

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH
ALLAHABAD

DATED: THIS THE 13 DAY OF ^{May} ~~APRIL~~ 1997

Single Member bench of Hon'ble Mr. T.L.Verma JM

ORIGINAL APPLICATION NO.33/97

Rajeev Srivastava s/o R.D.Srivastava,
resident of 15-Taksal,

District Jhansi.----- Applicant

C/A Sri K. P. Singh

Versus

1. The Union of India through Secretary,
Ministry of Defence, New Delhi.

2. The Engineer-in-Chief,
Army Headquarters, Kashmir House,
New Delhi.

3. The Chief Engineer, Central Command,
U.P. Lucknow.

4. The Garrison Engineer, Jhansi.

5. Maj. General T. M. Jhon,
Chief Engineer,
Central Command, Lucknow.

6. Maj. R. K. Singh,
Garrison Engineer

Jhansi.----- Respondents

C/R Km Sadhna Srivastava

Order

By Hon'ble Mr. T. L. Verma JM

The applicant, in this application under section 19 of the Administrative Tribunals Act, 1985 seeks quashing of the order dated 6.1.1997 transferring him from Jhansi to Allahabad.

2. The facts of the case in brief are that the applicant, at the relevant time was posted as Upper Division Clerk in the office of the Garrison Engineer, Jhansi division. He has, it is stated, completed only two and half years in that office when he was served with letter dated 14.12.1996 asking him to keep himself in readiness for his posting to hard tenure station under the authority of the Headquarters, Chief Engineer Central Command, Lucknow. Thereafter he was served with letter dated 6.1.1997 posting him in the office of the Chief Engineer (A/F) Allahabad in the same capacity (annexure 1). The applicant contends that he, in his capacity as Secretary of the U. P. M. E. S. Workers Union, Jhansi branch, had made several complaints against the respondent no.6 Major R. K. Singh & other authorities, touching their integrity. It has also been alleged that the applicant had organised agitation against the respondents for the failure of the administration to make payment of salary to the staff for the month of August, 1996 on due date. Apart from that at the instance of the applicant, several news items were published in different News papers exposing the illegal and irregular acts of the administration in general and the respondent no.6 in particular. It is alleged that the aforesaid action of the applicant had annoyed the respondent no.6 who manoeuvred the

transfer of the applicant from Jhansi to Allahabad. The further case of the applicant is that he being the Secretary of M. E. S. Workers Association, was protected from transfer from 29.10.1996 for a period of one year. The impugned transfer, it is alleged, is malafide as well as against the statutory rules.

3. The respondents have contested the claim of the applicant. In the counter affidavit filed on behalf of the respondents, it has been stated that the applicant had remained posted at Jhansi in different capacity for over 17 years and that he has been transferred from Jhansi to Allahabad in administrative interest. The further case of the respondents is that the respondents, against whom malafide has been alleged, have not been impleaded by name. Therefore, ground of malafide cannot be taken into account. It has also been contended that protection from transfer has been extended to a workman who is an office bearer of U.P.M.E.S. Workers Union and whose name for such protection is sent by the Secretary in letter addressed to the competent authority. But the protection, it was argued, does not extend to office bearer of the branch of the Union. Hence the applicant is not entitled to protection from transfer. Not only that, it is stated, the protection according to the instructions issued in that behalf is admissible only once whereas the applicant has been enjoying the same since 1990.

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

5. The ~~blawer~~ ^{blawer} regarding transfer has been settled by the Apex court in a catena of decisions. One such decision is that of Smt. Shilpi Ghosh and others V/s State of Bihar AIR (1991) SC 532. In this case the Hon'ble Supreme court has held that a government servant has no vested right to remain posted at one place and is liable to be transferred from one place to another. It has been further held that even if the transfer is in violation of the Executive instructions ~~of~~ order, the court/Tribunal ordinarily should not interfere with the transfer order. The court/Tribunal, however, ^{can} come to the aid of a transferred employee if it is shown that the transfer is tainted with malice or that the same is against statutory rules. One of the ground on which the impugned order has been assailed is malice on the part of respondents no. ~~1 and~~ 6. The applicant has filed copies of representations made by him in his capacity as the Secretary of Workers Union against the authorities. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~. He has also annexed the paper clippings in which the allegation of the alleged irregularity committed by certain Officers have been reported. Respondents ~~XXXXXX~~ who are alleged to be nursing grudge against the applicant for his activities as the Secretary of Jhansi branch of M.E.S. Workers Union have not been made parties by name. Therefore, they have no occasion to rebut the above allegation by filing counter

