

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Passed on 31st March 1999

D.A.NO. 772 OF 1998

CORAM : Hon'ble Mr.S.L.Jain, Member(J)

1. H.N.Singh son of Late Sri Ram Shanker Singh, resident of 69/69, Danakhori, Kanpur.
2. Vinod Kumar Srivastava son of Late Sri Vijai Bahadur resident of 105/616, Deputy Ka Parao, Near Gandhi Park, Kanpur.
3. M.P. Tewari son of Late Sri Chhotey Lal, resident of 53E/28, Dabauli, Kanpur.
4. R.K.S.Bhadauria son of Sri Paras Ram Singh, resident of 285/5, Lal Colony, Jhui, Kanpur.
5. Arun Kumar Tripathi son of Late Ram Dutt Tripathi resident of A-666 Vishwa Bank Colony, Barra, Kanpur.
6. Sushil Kumar Tandon son of Late Sita Ram Tandon resident of 8/208, Arya Nagar, Kanpur.
7. Nirmal Kumar Shukla son of Sri Nathoo Ram Shukla resident of 41 N Block, Kidwai Nagar, Kanpur.
8. H.B.D. Shukla son of Sri K.K.B.Shukla, resident of 22/6, Vishnupuri Colony, Nawabganj, Kanpur.
9. K.B.Singh son of Sri J.S.Chauhan, resident of 287/6, Juhi Lal Colony, Kanpur.
10. Ashok Kumar Bajpai son of Late Sri Vidya Ram Bajpai resident of 119/254, Darshanpurwa, Kanpur.
11. Ramji Gupta son of Sri Shanker Prasad Gupta, resident of 121/B, Deoki Nagar, Kanpur.
12. Man Mohan Gupta, son of Narain Prasad Gupta, resident of 39/30 Maida Bazar, Meston Road, Kanpur.
13. Kishan Kumar son of Paras Ram, resident of 124/375 Govind Nagar, Kanpur.
14. Ramesh Chandra Dixit son of Late Vidhya Bhushan Dixit resident of 8/186, Arya Nagar, Kanpur.
15. Mahendra Kumar Shukla son of Late R.N.Shukla resident of 104A/61A, Ram Bagh, Kanpur.

S.V.

contd../2p

16. Suresh Chand Srivastava son of Sri Mahesh Prasad Srivastava, resident of 117/P1/380, Shivpuri Kakadeo, Kanpur.
17. Shesh Narain son of Sri Phool Chand resident of 41/89, Misri Bazar, Kanpur.
18. Saheb Singh son of Shiv Baran Singh, resident of 6E/3, Dabauli, Kanpur.
19. S.C. Mehndiratta, son of Late Chaman Lal resident of 7-M/1, Daboli, Kanpur.
20. D.P. Singh son of Late Teg Bahadur Singh, resident of 119/49, Nasimabad Gumti No.5, Kanpur.
21. S.K. Abrol son of Late Sri K.L. Abrol, resident of 6/M/5, M. I. G. , Dabauli, Kanpur.
22. Shrawan Kumar Chaturvedi son of Late Sri C.S. Chaturvedi resident of 211/8, Baboo Purwa Colony, Kidwai Nagar, Kanpur.
23. Vinod Kumar Tripathi son of Sri M.L. Tripathi resident of Mini L. I. G.-2, Indra Nagar, Kanpur.
24. Ram Babu Kushwaha son of Late Sri Kali Charan, resident of 117/42/148, Pandu Nagar, Kanpur.
25. Prabha Shanker Shukla son of Late Sri Anand Shanker Shukla resident of 124/194 B, Govind Nagar, Kanpur.
26. Ved Prakash Jauhari son of Late Sri B.P. Saxena resident of 212-A, Vikas Nagar, Kanpur.
27. Ram Naresh Singh son of Sri Bhura Singh, resident of 771/E/II, E.W.S. Single Storey, Barra-II, Kanpur.
28. Dinesh Kumar Saxena, son of Sri V.P. Saxena, resident of 18/33, Kursanwa, The Mall, Kanpur.
29. Ashwani Kumar Awasthi son of Sri R.G. Awasthi, r/o. 143, L.I.G. Avas Vikas Colony, Kanpur.
30. Harish Chand Bhardwaj son of Ram Anant resident of 39, Nidhi Nikanj Colony, Sarvodaya Nagar, Kanpur.
31. Ashok Kumar Tewari son of R.P. Tewari resident of P-22, Jarauli I, Kanpur.
32. Jagdish Pal Singh son of Sukh Pal Singh resident of G 1417, Avas Vikas Colony, Kalyanpur, Kanpur.

