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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No.1019 of 2005.

ALLAHABAD THIS THE 15th DAY OF September. 2005.

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr. K. B.S. Rajan, Member-J.

N.L. Kushwaha, aged about 59 years, 4 months, S/o late Sri Ram Badan Kushwaha, presently working as Superintendent of Post Offices, Basti Division, Basti.

.....Applicant.

By Advocate : Sri U.N. Sharma Senior Advocate
assisted by Sri Rakesh Verma)
+ Pankaj Srivastava 13

Versus.

1. Union of India through Secretary, Ministry of Communication, (Department of Posts), New Delhi.
2. The Post Master General, Gorakhpur Region, Gorakhpur.

.....Respondents.

(By Advocate : Sri S. Singh)

O R D E R

By K.B.S. Rajan, JM

The question of law involved in this case is whether the transfer order issued to the applicant vide order dated 29-08-2005 (Annexure 1) suffers from any illegality warranting judicial interference. The capsulated facts of the case precede consideration of the legal contentions put forward by either side from the succeeding paragraphs.



2

2. The applicant, presently posted as the Superintendent of Post Office at Basti since Mid April, 2005, after completion of his tenure at Bahraich who is due for superannuation in May, 2006, has, by virtue of order dated 29-08-2005 been transferred as "Officer on Special Duty" in the office of the Chief Post Master General, Gorakhpur and it is this order that has been challenged on the following grounds:-

"5.a. Because the aforesaid impugned transfer order is totally arbitrary being in violation of the aforesaid Policy/Guidelines and as such the same is liable to be quashed.

b. Because from the aforesaid Policy/Guidelines, it would be evident that, as a matter of fact, the same is fully applicable in the case of the present petitioner as the petitioner has only nine months services in his credit. It appears that the impugned transfer order has been passed as a result of arbitrary exercise of power showing the same in the interest of service but as a matter of fact, the same being totally in violation of the aforesaid Policy/Guidelines is not liable to be sustained under the law and, thus, the same is liable to be quashed.

c. Because from the above facts, it would be abundantly clear that the petitioner once earlier was transferred vide order dated 11.04.2005 and in what exceptional circumstance he has again sought to be disturbed from one place to another place by way of the impugned transfer order particularly when at the present place after having joined there was effect from 11.4.2005 the petitioner has merely put in about five months service. It is obviously proved that the transfer is nothing but is totally ignorance of law and own circulars and directions as laid

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down by the Respondent No. 1 in its circular dated 07.12.1998.

- d. Because in any view of the matter, the impugned transfer order cannot be sustained under the law. Further it is submitted that neither the petitioner in pursuance of the impugned transfer order dated 29.08.2005 has been relieved from the present place of posting i.e. Basti and the petitioner is still holding the entire charge of Basti Division Basti as superintendent of Post Offices and as such it is submitted that the impugned transfer order has not come into effect and, thus, the same is liable to be stayed till the final disposal of the present case.
- e. Because the Post Master General, Gorakhpur Region, Gorakhpur has no power to create the post of Officer on Special Duty. The power to create the post of OSD or any other equivalent post (to the post on which the applicant is working) in the department lies only with the Director General of Posts, who, is the competent authority."

3. On the very first day of hearing, when the senior standing Counsel was present in the Court, the case was heard for admission and interim relief and the following orders were passed, respectively on 1st and 2nd September, 2005.

"1.9.2005

Sri Rakesh Verma for the applicant.
List this case on 2.9.2005. Till then the status quo prior to issue of order dated 29.8.2005 shall stand."

2.9.2005

Sri R. Verma learned counsel for the applicant and Sri S. Singh learned Counsel for respondents.
Misc. Application filed on 2.9.2005 for impleadment by an Association represented by

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(10)

Secretary being no covered under any of the provision of Rules is sought to be withdrawn and permission is accordingly granted.

The applicant having been transferred has approached this Tribunal any by order dated 1.9.2005 status quo prior to issue of transfer order dated 29.8.2005 was maintained.

