

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 351 of 1998

Allahabad this the 22 day of November 1998

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

J.P. Patel, Son of Sri(late) L.P. Patel, aged about 39 years, Assistant Accounts Officer, barrack Store Office(MES), Jhansi Cantt.

Applicant

By Advocates Sri Suneet Kumar
Sri Rajeev Malviya

Versus

1. Union of India through Comptroller General of Defence Accounts, Government of India, West Block-5, R.K. Puram, New Delhi.
2. Controller of Defence Accounts, Central Command, Kariyappa Road, Lucknow.
3. Local Audit Officer(Army), Jhansi Cantt.
4. Local Audit Officer(Store), C.O.D. Chheoki, Allahabad.

Respondents

By Advocate Sri Ashok Mohiley

O R D E R

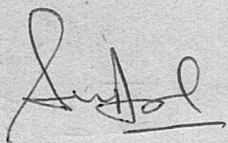
By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A., the applicant makes a prayer to set aside the impugned order of transfer dated 21.2.1998 and subsequently letter dated 28.2.1998

issued by respondent no.3. The applicant challenged impugned order of transfer stating that it is malafide exercise of power and the same is issued to harass the applicant so that he may not able to perform his functions as Office Bearer of the Association so as to frustrate the efforts of the said association pursuing the matter of corruption against the functions of the respondent-department.

2. It is also stated that the applicant has not completed the tenure of 5 years at Jhansi, therefore, his transfer from Jhansi to Allahabad is arbitrary, illegal. In this way, the applicant makes a prayer to quash the impugned order of transfer and subsequent communication issued by respondent no.3.

3. The counter-affidavit has been filed. It is stated by the respondents that the applicant resume posted at Jhansi from 09.10.1980 to 31.3.98 and every year an exercise is carried out to transfer the staff on the basis of station seniority and choice is also obtained from the individuals expected to be transferred. Thereafter, transfers are ordered by taking into account the choice of the individuals and administrative feasibility. It is also stated that before issuing the impugned orders of transfer, the same exercise was done and the applicant was also asked to furnish the choice but he did not respond. In pursuance to the above procedure, the applicant was transferrred and was relieved on 31.3.1998. It is denied that the impugned order of transfer is in any way arbitrary, illegal and was issued in malafide exercise of powers. It is also stated in the counter-



affidavit, that there were number of complaints against the applicant and the applicant before approaching this Tribunal did not avail the remedies available to him. No such representation was received by the respondents as alleged by the applicant. The transfer order is issued by the competent authority by following the policy as per no.368 to 381 of Office Manual Part-I. It is also stated ~~in~~ the counter-affidavit that the applicant was transferred on the basis of the seniority of Station at Jhanis. The applicant was transferred within the same command and it is denied that the applicant was transferred because he raised a issue of corruption against the officials as Office Bearer of the Association. In the counter-affidavit detailed reasons have been explained not to transfer some of the individuals mentioned by the applicant and it is stated that the applicant's order was communicated to the applicant through proper channel. In this way, as per averments made in the counter-affidavit, the respondents have requested to dismiss this O.A. with cost.

4. The rejoinder, supplementary counter-affidavit and supplementary rejoinder have also been filed, which are on record.

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

6. Learned lawyer for the applicant has argued that the impugned order of transfer based on seniority, is illegal. He has also submitted that applicant....pg.4/-

has complained and raised the voice against senior officers of the respondent-department against the corruption, therefore, impugned order of transfer was issued malafide and in colourable exercise of powers. He has also submitted that the applicant was shifted because of his union activities.

7. In support of his contention, he has referred '1997 U.P.L.B.E.C. 1 647'

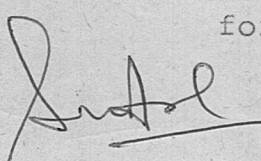
8. On the other hand, the learned lawyer for the respondents objected all the arguments as alleged by the learned lawyer for the applicant and submitted that;

(i) the applicant was transferred as mentioned in para-3 of the counter-affidavit on the basis of seniority at a place of posting.

(ii) the applicant was transferred within the same command as is evident from para-22 and 23 of the counter-affidavit.

(iii) the allegation of malafides are baseless as on inquiry the complaint of corruption against the official of respondent-department was found baseless and on inquiry, it was also revealed that the complaint was manipulated by the applicant himself.

9. In support of his contention, learned lawyer for the respondents has referred the following judgments;



i. Sankaranarayanan Vs. State of Karnataka
1994 S.C.C. (L&S) 1180'

ii. Rajendra Roy Vs. Union of India 1993
S.C.C. (L&S) 138'

iii. E.P. Royappa Vs. State of Tamilnadu
A.I.R. 1974 S.C. 555

iv. K. Nagraj Vs. State of Andhra Pradesh
1985(1) S.C.C. 523.

v. N.K. Singh Vs. Union of India 1994
S.C.C. (L&S) 1130.

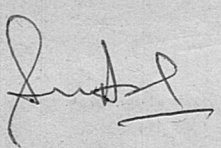
10. I have given thoughtful consideration to the rival contention of both the parties and perused the whole record and citations as referred by the learned lawyer for the parties.

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

12. In 'Sankaranarayanan Vs. State of Karnataka (1993) 1 S.C.C. 54', the Supreme Court observed;

"It may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures."

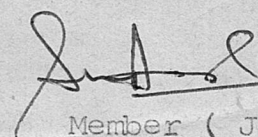
13. In 'N.K. Singh Vs. Union of India 1994 S.C.C. (L&S) 1130', their Lordships of the Hon'ble Supreme Court in para-2 of the judgment had inter-alia observed that only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated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



governing the transfer which alone can be scrutinised judicially.

14. In the instant case, the applicant could not established the fact of malafides against the respondents. No-one by name has been impleaded as respondents against whom any malafides may be imputed. No inference can be drawn against the respondents that impugned order of transfer has been passed with malafides. Malafides can be established by the direct evidence but it may not always be possible. In such circumstances, reasonable inference of malafides can also be drawn from the facts pleaded and established. Such inference ~~can~~ must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures. The alleged transfer cannot be termed as a colourable exercise of powers or it cannot be termed as to frustrate the purpose of the applicant being Office Bearer of the Union. In no stage of imagination, it can be held that the applicant was transferred because he raised the voice against the respondents officials regarding corruption but on the basis of the pleadings of the parties, it does reveal that the applicant was transferred on the basis of station seniority and if some exception are made, the respondents have explained in detail the reasons.

15. Therefore, in view of the discussion as above, I am of the considered opinion that there is no ground to interfere in the impugned order of transfer. Therefore, this O.A. is dismissed with no order as to costs.


Member (J) 2/11/88