54 / -

33. Dinesh Kumar Saxena son of Sri Shankar Sahai resident of 13/162, Govind Nagar, Kanpur.
34. Kamlesh Kumar Tewari, Son of Sri S.P. Tewari, resident of J-2/101, Vijai Nagar, Kanpur.
35. Om Chandra son of Late Sri S.N. Verma, resident of 1/42, Nawan Ganj, Kanpur.
36. Dharendra Pandiya son of Late S.C. Pandiya resident of 1/90, Nawab Ganj, Kanpur.
37. D.C. Mishra, son of Late Shyam Manohar Mishra resident of 74/243, Dhankutti, Kanpur.

.....APPLICANTS.

(By Shri Vijai Bahadur, Advocate)

VERSUS

1. Central Board of Trustees E.P.F. Organisation, New Delhi, through its Chairman.
2. The Central Provident Fund Commissioner, 14, Bhikaji, Cama Place, New Delhi.
3. Regional Provident Fund Commissioner, Nidhi Bhawan, Sarvodaya Nagar, Kanpur.

....., RESPONDENTS

(BY Shri S. Chaturvedi and Shri N.P. Singh, Advocates)

ORDER

(By Hon'ble Mr. S.L. Jain, Member(J))

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for an order/direction quashing the impugned order dated 13-7-98 (Annexure-A1) commanding the respondents to pass a fresh transfer order, if necessary, by transferring employees recruited in 1976 exclusively for Sub-Regional Offices, Staff

JS

members promoted out 35% quota to the ir original place of postings, other staff members (LDC, UDC, UDC(SG) exclusively appointed for Sub-Regional office as laid down in various circular letters and policy decisions of superior authorities alongwith cost of the petition.

2. During the pendency of Original Application Applicant No. 4 and 30 Shri R.K.S.Bhadauria and Shri Harish Chand Bhardwaj respectively moved Misc.Application No. 3041/98 seeking permission to withdraw from the above case, applicant No.35 (correct Number is 34) Shri Kamlesh Kumar Tewari also moved Misc.Application No. 3042/98 for withdrawal from the O.A., Applicant No.26 Ved Prakash Jauhari moved Misc.Application No. 2967/98 for deleting his name as applicant. The said applications were allowed and necessary orders were passed on 21-9-98.

3. There is no dispute between the parties in respect of the facts that the applicants were initially appointed as L.D.C. in the office of Regional Provident Fund Commissioner, U.P. Kanpur in between 1977 and 1978 on different dates after their selection for the said appointments by the Departmental Selection Committee. Vide Annexure A2 and A2(a) similar appointment letters were issued to other applicants. In due course of time the applicants confirmed as LDCs and thereafter promoted as UDCs in the office of Regional Provident Fund Commissioner U.P. Kanpur except applicant No. 37 Shri D.C.Mishra. Other applicants are working as UDCs (Selection Grade) while Shri D.C.Mishra is working as LDC. The applicants are transferred vide impugned order dated 13-7-98 from Regional Office, Kanpur to Sub-Regional Office, Meerut.

4. The applicants case in brief is that they were appointed in Regional Provident Fund Commissioner Office, U.P. Kanpur in the year 1977-78, a number of persons were appointed as LDC in the year 1976 and according to terms of their appointment letters, their appointments were done for Meerut Sub-Regional office though they were allowed to join at Kanpur Regional Office and are also continuing to work at Kanpur Regional Office. Their list is Annexure-A3 and appointment letters are Annexure-A4 and A5. The Union of Employees submitted a representation dated 14-7-98 to respondent No. 2,3 about their grievances and hardships of the applicants on account of the impugned transfer order and applicant also submitted their representations against the said transfer orders which are pending, but respondent No.3 ^m ~~is~~ declined to cancel the transfer order. However, he has stayed the transfer order till 31-7-98 by order dated 15-7-98. The terms and conditions of service of the employees of Regional Provident Fund Commissioner office are being governed by Employee's Provident Fund (Staff & Conditions of service Regulations) 1962. Various circulars were issued by respondent No.1 & 2 containing the instructions and guidelines in respect of transfers. The Central Board of ~~all~~ Trustees had decided to open many Sub-Regional Offices as such a Committee known as "Faquir Chand Committee" was constituted to make recommendations with regard to Transfer Policy of the Employees. The said Committee submitted its recommendations and on the basis of the aforesaid recommendation following instructions have been issued on 11-11-80 by the Regional Provident Fund Commissioner.

