

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 358 of 1998

Allahabad this the 2nd day of November 1998

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

R.B. Nenoriya, aged about 39 years, Son of Sri R.D. Nenoriya, Auditor, Office of the Assistant Accounts Officer, Barrack Store, M.E.S., Jhansi.

Applicant

By Advocate 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, Central Ordnance Depot, Kanpur.

Respondents

By Advocate Sri Ashok Mohiley

O R D E R

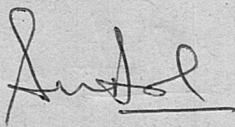
By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A., the applicant makes a

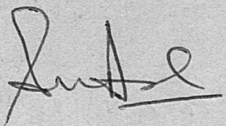
prayer to quash the transfer orders dated 31.7.96 are order dated 28.2.98 by which it was directed by the respondent no.3 to be noted and on production thereof.

2. The case of the applicant that the impugned order of transfer was issued to harass the applicant as he being office bearer of the association, pursuing the case of corruption and making efforts to the removal of officials/officers from Jhansi and Babina against whom corruption charges are levelled. It is stated that the impugned order of transfer has not been issued in the exigencies of service and public interest, but it has been issued solely in the interest of the corrupt officials of the department. It is submitted that the order of transfer dated 31.7.96 was communicated on 28.2.98. It is also submitted that the applicant is active member of the Association and hold the post of Joint Secretary of the Association and highlighted the corrupt practice in the Defence Accounts Office, Jhansi and Babina Station and therefore, on account of this fact, the applicant was transferred from Jhansi to Kanpur, which order is wholly illegal, arbitrary and it is infringement upon the right of the applicant. It is, therefore, requested that the impugned order of transfer be quashed.

3. The counter-affidavit has been filed by the respondents. It is stated that the applicant was appointed in the Defence Accounts department as Clerk on 31.7.1980 and continuously serving with the department till the date. 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 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. The impugned order of transfer was never cancelled but it was deferred on the request of the applicant on the ground of ailment of his wife as a special case. It is denied that impugned order of transfer is in any way arbitrary, illegal and was issued in malafide exercise of powers. It is also stated that there were number of complaints against the applicant and the applicant before approaching this Tribunal did not avail the remedies available to him. The applicant was transferred within the same Command and it is denied that the applicant was transferred ~~again~~ because he raises a issue of corruption against the official 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 ::

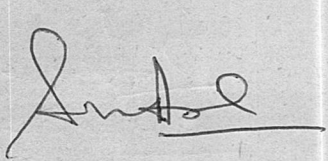
4. The rejoinder, supplementary counter-affidavit and supplementary rejoinder, have also been filed, which are on record.

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 has complained and raised the voice against senior officers of the respondents-department against the corruption, therefore, impugned order of transfer was issued mala-fide 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
2. Rajendra Roy Vs. Union of India 1993
S.C.C. (L&S) 138.
3. E.P. Royappa Versus State of Tamilnadu
A.K. R. 1974 S.C. 555
4. K. Nagraj Versus State of Andhra Pradesh
1985(1) S.C.C. 523
5. 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.

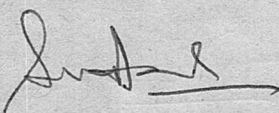
11. In 'Rajendra Roy Vs. Union of India 1993 S.C.C. (L&S) 138' the Hon'ble Supreme Court observed that transfer order which is not malafide and not in violation of service rules and issued with proper jurisdiction, cannot be quashed by the Court.

12. In Sankaranarayanan Vs. State of Karnataka (1993) 1 S.C.C. 54^o, the Hon'ble 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."

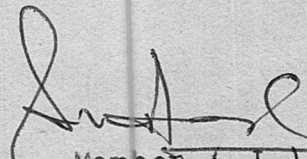
13. In 'N.K. Singh Vs. Union of India 1994 S.C.C. (L&S) 1130', their Lordships of the Hon'ble Supreme Court in para-2 of the judgment had inter-alia observed that only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by malafide or infraction of any professed norms of principles 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 must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures. The inquiry report referred by the learned



lawyer for the respondents which was prepared on the complaint of Sri J.P. Patel makes it clear that in the impugned order of transfer, there was no malafides on the part of the respondents. The alleged transfer cannot be termed so 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

/M.M./