Counsel for the respondents submits that short Counter is ready and the same will be filed on 5.9.2005 and as such this case maybe taken for consideration at the earliest day. If the Counter is filed by Monday after serving a copy upon the applicant's counsel, applicant may file his Rejoinder within 3 days from the date of receipt of copy of this Counter i.e. by 7.9.2005. Let the case be listed for consideration on 8.9.2005 before any Single Bench, if available, or Division Bench, otherwise the interim order already passed shall continue till then."

4. Promptly came the short counter from the respondents and their contentions are as under:-

"9. That by means of the order impugned dated 29.8.2005, though the same refers to the word 'transfer', but the applicant has merely been shifted and not transferred from the post of SPO, Basti to that of OSD in the officer of PMG, Gorakhpur in the interest of the administration only for the purposes for debarring the applicant from holding independent charge of the Divisional head in a particular division. The above shifting has been done on account of the reason that the applicant had involved in several irregularities such as making irregular appointments in ED cadre, passing transfer/posting order of subordinate staffs, purchasing various items such as Air Conditioners, Computers, Stationeries etc. without calling for any tenders, individually through his chosen persons from open market at much enhanced rates, thus causing heavy monitoring loss to the Department. The above informations were brought in the knowledge of the higher officials such as Chief PMG and Director General Posts by the public at large. The misdeeds of the applicant were also reported in the daily newspapers. Reference maybe made in this regard to certain documents

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(11)

evidences including the news papers reporting which shall demonstrate the aforesaid irregularities and the misdeeds of the applicant, copies of which are collectively enclosed herewith and marked as Annexure-2 to this Short Counter Affidavit.

10. That it is well settled law that transfer is exigency of service and the Hon'ble Supreme Court have time and again passed various judgments stating therein that no court should interfere in the matter of transfer when the same has been issued in the administrative interest, apart from when it gets established that the same has been issued on account of the malafides of some concerned officer or are in violation of some statutory rules. In the present case, the applicant has neither alleged malafide against any officer and had not arrayed any officer by name for the purpose of establishing specific malafies, nor have proven that the same is in violative to any statutory rules. The sole ground taken bye the applicant is rotated about the instructions dated 17.12.1998 issued by the Addl. Director, Department of Posts, New Delhi, wherein it has been stated that the staff who has about one year of service left before superannuation, should be exempted from rotation of transfer. It may be stated here that the letter dated 7.12.98 has no statutory force and is merely an administrative instructions and as such cannot be stated to be a statutory rule, which has been violated in the present case. The Hon'ble Supreme Court has even recently passed a judgment wherein direction in the cases of transfer on the ground where personal hardship is the cause of challenging the transfer order. The necessary judgment and legal victims so referred to above shall be duly produced before this Hon'ble Court at the time of arguments.

11. That the applicant has merely been shifted to Gorakhpur from Basti which is about 65 Kms away and that too on administrative grounds and in the interest of service as the applicant had merely been debarred from holding an independent charge as the Divisional Head on account of various irregularities and bungling which had been committed by him and had been reported by the public at large to the higher officials. The above shifting of the applicant has been done in order to safeguard the interest of the public and is in administrative interest as in the interest of service. More so

b/

121

there is no change of status or pay scale on the post on which the applicant had been shifted just 65 Kms. Away from the present place of posting."

5. Arguments were advanced and the senior counsel for the applicant vehemently argued that the transfer smacks malice in law on the one hand and the transfer order is illegal as the same is punitive. For the purpose of substantiating his arguments, he had referred to a complaint dated 30th August 2005 which formed part of the counter and submitted that it would be curious to note that the transfer order is dated 29th August, 2005 while the complaint on the basis of which (or one of the many) the transfer order was issued is posterior to the transfer; in other words, the respondents were trying to search for justification after passing transfer order. Again, he had invited the attention of the tribunal to various other complaints as well as the narration as contained in the counter to contend that by their own admission the respondents have confirmed the fact that the transfer is in the wake of certain complaints. Hence, it has been contended that the transfer order is punitive and illegal.

