

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1390 OF 2004
ALLAHABAD, THIS THE 10th DAY OF December 2004
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Shri N.P. Chaudhary,
about 56 years, s/o Shri T.L. Chaudhary,
posted as Commander Works Engineer,
Air Force, Bamrauli, Allahabad.
r/o P-225 / 1 Officers' Enclave, North Camp,
District-Allahabad.

.....Applicant

(By Advocate : Shri A. Chandra)
Shri C.P. Srivastava)

V E R S U S

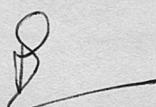
1. Union of India through Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. Engineer in Chief, E-in-C Branch,
Army Headquarter, Kashmir House, New Delhi.
3. Director General (Personnel),
Ministry Engineering Services,
Engineer-in-Chief's Branch
Army Headquarters, DHQ(P), New Delhi.
4. Staff Officer-I Personal Management,
Office of Director General (Personnel),
Military Engineering Services,
Engineer-in-Chief's Branch, Army Headquarters,
DGQ(P), New Delhi.
5. Wing Commander, R.C. Soni,
Station Commander, Air Force, Darbhanga, Bihar.
6. Indian National Defense Workers Federation
Through its general Secretary, Sramik Kendra,
4 Bhai Beer Singh Marg, New Delhi.

.....Respondents

(By Advocate : Shri S. Singh)

O R D E R

By this O.A. applicant has challenged the order dated



to Bhatinda 82

12.10.2004 whereby he was transferred from Bamrauli (Pg.20). He has further challenged the order dated 05.11.2004 passed by respondents pursuant to the directions given by this Tribunal in O.A. No.1280 of 2004 (Pg.22).

2. It is submitted by applicant that the order dated 05.11.2004 is a non speaking order and the order of this Tribunal has not been complied with. He also submitted that representation was given by him to the secretary of Ministry of Defence but the same has been decided by a lower authority.

3. On merits of the case, he submitted that the transfer order was issued due to malafides which is substantiated by the fact that applicant had transferred 3 persons who were caught taking money from contractors but since they were office bearers, the union pressurised the authorities and their transfers were stayed with a direction to review their cases. Similarly Wing Commander R.C. Soni was also ticked off by applicant as he was also collecting money from contractors and Shri R.C. Soni prejudiced the mind of his Sr. Officers against the applicant as a result of which applicant has been transferred out. He further submitted that para 36 of the transfer guidelines issued in July 2003 are bad in law in as much as it smacks of arbitrariness and is violative of Article 14 of the Constitution. It was submitted by the counsel that he should have been given the opportunity of hearing before transferring him out and the recommendation made by higher officers should have been brought to his notice. Since he has not been given any hearing or opportunity, para 36 of the transfer guidelines is liable to be quashed and set aside.

4. This is second round of litigation by the applicant.

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Earlier when applicant had filed O.A. No.1280/04 it was disposed off at the admission stage itself by giving direction to the applicant to make a representation which was to be decided by a reasoned order. Till such time respondents were directed to maintain status quo. This order was passed without going into the merits of the case because applicant had stated he has been transferred out without letting him complete his tenure at one station.

5. Respondents passed the order dated 05.11.2004 by stating that his transfer has been issued in terms of para 36 of Transfer Guidelines according to which tenure can be curtailed on the recommendations made by MOD/GOC-in-C etc. He was also informed that his presumption that his posting was due to isolated event at Darbhanga is misplaced and not true.

6. Applicant thereafter filed this O.A. and insisted vehemently that he has been transferred due to the incident which took place at Darbhanga at the behest of R.C. Soni and which prejudiced the mind of AOC in C whom applicant had accompanied but R.C. Soni purposely created situations to let down the applicant before AOC in C. e.g. he could not ~~be~~ attend the dinner of AOC in C because he was never invited by R.C. Soni and even though departure timings of AOC in C were changed but applicant was not informed purposely as a result of which he reached the airport after AOC in C had reached. According to applicant, this annoyed the AOC in C and it resulted in his transfer.

7. Since applicant projected asif he is being made to suffer for acting as a whistle blower, I had directed the respondents to produce the file wherein recommendations were made for curtailing his tenure because I wanted to



satisfy myself that no injustice is done to the applicant.

8. Respondents have produced the entire file containing the recommendations made by Sr. Officers for transferring the applicant to some other place along with material to substantiate their stand. I have perused the records and am fully satisfied that the transfer of applicant before completion of his tenure was based on recommendation made by the higher officers on valid grounds. The grounds taken by the Sr. Officers are supported by material available on record, therefore, by no stretch of imagination can the transfer be said to be malafide. Applicant has strenuously argued that it was because of incident at Darbhanga that ^{he} has been transferred out but this finds no mention at all in the recommendations. Moreover, the letter written by union is of a subsequent date, i.e. dated 19.10.2004 whereas applicant was already transferred on 12.10.2004, therefore, a subsequent letter could not have been made the basis of applicant's transfer. In fact it is seen that recommendations were made on administrative grounds and it is settled law that transfer on administrative grounds can always be made by the authorities at any time. Para 36 very much gives power to the authorities to either curtail or extend the tenure based on performance of the officer and specific recommendations made by MOD/EOC in C/AOC-C/FOC-in-C and recommendations of CE Commands/CE Zones are also to be given due considerations. However, while giving this power it is ensured that such recommendations are not arbitrary or whimsical as they can be made provided there is sufficient documentary or other evidence on record. The very fact that recommendations are to be supported by evidence or material itself makes it clear that the said power cannot be termed as arbitrary or whimsical. I therefore, see



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no justification to quash para 36 of Transfer Guidelines.

