

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No./~~000000~~ 1008/97

Date of decision

14/9/98

S.P. Pathak

Applicant(s)

C/A

Sri Vijai Bha Bahadur

COUNSEL for the
Applicant(s)

Versus

Union of India and Others

Respondent(s)

Km. S. Srivastava

Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S.K. Agrawal, V.C./ Member (J)

Hon'ble Mr. _____ Member ()

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? Yes
3. Whether their Lordship wish to see the fair copy of the judgment ? Yes
4. Whether to be circulated to all Benches ? No


(SIGNATURE)

MANISH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1008 of 1997

Allahabad this the 14th day of Sept 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

S.P. Pathak, Son of Late Rameshwar Dayal Pathak,
R/o 179, Gopal Nagar, Baubasta, Kanpur.

Applicant

By Advocate Sri Vijai Bahadur

Versus

1. Union of India through Secretary, Ministry of Communication, Department of post, Dak Bhawan, New Delhi.
2. Director Postal Services, Kanpur.
3. The Post Master General, Kanpur.
4. Chief Post Master General, Lucknow.

Respondents

By Advocate Km.S. Srivastava

ORDER

By Hon'ble Mr. S.K. Agrawal, Member (J)

IN this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order of transfer dated 23.7.97.

2. In this O.A. the facts of the case as

stated by the applicant are that the applicant was transferred vide impugned order dated 23.7.97 from the post of P.A.(CO) BCR, Regional Office, Kanpur to Kanpur (City) Dn. issued by Director, Postal Services, Kanpur Region, Kanpur. The applicant was appointed as Postal Assistant in P&T Department in Rajasthan Circle on 23.10.73. He was promoted as Upper Division Clerk on 19.2.80 and was posted at Lucknow. Subsequently, on creation of new post in the office of Regional Office, Kanpur, the applicant was transferred to Regional Office, Kanpur. It is submitted that applicant has completed 17 years of service as Upper Division Clerk and government enforced a scheme known as Time Bound One Promotion (for short TBOP) and Biennial Cadre Review (for short BCR) to Group 'C' employees in certain offices, and said scheme came into effect on 26.6.93 in Circle and Administrative Office, Department of Posts. According to the said scheme T.B.O.P. promotion was to be given after 16 years of service and B.C.R. promotion was to be given after 26 years of service. Under this scheme, nomenclature of L.D.C. and U.D.C. have been changed as P.A. C.O. (Postal Assistants Circle Office) It is submitted that an option was asked from the employees whether one wanted to remain in old scale. The applicant did not give his option as such he was brought in the grade of P.A.C.O. Since the applicant had completed 16 years of service, he was given promotion under T.B.O.P. Scheme and applicant was further promoted

:: 3 ::

to H.S.G.II(Higher Selection Grade) as per memo no. STA/43-XII/BCR/Modification 96, dated 05.8.96. It is further submitted that the applicant having put in such a long service, in Regional Office has acquired special nature of work but he was transferred by an order dated 23.7.97. Against this order, he submitted a representation dated 08/8/97 but, the applicant did not receive the reply. It is submitted that in view of the instructions dated 08.8.95, the applicant could not be transferred from Regional Office to another operative office and since the applicant has acquired knowledge of special nature of work, he could not be transferred. The applicant is a permanent staff in the Regional Office/Circle Office and his name is mentioned in Combined CO/RO gradation list from which promotion to Section Supervisor/Assistant Superintendent/Superintendent of P.M.G. Office are made on the basis of the seniority of the office. If, this transfer is made effective, the chances of further promotion of the applicant will be completely blocked. It is also submitted that this transfer order has been passed by way of punishment and the impugned order is wholly malafide and arbitrary, as such hit by Article 14 of the Constitution of India. The impugned order of transfer amounts to reversion as the applicant is already working as H.S.G. II under B.C.R. Scheme and this transfer order is in contravention of Rule 60A and 66 of P&T Manual. It is submitted that in the similar circumstances transfer of one Sri O.P. Misra from office of P.M.G. Kanpur to

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:: 4 ::

Bhogaon, Mainpur has been refused. It is, therefore, submitted that impugned order of transfer be quashed.

3. The counter-affidavit has been filed by the respondents. In the counter, all the allegations made by the applicant in his original application, are denied, and submitted that the applicant has been transferred from the office of Post Master General to Kanpur City Division on administrative grounds by respondent no.3. Accordingly, the respondent no.2 has communicated the order of transfer to the petitioner. It is further submitted that the applicant has been transferred in the light of the instructions contained in para 3.10 of D.T.E. Communication dated 22.7.93, which lays down that the circle office staff as on 26.6.93 will retain the existing liability for transfers between the Circle Office and the Regional Office. In addition their promotion under the TBOP/BCR Scheme will be conditional subject to their liability for transfer to any Unit located at the Head Quarter stations of the Regional Office/Circle Office. This additional liability of transfer was further clarified in para 12 of D.T.E. communication dated 08.8.95. Therefore, the impugned order of transfer is in accordance with the conditions mentioned in the aforesaid D.T.E. communication. It is further submitted that if there is any administrative reason and an employee holding a transferable post, he cannot claim particular post and place to remain there. The petitioner was promoted under TBOP/BCR Scheme, hence his transfer was ordered to Kanpur City Division an Unit located at Head Quarter of Regional Office, Kanpur vide order dated 23.7.97 which is in accordance with the

:: 5 ::

instructions contained in para-12 cited by the petitioner. It is denied that impugned order of transfer is malafide or arbitrary and stated that representation filed by the applicant, has been decided by the respondent no.3. The applicant himself interpreted the D.T.E.'s clarification in para-12 of its communication dated 08/8/95 regarding transfer liability in respect of Regional Office/ Circle Office. It is also submitted that the petitioner has been transferred to the same cadre which he was holding before his transfer in Regional Office, Kanpur as mentioned in transfer order dated 23.7.97. Hence, the respondents have submitted that Tribunal should not interfere in the order of transfer incase it is made in the exigency of service. In this way and on the basis of counter-affidavit filed by the respondents, the respondents have prayed to dismiss this O.A. with cost.