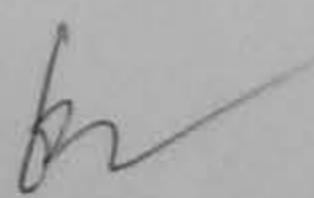
6. The Senior Standing Counsel for the respondents has submitted that while a number of complaints were

b

137

received against the applicant prior to the issue of transfer order, receipt of complaints against him did not stop even after issue of the transfer order and it is only to demonstrate that complaints are pouring against the applicant both anterior and posterior to the issue of transfer order that the said complaint dated 30th August, 2005 was added to the counter. He has mainly relied upon the law on transfer as enunciated by the Apex Court and also some of the other High Courts and contended that the rules provide for Transfer liability of the officers of the Postal Department and that the ground that transfer could not be effected during the 'dusk stage' of the career of the applicant prior to superannuation is untenable as the guidelines are not mandatory and in any event, the guidelines do not render a complete ban on transfer of such officers at the evening of official career. The following are the decisions cited by the Senior Standing Counsel for the respondents:-

Sl No.	Citation	Relevant portion of the authority
1,	St. of Madhya Pradesh vs S.S. Kourav, 1995 SC Service Law Judgment 350	<i>State of M.P. v. S.S. Kourav, (1995) 3 SCC 270, at page 271 :</i> 4. It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or



(14)

tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

2

Union of India
vs Janardham
Debanath and
Anr 2004(1) SC
Service Law
Judgments 353

Union of India v. Janardhan Debanath, (2004) 4 SCC 245, at page 251 :

The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially - and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and

62

(15)

assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

3. Sundar Lal &
Ors
Vs U.O.I and
others 1998(2)
SC Service Law
Judgments 490

Sunder Lal v. Union of India, (1998) 6 SCC 595, at page 596 :

3. In the present case, the posts of Carpenter and Wireman are equivalent posts carrying the same pay and the same terms and conditions of service. The post of Carpenter is also a post to which the appellants were originally appointed. Now, on account of administrative reasons, the appellants have been posted as Carpenters instead of Wiremen when the category of Carpenter-cum-Wireman was proposed to be abolished. We are also informed that out of the six appellants, two have died and the other four have been working as Carpenters after the Tribunal's order of 10-2-1987. Looking to all the circumstances of the present case, this is not a fit case for setting aside the decision of the General Manager of 24-9-1984 when the appellants continued to get the same pay in the same pay scale and the terms and conditions of service were not affected in any manner.

4. Union of India
vs S.L. Abbas
1994 SCC (L &
S) 230

Union of India v. S.L. Abbas, (1993) 4 SCC 357, at page 359 :

6. An order of transfer is an incident of Government service. Fundamental Rule 11

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(16)

says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by

b

(17)

the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer

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(18)

(competent authority).

5. State of U.P.
Vs Gobardhan
Lal 2004(2) SC
Service Law
Judgments 42

State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402, at page 406

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 contra, 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

62

(19)

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 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.

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(Telecom) N.E.
Telecom Circle
and Anr vs
Rajendra Ch.
Bhattacharjee
and others
1995 SCC (L &
S) 533

*Chief General Manager, (Telecom)
N.E. Telecom Circle v. Rajendra Ch.
Bhattacharjee, (1995) 2 SCC 532, at
page 535 :*

7. It is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting. Since the respondent has no legal or statutory right to claim his posting at Agartala, therefore, there was no justification for the Tribunal to set aside the

62

22

respondent's transfer to Dimapur.

8. Apart from the above facts the appellants have stated in the memo of appeal which is supported by an affidavit filed by Shri P.C. Chaturvedi, Vigilance Officer of the Office of Chief General Manager, N.E. Telecom Circle, Shillong that during the last posting of Respondent 1 at Agartala from 1-5-1987 to 17-1-1990 a number of complaints were received from the staff unions against him. There are also several complaints of various irregularities committed by Respondent 1 which are being separately investigated by the Vigilance Department and a copy of a complaint signed by 270 employees has been filed as Annexure 'B' along with the memo of appeal. In these facts and circumstances the posting of Respondent 1 at Agartala would not be justifiable from the administrative point of view also. The transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. In the present case we find no such grounds. On the contrary, as discussed above, the respondent remained at Agartala for most of the period. In the facts and circumstances stated above the claim of Respondent 1 for choice posting cannot be accepted and for that reason the impugned order of the Tribunal could not be sustained.