- (a) The Group 'D' staff and LDCs should be recruited at the Sub-Regional Office level itself.

SW / -

4. The applicants case in brief is that they were appointed in Regional Provident Fund Commissioner Office, U.P. Kanpur in the year 1977-78, a number of persons were appointed as LDC in the year 1976 and according to terms of their appointment letters, their appointments were done for Meerut Sub-Regional office though they were allowed to join at Kanpur Regional Office and are also continuing to work at Kanpur Regional Office. Their list is Annexure-A3 and appointment letters are Annexure-A4 and A5. The Union of Employees submitted a representation dated 14-7-98 to respondent No. 2,3 about their grievances and hardships of the applicants on account of the impugned transfer order and applicant also submitted their representations against the said transfer orders which are pending, but respondent No.3 ^m ~~is declined~~ to cancel the transfer order. However, he has stayed the transfer order till 31-7-98 by order dated 15-7-98. The terms and conditions of service of the employees of Regional Provident Fund Commissioner office are being governed by Employee's Provident Fund (Staff & Conditions of service Regulations) 1962. Various circulars were issued by respondent No.1 & 2 containing the instructions and guidelines in respect of transfers. The Central Board of ~~and~~ Trustees had decided to open many Sub-Regional Offices as such a Committee known as "Faquir Chand Committee" was constituted to make recommendations with regard to Transfer Policy of the Employees. The said Committee submitted its recommendations and on the basis of the aforesaid recommendation following instructions have been issued on 11-11-80 by the Regional Provident Fund Commissioner.

- (a) The Group 'D' staff and LDCs should be recruited at the Sub-Regional Office level itself.

SW / -

- (b) With regard to UDCs who is the main operative elements, you may draw up a list of such officials who may willing to be posted to the Sub-Regional Offices in order to their seniority and send them as & when vacancies ~~here~~ occurs.

In accordance with the aforesaid guidelines the Sr.UDCs as given in Annexure-A3 ought to have been considered first for the transfer from Kanpur Regional Office to Meerut Sub-Regional Office. They were recruited and appointed for Meerut Sub-Regional Office though they were allowed to join at Kanpur. The seniority list of UDC circulated on 9-5-98 is Annexure A7(a). It reveals that several seniors to the applicants have also been omitted and not transferred, which are mentioned on Annexure- A8. Thus the transfer order has been ~~passed~~ issued in controvention of guidelines issued on 11-11-80 passed on recommendation of "Faquir Chand Committee" and hence the impugned order is wholly illegal and arbitrary which contravenes Article 14 of the Constitution of India. The said transfer policy was reiterated vide circular dated 17-8-82. The Central Provident Fund Commissioner, Delhi, issued an Inspection Report dated 21-2-98 in which he directed that the employees who were appointed for Sub-Regional Office but were brought to Regional Office should be transferred as far as possible to the vacant post in the Sub-Regional Office and some way may be found out for the same by 30-6-98. Shri U.C. Tewari, Regional Provident Fund Commissioner who passed the impugned order was also present. The number of employees at present working at Kanpur were appointed and joined at different Sub-Regional Offices, but they

