

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 16/11 day of November, 2005.

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

Original Application No. 1236 of 2004

Laeq Ali Khan, S/o Late Mohd. Ishaq Khan,  
R/o 164 Tareak Tickle,  
SHAHJAHANPUR.

.....Applicant

By Adv: Sri R.C. Pathak

V E R S U S

1. Union of India,  
through the Defence Secretary,  
Ministry of Defence, Govt. of India,  
South Block, D.H.Q. P.O.,  
NEW DELHI.
2. The Controller General Defence Accounts  
(CGDA), Sector I West Block 5,  
R.K. Puram,  
NEW DELHI.
3. The Principal Controller,  
Accounts (Factories) PC of A (Fys),  
10-A Auckland Road,  
Kolkata.
4. The Principal Controller,  
Accounts Pension (PCDA (P)),  
Draupadi Ghat,  
ALLAHABAD.
5. The Joint Controller Finance, Accounts JCFA  
Office of JCFA I/C AOOCF,  
SHAHJAHANPUR.
6. The In-charge Accounts Office,  
Ordnance Clothing Factories,  
SHAHJAHANPUR.

.....Respondents.

By Adv: Sri S. Singh

O R D E R

Transfer to CDA (P), Allahabad, of the  
applicant, a senior auditor in the office of  
Joint Controller of Finance Accounts,



Shahjahanpur, who is the Branch Secretary of the All India Defence Accountants Association, CB (Pune) at Branch Accounts Office, OCF, Shahjahanpur, and also is a member in the Works Committee constituted under Sec. 3 of the I.D. Act, 1947 and further a member of Level IV JCM, is the main issue in this case. The applicant claims immunity from transfer on the basis of some of the orders of the Government the spine of which are as below:-

(a) Order dated 19<sup>th</sup> August 1988 which provides that the "President and General Secretary of the Branch Unit of the Recognized Union/Association who are members of the Staff Council should not except for special reasons, be shifted from main administrative office to subordinate office(including other offices or buildings".

(b) Army Headquarters OM 20852/Org 4 (Civ) (c) dated 08-05-1980 wherein it has been laid down, "The elected representatives of works committees may be given protection against transfer during their tenure of membership in order to maintain harmonious relations. The transfer may also not be effected even from one installations to another except on grounds of discipline, promotion, reduction in establishment or operational requirements. For transferring the elected representatives in works committee on

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grounds of operational requirements and disciplines, the local management should be instructed to obtain prior approval of the Ministry of Defence. The proposal is made only to eliminate the possibility of victimization of any worker's representative by local management through colourable exercise of power."

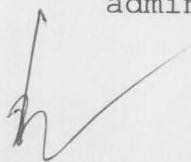
2. Briefly narrated, the applicant was issued with a transfer order on 2<sup>nd</sup> April, 2003, but, according to the applicant, the same was not served upon him as he was on medical leave by then. Subsequently, the applicant, in view of his continued illness, was sending the leave applications along with necessary medical certificate and it was on 16-02-2003 that the respondent No. 5 published through media of the factum of transfer. The applicant has challenged this transfer order communicated through the news paper notice.

3. In addition to the above, the authorities, on the ground of unauthorized absence first initiated minor penalty proceedings, which was agitated by the applicant and by another order dated 14-12-2004 withdrew the charge sheet under minor penalty proceedings, only to be substituted by a major penalty proceedings. The major penalty proceedings under rule 14 of the CCS (CC&A) Rules

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have been initiated vide memorandum dated 17th December, 2004.

4. The case was heard, when the counsel for the applicant submitted that the applicant being a trade union leader, holding certain executive post in the recognized union coupled with the fact that he has been in the Works Committee as well as in the Level IV JCM counsel, he cannot be transferred save for the specific grounds as contained in the Army HQs OM dated 08-05-1980. According to him, no ground such as *grounds of discipline, promotion, reduction in establishment or operational requirements* in which event alone the members of works committee could be transferred subsists in his case. His further contention is that the main reason for transfer is a complaint from one Mr. Vir Bhadra Chowhan addressed to the then Minister of Defence, alleging that the applicant has been conducting private business and is very affluent etc., (Annexure A-15 refers..) The learned counsel for the applicant invited my attention to the specific provision of exemption from transfer of the executives of the recognized Unions and contended that the respondents are acting malafide. (Malice in Law). The fact that the applicant, with a view to obeying the administrative orders for a second medical

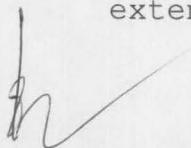
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opinion applied for advance of Rs 25,000/- for conducting necessary test of M.R.I. which was not paid to him and his inability to present himself before the Medical Board due to non payment of the medical advance, has been misconstrued as deliberate disobedience and charge sheet issued under major penalty proceedings.

5. The counsel for the respondents contended that the transfer order being of 2<sup>nd</sup> April, 2003, the applicant has chosen to come to the Court only 05-10-2004 and as such, the OA is not maintainable being time barred. He had, on merits contended that the respondents have enough powers to shift the applicant from the present place of posting.