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affidavit. The impugned transfer order has been passed by the Chief Engineer, Headquarters, Central Command, Lucknow. Neither respondent no.5 nor respondent no.6 are the Transferring authorities against whom malafide has been alleged. There is no material on record to show that respondent no.5 or 6 had in any way influenced the decision of the Chief Engineer in transferring the applicant from Jhansi to Allahabad permanently. In absence of proper evidence in support of allegation of malafide, we are unable to hold that the transfer of the applicant is tainted with malice.

6. Section 33(4) of the Industrial dispute Act 1947 provides that in every establishment, certain numbers of workmen shall be recognised as protected workmen. The provision as contained in rule 61 of Industrial Act central rules 1947 also provide that protection of the workmen who is a member of Workmen's Union for a period of 20 months. The Army headquarters has also issued instructions in letter annexure no.5.1 para 2 of the letter annexure 5^{is} provided that each recognised union/association is required to forward names of five office bearers whom they consider as important office bearers and for whom protection from transfer is required. There is thus protection to such of the office bearers of the union whose names are forwarded to the concerned authority in compliance with the requirement of rules.

7. The learned counsel for the respondents submitted that this protection from transfer is available to the office bearers of ^{National} Union. Since the applicant was the Secretary, Jhansi branch of Union, he was not

entitled to such protection. We have given our conscious consideration to the above submission of the learned counsel for the respondents and find ourselves unable to accept the same. From annexure nos. 5 and 6, it appears that the Secretary of Jhansi branch of M.E.S Workmen Union was directed to submit the names of such of the office bearers of the Union who it considered important members entitled to protection against transfer and that Jhansi branch of the Union had forwarded the names of five persons including the name of the applicant, who is the Secretary of Jhansi branch of the Union by letter dated 5.11.1996. Not only that the respondents themselves have, in their letter dated 31.12.1993 (annexure 13) to the R.A. confirmed that protection from transfer extends to the member of the branch Union also. The communication between respondents and the Union of the branch of U.P.M.E.S. Workmen Union is a clear evidence of the fact that protection against transfer of the office bearers of branch Unions also has been recognised and extends to the office bearers of the branch of the Union.

8. It was next argued by the learned counsel for the respondents that protection against transfer ^{is} available in respect of that particular station is available for that year/term only and that such protection was not available against for any subsequent term. This contention of the learned counsel for the respondents finds support from the instructions issued vide letter dated 4.10.1993 (annexure 5). The learned counsel for the respondent invited our attention to the averments made in para 10.11 of the C.A. wherein it has been stated

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that the applicant has been the office bearer of the Union since 1990 and that he has already been allowed one time protection granted by the rules. The averments in para 10.11 of the C.A. have been replied in para 25 of the rejoinder affidavit. The fact that the applicant has been the office bearer of the Union since 1990 and is continuing to act as the Secretary, has not been denied. The applicant, however, has averred that he did not avail this facility earlier. The espondents have not filed any letter to show that protection from transfer in respect of the applicant had been sought earlier also. The letter dated 20.12.1993 from ~~Headline~~ ^{Headline} Commander Works Engineering Jhansi (annexure 11 to the RA) however indicates that the Secretary M.E.S. Union Jhansi had been asked to forward the names of five important office bearers for protection from transfer. The respondents have not filed any document to show the name of the applicant was forwarded seeking protection in response to letter dated 20.12.1993. In absence of relevant material, it is not possible to arrive to arrive at a definite conclusion that the applicant has already availed one time protection against transfer.

9. In view of the above, this application is disposed of with a direction to the respondents to examine if the Jhansi branch of M.E.S. Union had sought protection of the applicant from transfer by virtue of his being an office bearer ^{earlier also} and if not he should not be transferred till October, 1997 and in case it is found that protection of the applicant from transfer was sought earlier also ^{and allowed} ~~this~~ this application shall stand dismissed.

There will be no order as to costs.

[Signature]
MEMBER (J)