

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 5th day of February 1997.

Original application No. 913 of 1996.

Hon'ble Mr. D.S. Baweja, AM

Munna Lal Sharma, S/o late Sri Rewati
Prasad Sharma, a/a 51 years, R/o
B-51, World Bank Colony, N Bye Pass
Road Barra, Barra, Kanpur.

..... Applicant.

C/A Sri O.P. Gupta

Versus

1. Director Small Industries Service
Institute, 107, Industrial Estate, Kalpi
Road, Kanpur 208012.

2. Union of India through Secretary,
M/o Industry Govt. of India, New Delhi.

..... Respondents.

C/R Km. S. Srivastava

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application is filed with a prayer for quashing the transfer order dated 14.8.96 transferring the applicant from Kanpur to Haldwani.

2. The applicant while working as peon in the office of Director Small Industries Service Institute, Kanpur has been transferred to Haldwani vide impugned order dated 14.8.96. Being aggrieved by the same, this application has been filed on 26.8.96.

3. The applicant has assailed the transfer order on the grounds of hardships as the education of his children will suffer, and he will be not able to shift his family to Haldwani with his low income. He has also contended

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that his transfer is in violation of the guide lines laid down for the transfer.

4. The respondents have resisted the application in the reply filed. The respondents contend for smooth functioning of the office and maintaining congenial atmosphere, transfer of the applicant in public interest was considered necessary. The transfer has been order^{ed} after due consideration of the difficulties of the applicant in public interest. In view of these facts, the application is devoid of merits and deserves to be dismissed.

5. The applicant has filed the rejoinder reply contesting the averments in the counter reply. The applicant has asserted that the respondents have failed to indicate the reasons as to how the transfer was in public interest. The applicant also alleges that the transfer has been ordered by respondent No. 1 due to the fact that the applicant had refused to work as night Chowkidar since he is posted as peon in the office. In support of this, the applicant has brought documentary evidence at RA-I & II. In view of this background, the applicant alleges that the transfer has been ordered with malafide motives to penalise the applicant and not in public interest.

6. Vide order dated 27.8.96, interim stay ^{was} ~~order~~ granted to maintain status quo as on date with regard to transfer order. This stay was extended from time to time.

7. I have heard Sh. O.P. Gupta learned counsel for the applicant and Km. Sadhaa Srivastava of the respondents

I have also carefully gone through the material placed on record.

8. The respondents have submitted that the transfer has been ordered in public interest. 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. ^Q ~~The~~ formation of the opinion regarding existing of exigency of the service is left to the satisfaction of the competent authority. Judicial interference ~~could~~ be done if in forming this opinion, proven arbitrariness or malafide or if it was by way of penalty or any disregard of statutory rules or binding administrative instructions is manifested.

9. The respondents' main defence is that the transfer has been ordered in public interest but without disclosing the reasons for the same. The only ground advanced is that the transfer has been ordered to maintain congenial atmosphere and smooth functioning of the office. The implication of this averment are obvious that all was not well with the working of the applicant in the said office and competent authority considered it expedient to transfer him out. Certainly there will be some incidents involving the applicant which ^{here} ~~will~~ affecting the working of the office, ^{and} which formed the ^{foundation} ~~formation~~ for forming this opinion. When a transfer is challenged, the respondents are expected to disclose the reasons behind the transfer to demonstrate that the same was in public interest. A mere statement is not enough to form a valid cover for transfer in public interest. On the other hand, the applicant has come out with some background in the rejoinder reply. The respondents have not denied the same. From RA-I and

RA-II, we find that the applicant was asked to work as a Chowkidar at night time in place of somebody who had gone on leave vide order dated 9.8.96. The applicant vide his application dated 7.8.96 expressed his reluctance to perform this duty out of the fear that in view of the incidents of theft at night time, he may not get involved. The transfer order has been passed on 14.8.96 after a few days ^{thereafter} ~~at~~. This could be background of annoyance of competent authority and reacting with a transfer of the applicant to a distant place. If the applicant disobeyed the orders, certainly disciplinary action could have been taken for the same. But it appears that ^{the} easy action of transfer has been instead taken.

10. The applicant is a low paid group D employee with a family and school/college going children. Transfer to a distant place will certainly cause hardship to him and his family and that too during mid-session. From the averments by the either party, the applicant is also not with the longest staff at Kanpur. The applicant has also alleged that transfer has been order^{ed} without following the guide lines. It is agreed that transfer order cannot be said to be bad if the guide lines are not complied with in letter and spirit or such a transfer causes hardship to the applicant. Further the guide lines are not statutory in nature and vesting any immunity from transfer. The consideration of hardship to the employee and his family is an administrative matter and is no ground for agitating the matter for judicial interference.

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However if the transfer which is made in public interest there must be made cogent and compelling reasons overriding the consideration of hardship particular in case of a Group D employee. Keeping in view the averments of the applicant and the silence on the part of the respondents, in disclosing the reasons and non controverting the version of the applicant, no other view could be taken than that the transfer was motivated by arbitrariness and colourable exercise of power. Therefore in my opinion impugned transfer order is not sustainable and the same deserves to be quashed.

11. In the light of the above, I find merit in the application and the same is allowed quashing the impugned transfer order dated 14.8.96. No order as to costs.

S. R. Singh
Member - *[Signature]*

Arvind.