

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 11<sup>th</sup> DAY OF MARCH 1997

Original Application No. 912 of 1996

HON.MR.JUSTICE B.C.SAKSENA,V.C.

Sahdev Singh, son of late Shri Karan Singh  
aged 49 years, R/o B-61 Barra-6, Kanpur.

..Applicant

BY ADVOCATE SHRI O.P. GUPTA

Versus

1. Director, Small Industries Service Institute, 107, Industrial Estate, Kalpi Road, Kanpur-208012
2. Union of India through Secretary Ministry of Industry, Govt. of India, New Delhi.

.. Respondents

BY ADVOCATE KM. SADHANA SRIVASTAVA

O R D E R(reserved)

JUSTICE B.C.SAKSENA,V.C.

I have heard Shri O.P. Gupta, learned counsel appearing for the applicant and Km. Sadhana Srivastava learned counsel for the respondents.

2. Through this OA the applicant challenges an order~~s~~ dated 9.8.96 passed by the respondent no.1 transferring the applicant from Small Industries Service Institute Kanpur to branch of the said Institute at Haldwani, district Nainital. The applicant was working as a Chaukidar, a group 'D' employee. The grounds to challenge the said order interalia are that the applicant being a low income group employee would be faced with difficulty of having two establishments one at Kanpur and one at Haldwani <sup>as</sup> and he will not be able to leave his family at Kanpur nor will be in a position to shift his

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family to Haldwani. The other ground is that his old mother remains almost ill and requires complete care and medical treatment every time. It has also pleaded that the wife of the applicant was also suffering from low blood pressure. The other family circumstances indicated is that his two daughters are students of B.A. IIIrd year and High school. Son of the applicant is studying in Junior High school and if the transfer order is given effect to it will effect the education of his daughters and son. It has further been pleaded that the Govt. of India has framed certain guidelines regarding transfer that the transfer should be avoided as far as possible.

3. The respondents have filed a counter affidavit to which a rejoinder affidavit has been filed by the applicant.

4. The learned counsel for the applicant submitted that one Munna Lal Sharma who was working as Peon in the office of Director Small Industries Service Institute, Kanpur feeling aggrieved by an order dated 14.8.96 transferring him to Haldwani had filed OA No. 913/96. The said OA has been allowed by an order dated 5.2.97 by a Single Member of this Bench of the Tribunal. The learned counsel for the applicant submitted that the facts in the said OA No. 913/96 are wholly identical as in the present case. A photostat copy of the said decision rendered in OA 913/96 have been placed for my consideration. I have carefully gone through the said decision. No doubt similar domestic problems as indicated in the present OA <sup>were pleaded</sup> to challenge the transfer order. The learned Single Member has made an observation that "it is agreed that transfer order cannot be said to be bad if the guidelines are not complied "with in letter and spirit or such a transfer causes hardships to the

applicant. Further the guidelines are not statutory in nature and vesting immunity from transfer. The consideration of hardship to the employee and his family is an administrative matter and in no ground to agitate the matter for judicial interference." There can be no dispute with regard to the said observation. I am in agreement with the same. In paragraph 8 it had also been indicated while dealing with the plea of the respondents that the transfer had been ordered in public interest. "That it is well settled law that transfer is an incidence of service. In the exigencies of service, government servant can be transferred by the competent authority. The formation of the opinion regarding existence of exigencies of the services left to the satisfaction of the competent authority. Judicial interference could be done if in forming this opinion prove arbitrariness or any mala fide or any disregard of statutory rules or binding administrative instructions is manifested." This part of the observation is in accord with the law on the question. However, the point that prevailed with the learned Single Member to allow the OA was that on an analysis of the pleadings he came to the conclusion that though the transfer was stated to have been made in public interest cogent and compelling reasons overriding particularly in the case of group 'D' employee has to be made out. The discussion about the pleadings upon which the decision turned is detailed in paragraph 9. This discussion goes to show that the order of transfer in the said case was quashed, In view of the absence on the part of the respondents to spell out the cogent and compelling reasons. The applicant had indicated certain facts to show that the order was passed due to the annoyance of the competent authority. In effect

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therefore the said decision proceeded on the basis of the pleadings in the said OA. In the present OA the pleadings which resulted in the OA 913/96 being allowed are totally absent. Accordingly it is difficult to accept the submission of the learned counsel for the applicant that in the event of disagreement with the decision rendered in OA 913/96. The matter be referred to a larger bench.

