

CENTRAL ACTIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 829/97
Transfer Application no.

Date of Decision 9.3.98

Ghurahe Applicant(s)

Counsel for the Applicant Shri S.N. Mishra Counsel for the
Applicant(s)

V E R S U S

Union of India and Others Respondent(s)

Shri Amit Sthalekar Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. D.S. Bawela, A.M.
Hon'ble Mr. _____

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ?
6. Whether to be circulated to all Benches ?

(SIGNATURE)

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

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Original Application No. 829 of 1997

Allahabad this the 9th day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)

Ghurahu S/o Raghunath, a/a 43 years, Instructor,
A.T.C. Chamaraha, Varanasi, R/o Village Amwa Mafi,
Post Office Jaganathpur, Distt. Bhadohi.

Applicant

By Advocate Sri S.N. Misra

Versus

1. Union of India, Ministry of Textiles, through its Secretary, New Delhi.
2. Regional Director, Office of the Development Commissioner(Handicrafts) Central Region B-46 (J. Park) Mahanagar Extention, Lucknow(U.P.).
3. Assistant Director(W) Office of the Development Commissioner(Handicrafts), B-46(J. Park), Mahanagar, Extention, Lucknow(U.P.)
4. Carpet Training Officer, Advance Training Centre, Chamaraha, Varanasi.
5. S.N. Yadav, Instructor, A.T.C. Chamraha, Distt. Varanasi.

Respondents.

By Advocate Sri Amit Sthalekar

CHIEF

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ORDER

BY Hon'ble Mr. D.S. Baweja. A.M.

The applicant while working as Instructor at Advanced Carpet Training Centre, Chamaraha, District Varanasi under the Development Commissioner (Handicrafts) Ministry of Textiles, has been transferred to Carpet Weaving Training Centre, Haripur Kalsi, Dehradun as per order dated 14.7.97 in modification of the earlier order dated 20/6/97 as per which Sri S.N. Yadav-respondent no.5 was transferred to Dehradun. The applicant has filed the present O.A. on 07.8.97 seeking the relief of quashing the order dated 14.7.97 and transfer order dated 20.6.97 with a prayer that the applicant be allowed to continue at the present place of posting and paid his monthly salary.

2. The applicant has laid his foundation for the challenging the transfer order on/following grounds:

A. The transfer order has been passed by an authority who is not competent.

B. The transfer order has been passed to show undue favour to Sri S.N. Yadav - respondent no.5 who has been retained at the same place of posting even after working for 6 years wherein the applicant had only served at the same Centre for about 2 years. The modification of the earlier order dated 20.6.97 is ample evidence to support this contention.

C. No reasons have been assigned for modification of the earlier order dated 20.6.97 by the order dated 14.7.97. Therefore, the order is ex-facie, unjust and illegal.

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D. The applicant has been discriminated and thereby violating the provisions of Article 14, 15 and 16 of the Constitution of India.

3. The respondents have opposed the original application through the counter-affidavit stating that the transfer order has been passed by the competent authority with the approval of the Regional Director who has been delegated power as per the extant rules. The respondents further contend that the transfer order is legal and valid. The respondents submit that work of the applicant was not found satisfactory as he was not taking interest and used to remain absent for which he was also served warning. The matter was considered on the report Officer-in-charge by the competent authority and transfer of the applicant has been ordered to Dehradun. The respondents further submit that the applicant has been continuing in and around his own home town through out his service career and only first time he has been transferred to a distant place. The respondents ^{have} strongly refuted that there has been any political approach or influence or pressure in modifying the order of transfer of Sri S.N. Yadav-respondent no.5. Keeping these facts in view, the respondents contend that the application is devoid of merits and deserves to be dismissed.

4. As per order dated 12.8.97, an interim stay order was passed providing status-quo in respect of the applicant with regard to the transfer order to be maintained till the next date. This order was extended from time to time and continued till the pronouncement of the order.

5. The applicant has filed the rejoinder-affidavit controverting the submissions of the respondents and re-affirming his grounds advanced in the O.A. The applicant denies the allegations with regard to his work having been not ^{found} satisfactory and ^{has been} remaining absent. The applicant has also refuted the contention of the respondents that he continued around his home town till the present order of transfer.

6. Heard the arguments of Sri S.N. Misra, learned counsel for the applicant and Sri A. Sthalekar, learned counsel for the respondents. Learned counsel for the respondents has cited the judgment of Hon'ble Supreme Court in the case of ^{Mrs.} Shilpi Bose Vs. State of Bihar ^{and Others} A.I.R. 1991 S.C. 532 in support of their contention.

