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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 28<sup>th</sup> day of Feb 2006.

Original Application No. 39 of 2005.

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

Shri Badri Prasad Rai, Aged about 48 years,  
Son of Sri Ram Bharose Rai,  
Resident of Village-Shivpuri Colony,  
Post Dak Patthar,  
District Dehradun, Uttaranchal.

. . . . . Applicant

By Adv: Sri V. Kumar & Sri S. K. Pandey

V E R S U S

1. Union of India through the Secretary,  
Ministry of Defence Department,  
I.G. Special Frontier Force,  
East Block-5, R.K. Puram,  
NEW DELHI.
2. Ordnance, O.C. E.S. T. No.22,  
through 56, A.P.O.  
Kalasi, District Dehradun.
3. Major Q.M. Platoon,  
H.Q. Est. No.22,  
C/o 56, A.P.O., Dehradun.

. . . . . Respondents.

By Adv: Sri S. Singh

O R D E R

The applicant, a Washer man, has been subjected to transfer from Dehradun to Siliguri (Assam) vide order dated 8.12.2004 which he has challenged on various grounds including that the order smacks malafide and is not in accordance with law. According to the applicant an inadvertent lapse in pressing the uniform of his officer infuriated the higher authority the result of which was his

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transfer thousands of kilometers away from his present place of posting. The respondents have contested the case accusing the applicant of various misconduct and causing inconvenience to the administration. According to them transfer being an incidence of service, judicial interference cannot be very lenient.

2. Arguments were heard and pleadings perused. Admittedly the applicant is a Group D employee and has been in and around Dehradun since the time of his appointment. According to the respondents he has been transferred seven times and his last posting was at Kalsi on compassionate grounds in October 2004 and his transfer order to Siliguri has been effected within three months of his last posting. The court is aware of the fact that in matters of transfer the scope of judicial review is very restricted. Catena of decisions of the Apex Court are available, giving a clear position of law that transfer can be agitated only when the same is violative of professed or when the same is accentuated by malafide or when the transfer order is punitive. See **State of U.P. v. Ashok Kumar Saxena, (1998) 3 SCC 303** wherein the Apex Court has held as under:-

*"In N.K. Singh v. Union of India<sup>1</sup> this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles and where career prospects remain unaffected and no detriment is caused to the government employee concerned, challenge to the transfer must be eschewed. Reiterating the said proposition in Abani Kanta*



Ray v. State of Orissa the Court added that transfer being an incidence of service, is not to be interfered with by the courts unless it is shown clearly arbitrary."

In the instant case, all that is to be seen is whether the applicant's transfer from Kalsi to Silliguri falls within any of the mischief's i.e. against professed norms or with malafide or punitive.

3. Counsel for the applicant referred to Annexure 8 to the CA which contains all the terms and conditions of the appointment and contended that no transfer liability is attached with this appointment. Thus, according to him this transfer is violative of the professed norms. Per contra counsel for the respondents submitted that when the applicant had yielded to various transfers hitherto fore he was subjected to without any murmur, he cannot turn around to contend that his services are not transferable. It is difficult to accept the contention of the respondents. There is no question of waiver in this case. When specifically no transfer liability is mentioned, it has to be treated that the applicant is not liable to be posted out save on administrative grounds and such administrative grounds should be bereft of arbitrariness, malafide or punitive. Generally group D employees are not subjected to transfer that too to far off of places. The respondents may have the power to transfer but they are expected to

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judiciously exercise the same. The applicant has specifically referred to the incident of the uniform, having, by mistake, been slightly damaged and said that the transfer is in the wake of the same. The respondents have itemized not one but many alleged misconduct including forging the signature of CMO vide paragraph A to E of the CA. Nowhere it has been stated that such misconducts are proved ones. The transfer according to them has been effected in view of such indiscipline on the part of the applicant. The elaborate counter confirms that the order is punitive. Though the respondent have not directly admitted that the transfer order was an immediate reaction against the applicant's damaging the uniform, timing of issue of transfer order tacitly confirms the same. Otherwise it could not have been that a group D employee posted at Kalsi on compassionate ground s could be disturbed just within three months of his posting at that place. Thus, the order is violative of professed norms secondly the same is punitive and lastly the order speaks of malafide. Hence the transfer order cannot be sustained. The same is, therefore liable to be quashed and set aside.

4. In view of the above, the O.A. succeeds. Order dated 8.12.2004 is quashed and set aside. The applicant should be permitted to continue in the same station subject to his manifesting good conduct and discipline in future if for any reason

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whatsoever the performance of the applicant or his conduct is not satisfactory the respondents can very well inform the applicant to improve and even after such warning there is no improvement, the respondents can transfer the applicant within the same district or near by state where without affecting the seniority of the applicant his posting can be effected. This much play at the joints is certainly available with the respondents. Other ways for disciplining the erring employees, of course do exist as per the provisions of various rules. No Costs.



Member-J

/ns/