7. Union of India
and others vs
Ganesh Dass
Singh 1995
SCC (L & S)
1142

Union of India v. Ganesh Dass Singh, 1995 Supp (3) SCC 214, at page 214

4. In our opinion, in the present case there is no material to justify interference with the mere order of transfer made by the competent authority for

6

(21)

administrative reasons particularly when the Tribunal had rejected the respondent's assertion that the transfer had been made on account of certain complaints he had made regarding the functioning of the Depot. We have no doubt that the view taken by the Tribunal is not justified on the facts found by it. It is also not within the scope of permissible judicial review in such matters relating to mere transfer made by the competent authority for administrative reasons.

8. National Hydroelectric Power Corporation Ltd., vs Bhagwan & Shiv Prakash 2001(2) SC Service Law Judgments 396

National Hydroelectric Power Corp. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574, at page 577 :

It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

9. Abani Kanta Ray vs State *Abani Kanta Ray v. State of Orissa,*

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(22)

of Orissa and 1995 Supp (4) SCC 169, at page 173
 Others 1996 :
 SCC (L &S) 175

10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh v. Union of India¹). The transfer of D.N. Mishra in this background being clearly in public interest, there was no permissible ground available to the Tribunal for quashing it. We are constrained to observe that the Division Bench of the Tribunal which made the impugned order dated 26-8-1993 quashing the transfer of D.N. Mishra on the ground of malice of the appellant as the Chairman of the Tribunal did so against the material on record and the facts beyond controversy which borders on judicial impropriety. It may also be noted that such comments were made against the Chairman without even a notice to him and as stated in the order itself after treating the application for impleading the Chairman to be deemed rejected.

7. The Senior Standing Counsel for the respondents has produced the relevant rules on the subject and the extract of the same are as under:-

(a) Rule 37 and 37-A of Chapter II Transfers and Postings -

"37 All officials of the Department are liable to be transferred to any part of India, unless it is expressly ordered otherwise for any

62

(23)

particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, Village postmen and Group 'D' servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in fundamental rule 15 and 22.

37-A Transfer should generally be made in April of each year so that the education of school going children of the staff is not dislocated. In emergent case or cases of promotion, this restriction will naturally not operate."

(b) F.R. 15

"F.R. 15 (a) The President may transfer a Government servant from one post to another; provided that except -
 (i) on account of inefficiency or misbehavior, or
 (ii) on his written request,

a Government servant shall not be transferred substantively to, or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14."

© Rule 17 of Postal Manual Vol. III reads as under:-

"A suspended Government servant continues to be in the grade held by him immediately before suspension and does not suffer a reduction in rank. Suspension may, however, cause a lasting damage to Government servant's reputation even if he is ultimately exonerated or is awarded only a minor penalty. The Competent authority is, therefore, expected to exercise his power with proper care and caution. **As alternative, it may be considered whether the purpose cannot be served by transferring the Government servant elsewhere** or by granting leave due and admissible in case the suspect officer prefers to proceed on leave." (Emphasis supplied)

8. The learned senior standing counsel had submitted that there are a number of newspaper reports which have been annexed to the short

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24

counter. At the very outset, it is made clear that since such news paper reports take the no place as a piece of evidence, such reports remain totally unregistered in the mind of the Tribunal. (See *S.A. Khan v. Ch. Bhajan Lal, (1993) 3 SCC 151*, at page 160 wherein it has been held,

"22. In the present case, no evidence has been let in proof of the statement of facts contained in the newspaper report. The absence of any denial by Ch. Bhajan Lal will not absolve the applicant from discharging his obligation of proving the statement of facts as appeared in the Press report. In fact, Ch. Bhajan Lal in his counter-affidavit has taken a stand that the statements attributed to him based on the newspaper report are mere hearsay and cannot in law be relied upon for the purpose of initiating such proceedings. Therefore, in the absence of required legal proof, the Court will not be justified in issuing a suo motu notice for contempt of court."

