

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 945 OF 2004
ALLAHABAD, THIS THE 13th DAY OF OCTOBER, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

S. R. Saha,
s/o Late Bijli Saha,
r/o House No.5/9-B, Vivek Vihar Colony,
Minto Road, Allahabad.

.....Applicant

(By Advocate : Shri S. Narain)

V E R S U S

1. Union of India through Secretary,
Ministry of Labour, Govt. of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Joint Secretary, Ministry of Labour,
Government of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
3. Chief Labour Commissioner,
Ministry of Labour, Govt. of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
4. Ambrish Sharma,
s/o Late Shri Rameshwar Dayal Sharma,
r/o 3/46, Vikas Nagar, Lucknow.

.....Respondents

(By Advocate : Shri Saumitra Singh
Mrs. Sadhna Upadhyay)

O R D E R

By this Original Application, applicant has
challenged the order dated 19.08.2004 whereby he has been
transferred to Ordnance Depot Allahabad as ALWC(C) from
the post of ALC(C) Allahabad with immediate effect and in
his place one Shri Ambrish Sharma posted as ALWC(C) Govt.


.....2/-

opium & Alkaloid Factory Gazipur has been posted with immediate effect (Pg.19).

2. It is submitted by the applicant that this order is bad in law as it is issued with malafide intentions to accommodate respondent No.4 and by ignoring their own transfer policy under which a person has a right to stay in one post for 4 years and in one station for 8 years. He had neither completed 4 years as Assistant Labour Commissioner nor 8 years at Allahabad therefore, there was absolutely no justification to transfer applicant from his present place of posting. He submitted that applicant was posted as ALC Allahabad only vide order dated 17.05.2001 (Pg.33) while he was posted from Jabalpur to Labour Officer COD Chheoki Allahabad vide order dated 11.04.1997 (Pg.26 at 30).

3. In any case it was submitted by applicant that Kanpur was much closer to Lucknow where 7 vacancies of ALWC were lying vacant therefore respondent could have easily adjusted respondent No.4 at Kanpur. Counsel for the applicant next contended that normal transfers were issued in April, May but applicant was not transferred only because he had not yet completed the tenure of 4 years as ALC. Therefore, there was absolutely no justification to displace the applicant to accommodate the respondent No.4 and even at Allahabad respondent No.4 could have been posted as ALWC therefore applicant's transfer suffers from malice in law. Counsel for the applicant further submitted that even the way respondents have proceeded to relieve the applicant shows malafides on the part of respondents as in the counter affidavit they have stated that applicant was relieved on 24.08.2004 itself whereas the office order issued by Regional Labour Commissioner Central Kanpur whereby applicant was



relieved itself is dated 25.08.2004 and was served on the applicant on 31.08.2004. Therefore, applicant was very much in office on the date when stay order was granted by this Tribunal. Applicant has also been paid his salary as ALC therefore, he has continued to perform his duties as ALC till date.

4. Official respondents on the other hand have submitted that transfer policy is only a general guideline, it is not mandatory in nature and government can always transfer any officer even before the stipulated period ^{as mentioned in} the said policy on administrative grounds. The applicant has been transferred in the same station, therefore, it cannot be said that it has resulted in any disturbance to the studies of his children or dislocation of his family. They have, thus, submitted that the O.A. may be dismissed. They have explained that the post of Assistant Labour Commissioner (Central) Assistant ^{labour} Welfare Commissioner, (Central) and Assistant Labour Welfare Commissioner Central, are equal in rank and status and they can be posted in ^{any} the three streams of the Service. They have further stated that applicant has completed more than 3 years on the post of ALC, Allahabad whereas respondent No.4 requested for retention at Lucknow on the ground that his daughter ^{was} studying in 12th class and his old aged mother is taking treatment at Lucknow. Since in his place another officer had already joined at Lucknow, it was not administratively feasible to reinstate respondent No.4 again as ALC(C) Lucknow. Therefore, the competent authority decided to post him at nearest station. They have denied that there are ^{any} extraneous considerations in posting the respondent No.4 at Allahabad. They have further submitted that applicant filed his representation but simultaneously this O.A. has been filed, therefore, his representation has



not been examined by the authorities. They have thus, submitted that the O.A. may be dismissed.

5. Private respondent ^{his R} has also filed ~~counter~~ counter affidavit. He has submitted that applicant has been in Allahabad for about 7½ years already and he has been posted in the same station. Therefore, he cannot have any grievance. It is submitted by the private respondent that pursuant to the order dated 19.08.2004 he gave his joining report on 23.08.2004 itself before the Regional Labour Commissioner, Central, Kanpur and assumed charge in office of Superintendent Labour Commissioner, Allahabad (Annexure CA-I). Simultaneously applicant ~~was~~ also relieved vide order dated 24.08.2004 but inspite of that applicant got the interim order from Tribunal by concealing the fact that respondent No.4 had already assumed charge on 23.08.2004 (F.N.).

6. Private respondent has submitted that Tribunals cannot interfere in matter of transfer. He has relied on number of judgments to state that it is ^{the R} prerogative of the Govt. to post an officer anywhere, they think their services can be best utilised. As far as transfer policy is concerned, he has submitted that policy ^{does not} give a prescribed tenure of 4 years specifically and department can always transfer ~~any~~ any officer even before the period of 4 years.