JN /

were brought to Kanpur vide order dated 29-6-89. Similarly 22 other persons were also appointed at different Sub-Regional offices on different dates but were brought to Kanpur Regional office and are still working at Kanpur. Their names are mentioned at Annexure- A12. The impugned transfer order has been passed ignoring the directions of the Central Provident Fund Commissioner dated 21-2-98. As such the impugned order is wholly illegal and has been passed in contravention of directions dated 21-2-98. In 1978, 22 employees were appointed on condition that they were appointed for Meerut Regional Office were brought to Kanpur Regional Office and are still working at Kanpur. Their names are mentioned on Annexure-A13 and appointment letter is Annexure- A14. The Regional Provident Fund Commissioner had good number of opportunities to fill in the vacancies of Sub-Regional Office, Meerut in accordance with the norms laid down and various circular letters, but he failed to fill in the said vacancies and has passed the impugned order of transfer arbitrarily. The impugned transfer order has been passed to victimise the applicants and it will put the applicants in great hardship and miseries. As the transfer order is irrational by adopting pick & choose method and not according to norms and guidelines having statutory force the Employee's Union has given another representation dated 21-7-98 to Central Provident Fund Commissioner, New Delhi, but no reply has been received on the said representation. Under the Service Rules 35% of Class-'D' employees ought to be promoted to Class-'C' and such persons after their promotion are also to be

My / -

absorbed in the vacancies of their original place of posting. A list of such promotees from Group 'D' to Group 'C' is at Annexure- A17. The said employees ought to have been transferred, hence this Original Application for the aforesaid reliefs.

5. The respondents contested the claim and alleged that the recruitment of LDCs is made by the Regional Office at Kanpur even for Sub-Regional Office. In 1976 Sub-Regional Office at Meerut was being contemplated, the applicants were selected for temporary posts of LDC sanctioned by the Government for Meerut Sub-Regional Office. In the year 1977-78 the office could not be established immediately thereafter. The applicants were not selected for Regional office at Kanpur but they were allowed to remain at Kanpur for the time being. They have been posted in their Head Office for which they were selected and were not transferred. Their Head Office is at Meerut and they have to be posted at Meerut. It is a case of pure and simple posting. By passage of time the work force of UDCs has been reduced at Meerut, hence on administrative ground they have been posted at Meerut. The services of the applicants is otherwise transferable and they can be asked to work at any place in India as per terms and conditions of service. They were ^{having} no right to remain at place of their choice. Due to exigency of work and administrative ground the applicants are posted at Meerut. They are relieved from Kanpur and out of 37 applicants, 35 are relieved. The grievances were considered, but as the applicants rushed to the Tribunal the matter became sub-judice and it was not considered proper by the

Jy /

Authorities to take decision on the representations of the applicants. The guidelines are not enforceable in Court. Faquir Chand Committee was only a recommending body and it is upto Government/Authority to accept it as a whole or in part or not at all. The applicants were junior^{most} amongst persons recruited for Meerut Sub-Regional office. Hence they were rightly directed to join their office at Meerut. The posting of the applicants was done on administrative grounds, hence question of seniority/juniority does not arise. The case of the applicants was not covered by the guidelines. The total sanctioned strength of UDC for Sub-Regional Office, Meerut is 169 against which only 89 UDCs were working. The sanctioned strength of LDC for Meerut office is 68, whereas only 33 LDCs were working. The shortage of hands was great inconvenience to the office in disposing off all cases. The Central Provident Fund Commissioner during his inspection on 21-2-98 observed that in Regional office, Kanpur there was surplus staff and shortage at Meerut. With a view to streamline the work a decision was taken to post 36 UDCs and one LDC at Meerut. Hence the staff recruited for Meerut were directed to join at their office at Meerut. The guidelines do not create a right or obstruction in proper functioning. The impugned order is neither arbitrary nor discriminatory. The impugned transfer is not a rotational transfer to Sub-Regional office, but posting due to exigency of work. The persons appointed at different Sub-Regional Offices were posted at Kanpur for specific purpose, but somehow they continued there. Annexure-A10 contains directives of Central Provident Fund Commissioner regarding transfer, but they are not applied in this case.

24/ -

The posting order of the year 1989 after opening the Sub-Regional office at Meerut is irrelevant. The said postings were made to meet the exigency at that time. It cannot be said that the said order was illegal or as mala fide merely for the reason that employees of other Sub-Regional office have been transferred in the normal course. There is shortfall of 41 persons, hands at Meerut apart from 36² sent by the impugned order, three other UDCs have been sent to Meerut and more hands will be sent to Meerut for proper running of the establishment. Hardship is no ground to cancel the transfer order. The order is neither irrational nor any pick & choose method was adopted. The application has become infructious as 35 applicants have joined at Meerut. The Group 'C' employees promoted from Group 'D' were not sent as the applicants were selected for the Meerut office. Hence prayed for dismissal of the Original Application alongwith costs.

