officers of the department to restore peace, particularly since the applicant had lodged F. I. R. adding fuel to fire. As a result, class III and class IV

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employees locked the office and the egress and ingress in the office premises became difficult. Police had to be summoned for restoration of law and order in the department, the applicant having become the focal point of anger on the part of class III and class IV employees. There was even threat to his life. The strike was called off on 29.3.1996, but the temper and feeling did not cool down and it became difficult for the applicant to discharge his ~~duties~~ as Incometax Officer, Ward no. 6, as a result of which, public work was suffering and in that back ground, the Incometax Commissioner, Allahabad passed an order giving concurrent jurisdiction for discharge of duties and work of ~~Ward No.6 to the~~ Incometax Officer of Ward No.I. This was challenged by the applicant before the Tribunal in O.A. No.412/96 which is sub-judice. It is further stated that the deponent as the Head of the department as Commissioner of Incometax, Allahabad and his team of senior Officers of the department left no stone unturned to effect ~~the~~ reconciliation between class III and class IVth employees on the one hand and the applicant on the other. However, as this was not possible and ~~is~~ <sup>-it was</sup> difficult on the part of the applicant to function as Incometax Officer, the impugned order was issued in public interest and for administrative reasons and this order coincided with annual general transfers usually ~~are~~ effected during this period of ~~the~~ year. Care was taken to see that the applicant was not inconvenienced in any manner. That is why, he has not been posted outside Allahabad, but to the I.T.A.T in Allahabad itself in the same premises in which the department of Incometax is located. The applicant has actually gained financially since he is entitled to special pay and allowances on the post of J. A. R.

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of Incometax in the appellate Tribunal. This order was challenged by the applicant by filing the present O.A. and at the time of admission, prayer for interim order staying the operation of the impugned order was rejected. The applicant has, however, not complied with the order of transfer so far.

8. As regards the alleged contravention of the order of the Chairman, Central Board of Direct Taxes, it has been stated that the said orders are in the form of guidelines relating to reorganisation and are dependent on certain assumptions/<sup>one</sup>of which was that there would be full availability of group 'A' Officers for posting as J.A.R. However, due to shortage of such Officers, it has not been possible for the department to post only group 'A' officer to the I.T.A.T.

9. The applicant has filed a rejoinder affidavit. Apart from reiterating the contentions made in the O.A., it has been stated that instead of upholding the honour of the applicant, respondents openly took side with Sri R.K.Singh and the transfer order has been issued on the pressure of the Union of which R.K.Singh is a member. He has further stated that this is amply demonstrated by the fact that he was posted as J.A.R. although that post is meant exclusively for group 'A' Officer.

10. We heard the learned counsel for both the parties and carefully perused the records.

11. From the perusal of the pleadings of both the parties, one fact stands out clearly and that is that the applicant's transfer is a sequel to the dispute between the applicant and Sri R.K.Singh, which resulted in the employees taking up the cause of the latter and

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creating a situation in which no work could be conducted in the Department for several days. The transfer of the applicant is, therefore, prima-facie in the interest of restoring peace and harmony in the Department though one could take a view that this is nothing but genuflexion on the part of the administration before the collective strength of the Employees' Union. The question that, however, remains is whether in such a situation, transfer of the applicant could be challenged on the ground that it was to placate the sentiments of the Employees Union.

12. It is now settled position of law that the transfer of an employee is a prerogative of the Employer and the the court/Tribunal should not interfere in an order of transfer of an employee unless such order is shown to be tainted by malafide or is in contravention of Statutory rules in that regard. This principle of law has been enunciated by the Hon'ble Supreme Court in a series of judgments, some of which are (1) Shilpi Bose V/s Union of India and others (1992) SCC (LNS) 127, (2) Rajendra Roy V/s Union Of India and others (1993) SCC(LNS) 138, (3) Union of India V/s S.L.Abbas A.I.R (1993) SCC 2444 and (4) State of Punjab V/s Jogendra Singh Dhatt AIR (1993) Sc 2484. The respondents have in fact referred to the decision in Shilpi Bose as well as in Joginder Singh Dhatt in support of the contention that the impugned order of transfer in this case could not be interfered with. The respondents have also relied on the decision of Hon'ble Supreme court in case of N.K.Singh V/s Union of India (1994) SCC(LNS) 1304 and in the case of State of Madhya Pradesh V/s S.S.Keurav (1195) (3) SCC 270.

13. The transfer of the applicant is certainly not in contravention of any statutory rules. Instruction issued by the Chairman, Central Board of Direct Taxes

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are not in the nature of statutory rules and even if these orders envisaged manning of the post of J.A.R. in I.T.A.T. by group 'A' Officer, placement of a group 'B' Officer on that post cannot be faulted on the ground of ~~xxx~~ contravention of any rule in this regard. We have, therefore, to examine whether the impugned order of transfer is tainted by malafide.

14. The learned counsel for the applicant, during course of argument, sought reliance on the decision of Punjab and Haryana High Court in <sup>the</sup> case of Bhupinder Singh V/s State of Haryana as well as the decision of Karnatak High court in <sup>the</sup> case of B. Krishna Bhatt V/s Supdt. of Police A.I.R. 1980 Karnatak ATI. In both these cases, scope of interference on the ground of malafide has been examined, although none of these cases relate to ~~the~~ order of transfer. We extract the relevant observations in case of Bhupinder Singh as under :

" Bad faith, malafides and malice are synonymous terms though not admitting of precise definition. Malice is a wish to injure the party, rather than vindicate the law. It is indicative of an evil mind which is disdainful of duties social or legal, and disregards the duties to others. In common parlance, malice means illwill against a person but in legal acceptation, it means a wrongful act done intentionally without just cause or excuse.