4. The rejoinder has been filed by the applicant in which all the facts mentioned in the O.A, are reiterated. It is further submitted that by this impugned order of transfer, the cadre of the applicant is changed. This transfer is by way of punishment to the applicant and against the instructions issued by the department for this purpose.

5. Heard, the learned lawyer for the applicant and learned lawyer for the respondents, and perused the whole record.

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:: 6 ::

6. Learned lawyer for the applicant during the course of his arguments submitted that by the impugned order of transfer, the applicant has been transferred to outside the cadre and applicant has been posted to a lower scale of pay. He has further submitted that impugned order of transfer was issued with malafides, which can be inferred from the facts of the case. Therefore, the impugned order of transfer be quashed.

7. On the other hand, the learned lawyer for the respondents while objecting the above arguments, submitted that neither there is any cadre change nor any scale of pay is reduced by the impugned order of transfer of the applicant. As regards malafides are concerned, the learned lawyer for the respondents has submitted that neither any malafides are pleaded in the O.A. nor could be inferred on the basis of the facts and circumstances of the case. Therefore, there is no justification to interfere in the impugned order of transfer by this Tribunal.

8. I gave thoughtful consideration to the rival contention of both the parties and perused the case file.

9. It appears that in view of contemplation of disciplinary proceedings against the applicant, the applicant was suspended on 17.6.97 and the suspension order was revoked thereafter on 23.7.97. On the same date, the applicant was transferred from the post of

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:: 7 ::

P.A.C.O.(B.C.R.) Regional Office, Kanpur to Kanpur City Division. Meaning thereby it is a local transfer. On the perusal of the whole record, it ^{also} appears that promotion of the staff under T.B.O.P./B.C.R. Scheme was subject to the liability of transfer to the Unit located at the Head Quarter of Regional Office/Circle Office in addition to their earlier liability for transfer to regional office. Therefore, merely placing the applicant on promotion under T.B.O.P./B.C.R. Scheme is not a change in the cadre..The respondents have made it clear in their counter that by the impugned order of transfer, there is no change of cadre and sufficient explanation has been given by the respondents. Moreover, promotion to H.S.G. Grade II cadre under B.C.R. ~~the~~ scheme does not confirm any right on the official to claim his posting on supervisory post and applicant failed to establish the fact by convincing documentary evidence to establish ~~the fact~~ ^{S.A.} that by impugned order of transfer cadre of the applicant has been changed. Therefore, by the said order of transfer, it could not be established that there is change of cadre.

10. As regards other contention of the applicant is concerned, there is no evidence that applicant has been placed in lower scale of pay by the impugned order of transfer. By the impugned order of transfer, basic pay of the applicant is not at all reduced, therefore, there is no basis to say that by the impugned order of transfer, scale of pay of the applicant has been reduced.

11. The impugned order of transfer appears

:: 8 ::

to be neither punitive nor it appears to have been issued with malafides. Malafides can be direct as well as can be inferred but on the basis of the facts and circumstances of this case, neither the applicant established the fact of malafides by direct evidence nor it can be inferred on the basis of facts and circumstances of this case.

12. In Abani Kanta Roy Vs. State of Orissa (1996) 32 A.T.C. 10', the Hon'ble Supreme Court has held that 'it is settled law that a transfer which is an incident of service, is not to be interfered with by the Court unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principles governing a transfer.'

13. In 'N.K. Singh Vs. Union of India 1994 S.C.C.(L&S) 1130' , their Lordships of the Hon'ble Supreme Court in para-2 of the Judgment had inter-alia observed that only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by malafide or infraction of any professed norms or principle governing the transfer which alone can be scrutinised judicially.

14. In 'Shilpi Bose Vs. State of Bihar 1992 S.C.C. (L&S) 127' , the Hon'ble Supreme Court has observed that even if transfer orders are issued in violation of executive instructions or orders, the Court ordinarily should not interfere with the said order, and effected parties should approach the higher authorities in the department. It is for the administration to take appropriate decision in the matter of transfer on administrative grounds.

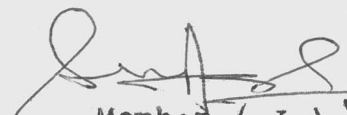
:: 9 ::

15. In 'State of M.P. Vs. S.S. Kaurav
1995 S.C.C.(L&S) 666' and in Rajendra Roy Vs. Union
of India 1993 S.C.C.(L&S) 138', the Hon'ble Supreme
Court has observed that a transfer order which is not
malafide and not in violation of service rules and
issued with proper jurisdiction, cannot be quashed
by the Court.

16. Therefore, on the basis of above
legal preposition and on the basis of facts and
circumstances of the case, I find that there is
no basis to interfere with the impugned order of
transfer by this Tribunal.

17. I, therefore, dismiss this O.A.
with no order as to costs.

/M.M./


Member (J) 14/9/98