7. At the time of arguments, counsel for the private respondent submitted that he has to submit a report with regard to parcel porters in Railways as per the directions given by Hon'ble Supreme Court and presently private respondent is nowhere ~~working~~ as he has already been relieved from Lucknow and at Allahabad, Applicant is not permitting the private respondent to do ^{his} work as a result of ^{it} he neither has any office nor staff and is not able to comply with the

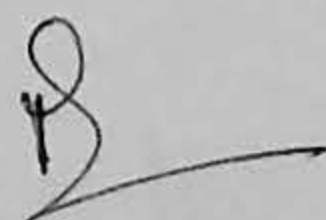


directions of Hon'ble Supreme Court. He thus submitted that the present O.A. may be dismissed and interim order may kindly be vacated so that he may ^{be}able to finish his work as ^{entrusted}~~interested~~ to him by the Supreme Court.

8. I have heard all the counsel and perused the pleadings as well as judgments referred to by different counsel.

9. At the outset, I would like to state that scope of interference in transfer matters is very limited. Hon'ble Supreme Court has repeatedly held that courts and Tribunals should not interfere in transfer matters in a routine matter as who is to be posted where and how best, services of an officer can be utilised are the matters to be decided by administration. Transfer matters can be interfered with, only if either transfer is issued due to malafide reasons or is contrary to some statutory rules. Counsel for the applicant submitted respondents have violated their own transfer policy by transferring him from his post before 04 years but firstly transfer guidelines do not have any statutory force secondly they are directory in nature because para 04 of the guidelines makes it clear that normally no officer will be posted in same establishment for more than 04 years but it is clarified that in exigency of public service or administration, an officer can be posted out earlier also. Therefore, 4 years is the outer limit for continuing a person in an establishment. It only means he will not be continued beyond 4 years. These guidelines do not state that an officer can not be posted out before 4 years. On the contrary it is made clear that in administrative exigencies he can be posted earlier also and retained beyond 4 years also. The contention of applicant, therefore, that applicant could not have been posted out before 4 years is not sustainable. The same is accordingly rejected.

In any



In any case applicant has been retained in same station though his post has been changed but he was not able to show me how he is adversely affected by this transfer except stating that after 7-8 months, he would again be transferred after completing 4 years and 8 years at Allahabad.

10. In the case of N.K. Singh Vs. U.O.I. & Ors. reported in 1994(6)SCC 98 it was held by Hon'ble Supreme Court that where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed. In the instant case admittedly both the posts i.e. ALC (C) and ALWC(C) are in ^{the same} pay scale, enjoy the same status and are in same station therefore, applicant has not been able to demonstrate how his career prospects are affected or any detriment caused to him if he is posted as ALWC in same station.

11. Counsel for the applicant strenuously argued that respondents could have posted respondent No.4 either at Kanpur if he was to be adjusted near to Lucknow as 7 vacancies of ALWC are available there or as ALWC at Allahabad also but once again I would have to refer to the judgment of Hon'ble Supreme Court reported in 1995(3) SCC 270 in the case of STATE OF M.P. & ORS VS. SHRI S.S. KAURAV & ORS wherein it was held 'the courts or tribunals are not appellate forums to decide transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and Tribunal is not expected to indict the working of administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated by malafides or by extraneous consideration without any factual background foundation.'



12. Similarly in the case of U.O.I. VS. S.L. ABBAS reported in 1993 (4)SCC 457 Hon'ble Supreme Court held "who should be posted where is a matter for the appropriate authority to decide, unless the transfer is vitiated by malafides or is made in violation of any statutory rules, the court cannot interfere with it. As far as the guidelines are concerned it was held they do not confer upon the government employee a legally enforceable right as they are not absolute in nature and only state as far as possible". In the instant case also para-4 is qualified by the expression 'generally' so the transfer guidelines do not give any enforceable right to the applicant.


13. As far as posting of officer is concerned, it is settled by now that administration is the best judge to post the officers wherever their services are required. We cannot decide sitting here in court whether private respondent should be posted as ALWC or ALC. These are the matters which have to be looked into by the authorities. If applicant knows there are other vacancies available at Kanpur where private respondent can be accommodated then he must give representation to that effect to the authorities. Applicant brought out this fact only in the rejoinder as such official respondents did not have any time to respond to this situation. In fact it has already been held by Hon'ble Supreme Court in the case of Gujrat State Electricity Board Vs. A.R. Sungonal Poshani as follows:-

"Transfer from one place to other is generally a condition of service and the employee has no choice in the matter wherever a public servant is transferred he must comply with the order and if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer orders."

14. In view of the above judgment and the following facts interalia that respondent No.4 had only requested for being

retained at Lucknow in his representation, the fact that respondent NO.4 was initially transferred from Lucknow to Gazipur as ALWC which was challenged by him before the Lucknow Bench but Lucknow Bench was pleased to dismiss the O.A. on 15.07.2004 by observing that applicant therein had failed to make out any prima facie case either for grant of interim relief or for interfering with the transfer order. Also the fact that applicant's transfer was sought to be stayed/quashed before Hon'ble Supreme Court but even Hon'ble Supreme Court did not interfere in the matter and observed that report could be submitted even after the officer is transferred, also the fact that Lucknow Bench had already observed that in none of the orders ^{passed by} by the Hon'ble Supreme Court, respondent No.4 was directed by name to prepare the report, It shall still be open to the applicant to give his representation to the higher authorities pointing out all these facts within 2 weeks from the date of receipt of a copy of this order. In case applicant gives such a representation it shall be decided by the competent authority within 2 weeks thereafter by passing a reasoned and speaking order under intimation to the applicant. The interim order is vacated ^{because} *respondent no 4 cannot be kept in limbo. B*
 Applicant can either join as ALWC (Allahabad) or remain on ^{for leave B} leave if he is applied [^] till the disposal of his representation.

15. With the above directions, this O.A. stands disposed off. No order as to costs.


 Member (J)