All acts done with an evil disposition or unlawful motive with an intention to cause injury and without a lawful excuse may be characterised as malicious. Mali-

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scious. Malicious action is not one which is done accidentally, thoughtlessly or negligently but designedly wilfully or wantonly. The term 'bad faith' is a shade milder than malice, and implies breach of faith or wilful failure to respond to one's known obligation or duty. Bad judgment or negligence is not 'bad faith', which imports a dishonest purpose, or some moral obliquity and implies conscious doing of wrong. It is much more than a mistake of judgment and is synonymous with dishonestly.

15. The relevant observations in case of B. Krishna Bhatt is as follows :-

" Any action of an authority even though the same is within its power, is actuated by mala fides established either by direct or circumstantial evidence, is liable to be struck down under Article 226 of the Constitution. In examining a plea of mala fides the court must necessarily have regard to the object of the statute conferring power and whether the power conferred has been exercised for the purposes and object of the Statute or for any other purpose."

16. As we have already pointed out, the transfer of the applicant is a direct sequel to the incident involving the applicant and <sup>a</sup>class III employees of the Department. To what extent either or both were culpable is neither the issue before us nor we are in a position to determine the same on the basis of the averments on record. The fact, however, remains that

there was

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took place  
an unfortunate incident involving the applicant and a  
class III employees of the department, following which  
the case of the latter was taken up by the Employees  
Union resulting in functioning of the entire department  
being brought to a grinding halt. In such a situation,  
respondent had two options. They could either have  
allowed the applicant to function on the same post which  
he was holding at the time of the incident and thereby  
risk continued confrontation with the employees Union  
with adverse effect on the functioning of the Department  
which ultimately would have resulted in creating in-  
convenience to the general public. Alternatively they could  
have placated the sentiments of the Employees Union by  
effectively removing the applicant from the spot by way  
of a transfer. The respondents appear to have chosen  
the second alternative. Whether or not such action on  
the part of the respondents can be termed as capitulation  
to the ~~grievance~~ demands of an employees Union and an attempt  
to buy peace without honour may be a subject of debate.  
However, this action of the respondents cannot be dubbed  
as a malafide action since we are unable to hold that  
they had any malice personally against the applicant. If  
in their wisdom, they decided that the best way to tackle  
the explosive situation was to transfer the applicant  
from the present post, no malafide can be imputed to  
them. It is for the administration to take a decision  
in such a situation, keeping in view the entire circum-  
stances of the case and once they have taken a decision  
without any bias or malafide, this Tribunal cannot sit  
in judgment on the wisdom of such an action in its ~~xxx~~  
limited jurisdiction of judicial review. In holding that  
the impugned order of transfer is not out of malice  
personally against the applicant, we have been influen-  
ced by the fact that the applicant has not been posted

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out of the station, but to a different establishment situated in the same premises, thus **minimis**<sup>ing</sup> the rigour of a transfer and also the fact that the post to which the applicant has been transferred carries special pay which is not available on the post he was presently holding.

17. In the case of State of Punjab Versus Joginder Singh Dhatt, respondents had challenged an order by which he was transferred from Hoshiarpur to Sangrur on the ground that it was a mid-term transfer and also that he **was** due to superannuate on July 30 1994, ~~xxx~~ The High court, on a writ petition had quashed the order of transfer even though the State of Punjab had pleaded that the petitioner was charge-sheeted and he was being transferred in order to ensure that he did not interfere in the enquiry proceedings. Reversing the decision of the High court, Hon'ble Supreme court inter-alia held that it is entirely **for** the Employer to **decide** ~~xxxxxxx~~ when and where and at what <sup>point</sup> of time a public servant is transferred from his <sup>present</sup> posting, ordinarily the court have no jurisdiction to interfere with the order of transfer.

18. <sup>the</sup> In case of State of Madhya Pradesh V/s **S.S. Korav** decision of the Administrative Tribunal, Bhopal, setting aside the transfer of the respondent was under challenge before the Hon'ble Supreme court. Hon'ble Supreme court inter-alia held :

" The courts or Tribunals are not appellate forums to decide on transfers of Officers on administrative grounds. The wheel of the administration should be allowed to run smoothly and the Courts and Tribunals are not expected to interdict the working of the administrative system by transferring

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the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. When, as in this case, the transfer order is issued on administrative grounds, the court cannot get into the expediency of posting an officer at a particular place."

19. The aforesaid decisions **fortify** our ~~viewed~~ <sup>viewed</sup> that once the applicant's transfer has been ordered on administrative ground in the exigency of public service, there is no reasons for the Tribunal to interfere by sitting in appeal on the wisdom of the respondents in deciding that the applicant's transfer was necessary for ~~in~~ <sup>in</sup> administrative interest.

20. In view of the foregoing, we see no reason to interfere in the impugned order of transfer. We must, however, observe that the responsibility of the administration does not end merely by transferring the applicant. This is only an expediency to defuse the situation. A responsible administration must hold a thorough enquiry into the incident and pin-point the responsibility therefor. Based on the findings of the enquiry, administration must also initiate appropriate action if any person or persons are found prima-facie guilty of misconduct.

21. With the above observations, this application is dismissed. Parties to bear their own costs.

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