9. Counsel for the applicant submitted that applicant should have been given the opportunity to meet the findings recorded by Sr. Officers against the applicant as otherwise it would affect his further promotions. Such a contention cannot be accepted because transfer is neither a punishment nor affects the officer in any other way adversely. It is settled by Hon'ble Supreme Court that who is to be posted where and how best the services of an officer can be utilised are the matters which can best be decided by the Administration as they alone know the requirements of a particular post and the capabilities of the officer to handle the same. It is also settled by now that transfer is an incidence of service and an officer having all India liability can be transferred at any time and it cannot be interfered with by courts in a routine matter. Court can interfere in transfer matters only if either it is contrary to statutory rules or is malafide. I have already stated above, after going through the records, that this transfer is not done due to malafides nor is contrary to any statutory rules, therefore it calls for no interference.

10. Counsel for the applicant had relied on following judgments:

- (i) J.T. 1997(6) SC 229
- (ii) J.T. 1998(6) SC 464
- (iii) AIR 1970 (S.C) 150

11. None of these judgments are applicable to the facts of the present case. The case of Basu Deo Tiwari was of termination and principle of *andi alteram partem* was attracted because the appointment of petitioner therein was



terminated holding it to be irregular or unauthorised, therefore, Hon'ble Supreme Court held that conferment of absolute power to terminate the services is antithesis to fair, just and reasonable treatment whereas in the instant case it is not as if ~~that~~ recommendations could be made whimsically or arbitrarily but the recommendations had to be based on material which is judged by the Ministry and only after ministry is satisfied that transfer order is issued to curtail the tenure. Moreover, court is also satisfied that the recommendations were made on the basis of material placed by higher authorities. In the case of Arvind Dattatraya Court had recorded a definite finding that transfer was malafide at the behest of persons interested to victimise honest officer which is not the case before us. In A.K. Kraipak's case court was dealing with an inquiry and it was emphasised that natural justice is to prevent miscarriage of justice therefore, even if they are not embodied in rules, they shall still be followed while holding an enquiry. There is no doubt about it that rules of natural justice have to be applied in enquiries because after the enquiry is completed, a person can be punished but as held above transfer cannot be termed as punishment at all as it is an incidence of service. Therefore, none of these judgments advance the case of applicant. On the contrary Hon'ble Supreme Court is repeatedly holding that transfers should not be interfered with. In STATE OF U.P. VS. GOVERDHAN LAL REPORTED in 2004(2) SCSLJ 42 Hon'ble Supreme Court held as follows:-

Transfer- Whether Courts or Tribunals can substitute their own decisions in the matter of transfer for that of competent authority-No even challenge to transfer on account of malafide must be such as to inspire confidence in the court or based on concrete materials-Mere allegations of malafide or on consideration borne out of



conjecture or surmises without any strong and convincing reasons cannot be a ground to interfere with the order of transfer."

Similary in STATE OF U.P. VS. SIYA RAM reported in 2004(7) SCC 405. Hon'ble Supreme Court held as follows:-

B. "Service Law- Transfer-Administrative grounds/ Public interest- held is not only an incident of service, but a condition of service as well and is necessary in public interest and efficiency in public administration-No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice .

C. Service Law-Transfer-Judicial review- Transfer unless shown to be malafide or in violation of statutory provisions, held, not open to interference by court- Question whether transfer was in the interest of public service, requires adjudication on the basis of peculiar basis and circumstances of the case-Hence should not be gone into by High Court in exercise of powers under Arts. 226 and 227 - Constitution of India Arts.226 and 227 -Question of fact."

In UNION OF INDIA VS. JANARDHAN DEBANATH AND ANOTHER reported in 2004 (4) SCC 245 Hon'ble Supreme Court went to the extent of observing as under:

Service Law- Transfer- Transfer on the ground that the employee concerned was "undesirable as he had misbehaved-If to be preceded by departmental enquiry-Such transfer unless adversely affecting the service conditions or status or service prospects or leading to penal consequences, held, need not be preceded by the same type of departmental enquiry was is conducted in cases leading to



dismissal, discharge, etc.- Prima facie satisfaction of the authority concerned based on contemporary reports sufficient- Utmost latitude should be given to the department concerned to enforce discipline decency and decorum in public service- Administrative Law-Natural justice."

12. The above judgments make it abundantly clear that courts should not interfere in matters of transfer lightly.

13. Respondents have already considered the representation given by applicant and have apprised him that incident of Darbhanga is not the reason for his transfer, as was apprehended by applicant and that his transfer has been issued in terms of para 36 after following due process. I have already seen the records and find there is no illegality in the process as well. Therefore, the D.A. is dismissed. The temporary arrangement made by way of interim relief is also vacated. No order as to costs.



Member (J)

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