6. In Rejoinder Affidavit it is alleged that C.A. has been filed by Shri R.L.Jaiswal, who is not a party in the present O.A. Hence C.A. is liable to be rejected on this very ground. In 1976 Sub-Regional office, Meerut was under contemplation yet necessary arrangements for establishing Sub-Regional office must have started in 1976 and for that reason staff for Meerut Sub-Regional office was recruited in 1976. Amongst applicants those who were selected in 1978 were not selected for Meerut, hence they stand on different footing. Similarly applicants selected in 1977 were required to join at Kanpur for undergoing training

Sd/-

for maximum period of 3 months, they were not transferred thereafter to Meerut. Thus condition for being appointed for Meerut also stands waived. After a lapse of more than 20 years the applicants were picked up while employees selected in 1976 particularly for Meerut have been left out for the reason that they are directly or indirectly related with the present Asstt. Commissioner Administration. The whole action of retaining the persons selected in 1976 is thus malafide. A false plea for considering the persons for transfer to Meerut has been put forth to conceal and suppress the act of favour and arbitrariness. The impugned order itself says ~~that~~ that it is a transfer order. Merely using term "Administrative Reasons or Exigencies" an order cannot be treated so. No rational method was adopted while passing transfer order, but only pick & choose method was adopted.

7. The applicants' counsel relied on AIR 1967 Supreme Court 1910 Sant Ram Sharma Vs. State of Rajasthan and others which lays down the proposition that till statutory rules governing promotion to selection grade post are framed it cannot be said that Government cannot issue administrative instructions regarding principles to be followed and if cases of all eligible candidates are considered before appointment to such posts there is no violation of Article 14 and 16 of the Constitution. Perusal of the said Authority shows that Government is competent to issue administrative instructions in respect of promotion policy.

8. The applicant's counsel relied on AIR 1991 Supreme

Slja

Court 1993 State of Sikkim Vs. Doorji Tshering Bhootiya and others which lays down the proposition that where statutory provisions are unworkable and inoperative, Government can exercise its executive powers in a case of recruitment.

9. The Applicant's counsel further relied on A. I. R. 1982 Supreme Court 917 for the proposition that Central Board of Directors, Reserve Bank of India can issue administrative directions or circulars for regulating service conditions.

10. On perusal of the above referred authorities only it can be said that the first authority relates to a case of promotion, the second one relates to a case of recruitment, ^W but the third one relates to a case of service conditions.

11. The applicant's counsel relied on (1997) 2 UPLBEC 925 Smt. Gyatri Devi Vs. State of U.P. and others for the proposition that if a transfer order is not on administrative grounds but on dictates of politician, is ~~legal~~ illegal and violative of Article 16 deserves to be quashed. The said authority refers and follows ^W to the case of Pawan Kumar Srivastava Vs. UPSEB reported in (1995) 1 UPLBEC 414. It also relies AIR 1993 SC 1605 Union of India Vs. M.P. Thomas, 1993(4) SCC 357 Union of India Vs. S.L. Abbas, AIR 1993 SC 1236 Rajendra Roy Vs. Union of India, 1994(6) SCC 98 N.K. Singh Vs. Union of India and AIR 1991 SC 532 Shilpi Bose Vs. State of Bihar. After summarising dictums laid down in the said judgements it has been laid down that transfer orders can be set aside on three grounds namely :-

Jy /

- (i) Violation of statutory rules;
- (ii) Malafides;
- (iii) Infraction of any professed norm or principle governing transfer.

12. In case of B.Varaha Rao Vs. State of Karnatak reported in 1986 (4) SCC 131 it has been observed as under :-

"This power (of transfer) must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as malafide. A transfer is mala fide when it is not made for the professed purpose such as in the normal course or in public and administrative interest or in the exigencies of service. It is a basic principle of the rule of law and good administration that even administrative action should be just and fair."