7. In the matter of transfer when challenged, the Hon'ble Supreme Court has laid down the law as to the scope of judicial interference. The respondents have cited the judgment of ^{the} Hon'ble Supreme Court in the case of ^{Mrs.} Shilpi Bose (supra). In para 4 of this judgment ^{the} Hon'ble Supreme Court has laid down as under;

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the

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Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.*

8. Keeping in view the law laid down by the Hon'ble Supreme Court dealing the scope of interference by the Court/Tribunal when the order of transfer is challenged, the various grounds raised by the applicant in assailing the impugned transfer order, will be examined to identify if the transfer order is vitiated by any of these grounds. The first ground raised is that the transfer order has been passed by the authority who is not competent in respect of the applicant. The respondents in the counter-affidavit have contested this claim of the applicant stating that the transfer order has been passed by the Regional Director who has been delegated the power in terms of the order dated 08.12.94(Ann.C.A.-2). In the rejoinder affidavit, the applicant has not contested this submission of the respondents. During the hearing, the learned counsel for the applicant fairly conceded that in view of the submissions made by the respondents, this is no longer the valid ground for challenging this transfer order. The second ground for challenge is that no reasons have been advanced for modification of the transfer order dated 20.6.97 by issuing the impugned order dated 14.7.97 as per which the applicant has been transferred, --in place of Sri S.N. Yadav--respondent no.5. The applicant does not indicate the rules under which the reasons for transfer are ^{to be in the order,} indicated. If nothing is mentioned in the transfer order, it is to be presumed that the transfer has been ordered in the interest of administration. However, if such a transfer order is challenged, it is incumbent on the part of the respondents to disclose the reasons for

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transfer or modification of the order to satisfy the Tribunal that the transfer has been order for bonafide reasons in the interest of administration. In the present case, the respondents have disclosed the reasons for transfer in the counter-affidavit, filed by them. In view of this position, I am not inclined to subscribe to the submissions of the applicant that the transfer order suffers infirmity due to non-disclosure of the reasons^{for} effecting transfer of the applicant.

9. The next ground taken by the applicant is that of discrimination and showing undue favour to Sri S.N. Yadav, respondent no.5, who has been retained at the same station even after being there for about 6 years while the applicant has been transferred out after working hardly for 2 years at the same Centre. The applicant has contended that the respondent no.5 has managed to get his transfer order modified through the political influence and pressure on the transferring authorities. The respondent no.5 who has been made^a party but he by name, has not filed any counter-affidavit although notice was issued to him. The applicant except making the allegation of political influence brought on the transferring authority by the respondent no.5, has not given any details. It has been not indicated as to which authority has been influenced by the political consideration to change the order of respondent no.5. If the authority who has transferred the applicant, has been influenced by the political pressure then the applicant should have named that authority. However, it is noted that the Regional Director who has passed the transfer order, has not been made the respondents by name. In the absence of any fact on the basis of which one could conclude



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that there was such a clout of respondent no.5, I am unable to find any merit in the allegation which is vague and without foundation. As regards the discrimination, the respondents have countered the claim of the applicant by submitting in the counter-affidavit that the applicant has been working in and around his home town through^{out} his service career and he has been transferred out of the Varanasi region for the first time. The applicant^{has} contested this claim of the respondents, stating that besides Varanasi, the applicant has posted at several other places such as Mirzapur, Barabanki, Shahjahanpur, and Unnao. Even for a moment the contention of the applicant is accepted that he has been transferred away from Varanasi on several occasions, the plea of discrimination taken by the applicant, does not survive. It is for the administration to decide as to who should be transferred out. If a person with a longer stay is allowed to continue at the same station, ^{this} cannot be a case of discrimination when the transfer is an exigency of service.

10. The respondents have indicated in the counter-affidavit that the work of the applicant has been not found satisfactory at the present centre and, therefore, the competent authority has considered the matter and decided to transfer the applicant to Dehradun in the interest of administration. The respondents have also submitted that warning letters have been issued to the applicant. The applicant, however, has contested the submission of the respondents. As indicated above in the extract from of the the judgment of Mrs. Shilpi Bose (supra) that Government servant holding a transferable post has no vested right to remain posted at a particular station and transfer of

the applicant by the competent authority does not violate any legal right. It is within the domain of the competent authority to decide as to which incumbent is most suitable for a particular post. and if required, the transfer of an incumbent could be done in the interest of the administration to ensure proper functioning. In the present case, the competent authority has ~~been~~ ^Q considered it expedient to transfer the applicant in place of respondent no.5 keeping in view the interest of administration and proper functioning of Centre at Varanasi. This ~~situation~~ ^{Conduct of Satisfaction} of the competent authority can be gone into only if the transfer order is challenged attributing malafides or colourable exercise of power to the competent authority. In the present case as indicated earlier, no malafides have been alleged against the transferring authority. The allegation of political clout of respondent no.5 and pressurising the transferring authority is also without any basis. Keeping this background in view, and also what is laid down by the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose, I am unable to find any ground for judicial interference with the transfer order.

11. In the light of the above discussions, the application is devoid of merits and the same is dismissed. No order as to costs. The interim stay order granted as per order dated 12.8.97, is also vacated.

[Signature]
Member (A)

/M.M./