And in the instant case taking into consideration his position, sufficient time has been given to him for joining but then, the applicant has been deliberately disobeying the orders of the Administrative Authorities and he himself courted disciplinary proceedings. He had, therefore, prayed that the OA be dismissed.

6. I have given my anxious consideration to the entire case. First on the legal points, especially the power of the administrative authorities to pass transfer orders and the extent of judicial interference against such

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transfer. In a recent judgment, the Apex Court in the case of **State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402**, firmly held as under:-

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a *mala fide* exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed *supra*, shown to be vitiated by *mala fides* or is made in violation of any statutory provision.

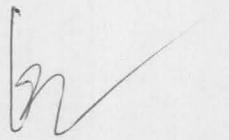
8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of

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competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

7. The above clearly exhibits the widest power of the administrative authorities and the limited power of judicial review. Hence, it is to be seen whether there are strong and convincing reasons for interference in the transfer order.

8. Admittedly the applicant has been the Branch Secretary of the recognized Union which is a member of the JCM and as such, he is entitled to the concessions available under the provisions of Order dated 19-08-1988 (referred to above). Similarly he has been a member in the Works Committee and hence, he is entitled to the concessions as contained in the Army HQ. OM dated 08-05-1980 (referred to in para 1 above.) The said orders do not provide absolute immunity from transfer of the office bearers of the Association/Works Committee. Such a concession is qualified with certain exceptions. The order dated 19<sup>th</sup> August, 1988 provides that "President and General Secretary of the Branch Unit of the Recognized Union/Association who are members of

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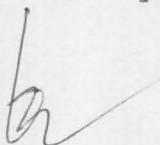
the Staff Council should not except for special reasons, be shifted from main administrative office to subordinate office (including other offices or buildings". In other words, if there are special reasons, the transfer can be justified. Similarly, as per Army HQ OM dated 08-05-1980 the transfer cannot be effected save on grounds of discipline, promotion, reduction in establishment or operational requirements. Hence it is to be seen whether the transfer order effected falls within the excepted category. The notice as published in the media does not disclose any specific reason for transfer. Nor are there any communication or submission before this Court as to the special reason. The applicant's transfer is not on account of any promotion, or on ground of discipline, much less reduction in establishment and there is no operational requirement. In the absence of such a situation, under which only the member of the Works Committee or the Secretary of the Association could be transferred, it appears that there is no good ground for effecting the transfer. The issue of minor or major penalty charges is in pursuance of the applicant's not reporting to duty and non compliance with the orders of the Administrative Authorities in presenting before the Medical Board and the same is not germane to transfer. Thus, the

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respondents have issued the transfer order without taking into account the concessions available to the members of Works Committee and the Members of the JCM and those holding the post of President or Secretary in the recognized Union or Association. The judgment of the Principal Bench in the case of R.K. Joon vs Union of India and others reported in **II (1992) CSJ (CAT) 265 (PB)** also supports the case of the applicant. The reasons for judicial interference are therefore strong and convincing.

**9. Thus, the original order of transfer cannot be legally sustainable and therefore the same is quashed and set aside.**

10. That is not the end of the issue here. The applicant has submitted that he has been ill throughout from April, 2003. It is not exactly known as to what is the nature of ailment, which compelled the applicant to be away from duty, on medical grounds for such a long time. The authorities are fully empowered to direct the applicant to present himself before a constituted medical board so that the Board could assess the extent of illness and whether the applicant really needed rest for such a long period.

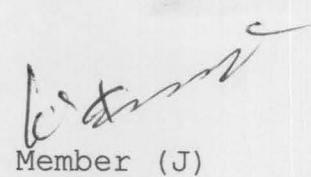
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11. It would be in the interest of justice, if the respondents fix up an appointment with any Medical Board constituted by at least three doctors in Shahjehanpur, of whom one shall be the Chief Medical Officer of the Government Hospital and communicate the date to the applicant in advance so that the applicant could subject himself to the medical examination of the Board. The Board shall consider whether the applicant needs any M.R.I. Test. If so, the applicant could be admitted as an in patient in any of the Govt. Hospital and the requisite advance be made available to the applicant for conducting the medical test. If in the opinion of the Board the applicant was really ailing which warranted rest right from April, 2003, the Board should certify also whether in view of such prolonged illness the applicant would be fit enough to resume duties as Senior Auditor or should he be medically invalidated from service. In case the applicant's health condition was such that the same warranted such a long period of rest and the applicant is now fit to resume duties, their opinion in this regard should be communicated in which event the applicant shall join forthwith the duties at Shahjehanpur and the period of absence till now would be regularized by grant of leave on medical grounds as per the medical attendance rules. However, if in the opinion of

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the Board the applicant's health conditions did not indicate that he needed that much rest from April, 2003 till now, the same should be so recorded and the report sent to the respondents for consideration of taking necessary action against the applicant on the ground that he had been absent without sufficient cause. As regards the complaint of his having private business, no opinion is expressed and it is for the respondents to deal with the same in a manner as they deem fit.

12. With the above, the O.A. is disposed of and under the circumstances, no orders as to cost.



Member (J)

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