In para 47 it has been mentioned that to run the administration properly there must be objective criteria regarding transfers and postings of government servants in the States and it should not be done on the basis of caste, religion, favouritism, pick and chose, or illegal gratification.

13. The applicant's counsel relied on 1995 (1) UPLBEC 414 Pawan Kumar Srivastava Vs. U.P. State Electricity Board, which is already referred in case of Smt. Gyatri Devi Vs. State of U.P. & others reported in (1997) 2 UPLBEC 925.

J.M. /

14. The learned counsel for the applicant relied on JT 1997 (6) S.C. 229 Shri Arvind Dattatraya Dhande vs. State of Maharashtra and others, which lays down on the proposition that if a transfer order is passed at the behest of the persons interested to victimise honest officers - transfer is nothing but malafide and arbitrary action. The case is no reliance for deciding the present case.

In case of Union of India and others Vs. S.L. Abbas reported in 1993 (4) SCC 357, it has been held that guidelines issued by government do not confer upon employee legally enforceable right and order of transfer made without following guidelines cannot be interfered with by Court unless it is vitiated by malafide or is made in violation of statutory provisions.

15. The learned counsel for the respondents relied on (1996) 1 ESC (Alld.) 471 Raj Deo Singh vs. Chief Engineer U.P. Jal Nigam, Lucknow, which lays down that a person holding a transferable post cannot claim any vested right to work on a particular place. If an employee is not able to make any firm foundation for alleging that his transfer was contrary to any statutory provisions or actuated by malice - transfer order cannot be cancelled- even though it is made in the mid academic session adversely affecting the education of the children.

16. The respondents counsel relied on case of Rajendra Roy Vs. Union of India and another reported in 1993 LAB. I.C. 446 which was also relied on by the applicant's counsel which is referred in (1997) 2 UPLBEC 925 Smt. Gyatri

Signature

Devi Vs. State of U.P. and others for the proposition that if transfer order not passed malafide or in violation of service rules or without proper justification cannot be quashed. It further lays down that malice cannot be established on the basis of insinuation and vague suggestions. The said case applies to the facts of present case for the reason that there was no averment in the O.A. regarding favouritism and adoption of pick and choose policy. For the first time in R.A. it has been put forth.

17. The learned counsel for the respondents relied on State of M.P. and another Vs. S.S. Kourav and others reported in (1995) 29 Administrative Tribunals Cases 553 which lays down that hardship caused to the employee from the transfer held not a ground for judicial review of the transfer order.

18. The learned counsel for the respondents also relied on AIR 1991 SC 532 Mrs. Shilpi Bose and others Vs. State of Bihar and others which was also relied on by applicant's counsel while referring (1997) 2 UPLBEC 925 Smt. Gyatri Devi Vs. State of U.P. & others for the proposition that if no mandatory rule followed by transfer interference is not warranted.

19. The respondents counsel relied on AIR 1989 (SC) 1433 Gujarat Electricity Board Vs. Atma Ram Sungomal Poshami, which lays ~~down with~~ down with a duty to comply the transfer order unless it is stayed, it cannot be avoided on a ground that a representation is pending or there is difficulty in moving from one place to other.

JST

20. The learned counsel for the respondents relied on (1995) 29 A.T.C. 379 Chief General Manager (Telecom) N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, which lays down that in absence of legal or statutory right of the transferee - judicial review of the transfer of such a employee held unjustified.

21. The learned counsel for the respondents relied on (1993) (67) F.L.R. page 293 Union of India and others Vs. S.L. Abbas, which first also relied by the applicant's counsel while referring (1997) 2 UPLBEC 925 Smt. Gyatri Devi Vs. State of U.P. and others for the proposition that unless transfer order is malafide government instructions in respect of transfer merely for guidance without any statutory force.

22. The learned counsel for the respondents relied on 1994 (24) AT.C. 246 N.K. Singh Vs. Union of India and others which was also relied by learned counsel for the applicant while referring (1997) 2 UPLBEC 925 Smt. Gyatri Devi Vs. State of U.P. & others which lays down the proposition that interference in transfer matters justified only in cases of malafides or infraction of any professed norm or principle and where career prospectus remains unaffected and no detriment is caused, challenge to the transfer must be eschewed. For the first time in a R.A. the applicants tried to make out a new case that there emoluments are affected but they are not able to demonstrate how the emoluments are affected. Hence the same new plea cannot be permitted to be agitated for the first time which is even not established.