5. I have already indicated that the propositions of law laid down in the decision in OA 913/96 are in accord with the law propounded on the subject of transfer by the various couts including the Apex court. OA 913/96 does not laid down any other binding proposition of law. It was decided on the basis of the pleadings of the parties therein.

6. The learned counsel for the respondents cited a decision in V.R. Datania Vs. Union of India and Others reported in (1989) 9 ATC 211. This decision is by a learned Single Member of the CAT Ahmedabad Bench. The view taken in the said case is that transfer of even a low paid employee can not be subject to judicial review as also result ant hardship. This view was ~~xxixixngxom~~ expressed relying on the decision of the Hon'ble Supreme court in B. Varadha Rao Vs. State of Karnataka, reported in (1986) 1 ATC 558. It was further laid down that administrative exigency or public interest is not necessary to be proved.

7. The learned Single Member relied on the following two Supreme Court decisions.

- (1) Shanti Kumar Vs. Union of India and Ors  
reported in (1986) 1 ATC 558

(2) Krishna Dev Dutt Vs. Union of India and Ors  
reported in (1987) 3 SLR 625.

To uphold the respondents plea therein that the authorities are the sole and final judges of the public interest which guides ~~regarding~~ <sup>The</sup> <sub>but</sub> decision of transfer.

8. The learned counsel for the respondents cited another decision reported in (1995) 29 ATC 553 State of M.P. and another Vs. S.S. Kourav and others. The Hon'ble Supreme court in the said case has crystallised the grounds on which an order of transfer can be interferred by way of judicial review. <sup>It was observed for</sup> The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous considerations without any factual background foundation. In this case transfer orders are issued on administrative grounds, expediency of those orders cannot be examined by the court."

*It was further observed. —*

" The court cannot go into the question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration."

8. The last observation would be relevant in the present case since the respondents in their counter affidavit have indicated that a representation against the transfer order filed by the applicant and for its cancellation and found that there is no justification of cancellation of the transfer order. It has also been indicated in the counter affidavit that while working as Chowkidar in the Institute at Kanpur several thefts occurred in the workshop and it was necessary to transfer

the applicant from the Kanpur Institute keeping in view the security measures. It has been indicated that the applicant was counselled to improve himself through memos dated 1.8.86, 10.8.88, 28.9.88, 3.11.88, 22.5.90, 19.6.90, 28.10.94, 23.5.95, 17.7.95 and 12.7.96. It has been indicated in the counter affidavit that while transferring the applicant it was viewed that Branch Small Industries Service Institute, Haldwani is a smaller one and the applicant may work there efficiently in comparison to Small Industries Service Institute, Kanpur which is bigger in shape and size.. The reasons set out in the counter affidavit clearly spells out the administrative exigency which resulted ~~in~~ <sup>passing</sup> in the ~~posting~~ <sup>posting</sup> of the order of transfer of the applicant from the Small Industries Institute Kanpur to Small Industries Institute Haldwani. There are no allegations of malafides. The limited ambit of judicial review of an order of transfer is fairly well settled. This Tribunal cannot sit as a court of appeal. The existence of the circumstances which prompted the authorities to pass the order of transfer has to be accepted. As was observed by the Hon'ble Supreme Court in the last case referred to hereinabove " the wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring 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."

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9. There are no allegations of mala fides. On the whole I do not see any good ground ~~to~~ made out for interference with the impugned order. The OA lacks merit and is accordingly dismissed. The interim order passed earlier is hereby vacated.

B. Chakraborty

VICE CHAIRMAN

Dated: March 11. 1997 <sup>TK</sup>

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