J. M. 2

23. The respondents counsel relied on Canara Banking Corporation Ltd. Vs Vittal reported in 1963 (7) 184, which lays down the proposition that transfer order is presumed to be proper unless it is proved that it was malafide or by way of action unfair labour practice or some ulterior motive not connected with the business of the ^{of proof lies} ~~gag~~ ^{fact}. Thus it is a duty and burden on the applicant to establish the same.

24. The learned counsel for the respondents relied on 1966 (12) F.L.R. 380 Syndicate Bank Ltd. Vs. Workmen which does not relate to transfer matters.

25. The respondents counsel relied on 1995 (70) F.L.R. 364, Dinesh Chandra Shukla Vs. Director, Rajya Krishi Utpadan Mandi Parishad and another, for the proposition that Court should not interfere with transfer orders which are made in public interest and for administrative reasons unless it is made in violation of any mandatory statutory rules or made with malafide and orders even passed in violation of executive instructions or orders- Courts should ordinarily not interfere with orders of transfer. Proper procedure is to approach the higher authorities.

26. The respondents counsel relied on 1993 LAB. I.C. 89 Union of India and another Vs. N.P. Thomas for the proposition that if transfer order is not violative of any statutory rule it is to be acted upon.

JY

27. On perusal of Annexure- A 2 (IV) the appointment of the applicant was on the following term :-

"(iv) His headquarter will be at Meerut but he will for the present be posted in the Regional Office, Kanpur to undergo training for a period of one month which may be extended upto three months at the discrepetion of the competent authority. During the period of his training he will be entitled to the same pay and allowances as mentioned above. He will however be liable to serve any part of India."

28. On perusal of the Annexure A-2(a) the appointment of applicant Manmohan Gupta was on the term mentioned at (IV) which is as under :-

"(iv) He will be posted in the Regional Office, Kanpur for the present. He will, however, be liable to serve any part of India specially Meerut/Varanasi."

29. Thus, both the applicants were appointed for Meerut (first may be for Meerut and the second may be specially for Meerut alongwith Varanasi). Similar is the case with the other applicants.

30. The learned counsel for the applicants relied on the circular dated 11-11-80 particularly on para 2 which is as under :-

"1. The group 'D' staff and LDCs should be recruited at the sub Regional Office Level itself;

2. With regard to UDCs who are the main operative elements you may please draw up a list of such officials who may be willing to be posted to the Sub Regional Offices in order to their seniority and send them as & when vacancy occurs.

J. S. Gupta

According to him the transfer order contravenes the policy of transfer Annexure A-7.

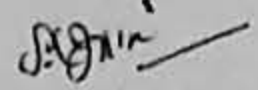
31. In case of Union of India and others Vs. S.L. Abbas reported in AIR 1993 SC 2444 it has been held that guidelines issued by the Government do not confer upon employee legal enforceable right if order of transfer made without following guidelines and such transfer order cannot be interfered with by Court unless it is vitiated by malafides or is made in violation of statutory provisions. As stated above, question of malafides is not established and hence the applicants have no legal enforceable right regarding cancellation of transfer. In Addition to it it is worth mentioned that the applicants are appointed for Sub Regional Office, Meerut. Though they have worked for about 20 years at Kanpur - it may be a posting for a certain period but continued for 20 years, it does not mean that any right has accrued in their favour to continue at Kanpur or the right of the employer is waived in any respect as their posting is specially for Meerut and Varanasi and they are liable to serve any any place of India.

32. The applicants are not at liberty to suggest the employer that particular employees ^h ~~recruited~~ recruited in 1976 ^v ~~are~~ or of 1978 be transferred first when there ^{no} ~~is~~ such ^m transfer policy having statutory force.

33. By merely picking a batch it cannot be presumed that the respondents have adopted a policy of pick & choose on account of some favouratism.

J.Y.

34. In the circumstances I do not find any reason to interfere in the transfer order passed by the respondents. In the result original application is liable to be dismissed and is dismissed accordingly, with no order as to costs.


MEMBER (J)

/satya/