9. As per the Respondents, the applicant, soon after sniffing that he was likely to be transferred chose to apply for leave and without awaiting sanction of the same remained at home, and in this regard, the relevant rules relating to availing of casual leave or sanction of earned and other kinds of leave have been cited by the senior standing counsel for the respondents and the same are as under:-

(a) Rule 162 of the Postal Manual reads as under:-

"Permission to avail of casual or/other leave should be taken in advance unless there are compelling reasons of medical or other urgent nature. An applicant for leave is not allowed to avail himself of it or to quit his office or his station until he leave is sanctioned and

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he has formally made over charge to the officer appointed to relieve him. In cases where the absence of an official is due to compelling reasons, he should sent immediate intimation to the head of his office by the quickest possible means and if the intimation has to be posted, it must be posted the same day. He should also satisfy the head of office as to the necessity of not taking permission to absent himself from office in advance. In cases of severe illness where leave is required for medical reasons and the official is not able to attend to his duties, he should sent the medical certificate in accordance with the procedure laid down in Rule 229 of the SRs of the P&T compilation of the FRs and SRs alongwith the first intimation or later or during the course of that day. The medical certificate should also definitely mention that date from which the applicant is unwell and unable to attend to his duties. Failing the production of such a certificate no pay can be granted to the applicant and he will be liable to be granted leave without pay. Owing to the necessity for carrying on the work and injustice to the staff of the office on whom the extra work due to unforeseen absences must fall, it is obligatory for every member of the staff to report his non-attendance at there. In the case of an official on traffic or maintenance duties, the report should be made atleast prior to the commencement of the term of duty for which he is due and as much earlier as possible."

(b) Right to leave in Chapter II of General conditions reads as under:-

- "(i) Leave cannot be claimed as of right.
- (ii) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

10. On the side of the applicant, the following authorities were cited.

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- (i) 1993 (3) SCC 151.
- (ii) 2001 ATJ (2) 311.
- (iii) 2000 SLR (5) 598
- (iv) 2003 ATJ 151.
- (v) 1997 ATC 357.
- (vi) 1989 ATC 9 122 (F.B.).
- (vii) 1999 (3) ATJ 55.
- (viii) 2004 (3) ATJ 116.
- (ix) 1992 UPLBEC (1) 223.
- (x) 2001 ATJ (3) 49.
- (xi) 2004 ATJ (1) 328.
- (xii) 1999 ATJ (2) 647.
- (xiii) 2004 ATJ (3) 116.
- (xiv) 2003 ATJ (3) 36.
- (xv) 1996 ATC (34) 172.
- (xvi) 1993 SLR (4) 349 (SC).
- (xvii) (1984) Suppl. SCC 413

11. We have heard at length the counsel for both the sides and given our anxious consideration to the matter.

12. **First as to the nature of the impugned order.**

The counsel for the respondents, inviting our attention to para 9 of the short counter, contended that the applicant has only been *shifted*. It is not exactly known as to what is the exact meaning of the expression "shift". Perhaps if the authorities mean a temporary transfer, then they are certainly at liberty to do so by passing a suitable order of temporary transfer, which cannot extend at a time beyond 180 days and for which the individual is entitled to TA and DA. And for this purpose, there need not be an identified post, equivalent to that of SPO Basti. In the interest of service exigency, the authority can invoke this power of temporary

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(27)

transfer at any time, and for this purpose the limitations as contained in the rotational transfer policy do not apply. If the posting order is of this character, the OA would have been dismissed at the very threshold stage. But the impugned order does not speak so. The order clearly shows, "Transfer and Posting" which is meant only for permanent transfer.

13. **Next is as to the scope of judicial review of such transfer orders:**

(a) The settled law is that *transfer* is an *incidence of service* and the authority, as long as it acts keeping in view the public interest as the paramount consideration, has unfettered powers to effect transfer subject, of course, to certain disciplines. In this regard, reference to the judgment of the Apex Court in the case of *E.P. Royappa v. State of T.N.* (1974) 4 SCC 3 is appropriate at this juncture, wherein it has been held as under:-

"It is an accepted principle that in public service transfer is an *incident of service*. It is also an *implied condition of service* and **appointing authority has a wide discretion in the matter**. **The government is the best judge to decide how to distribute and utilise the services of its employees**. However, this power 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

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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 *mala fide*. A transfer is *mala fide* when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

(Emphasis supplied)

(b) (Though in the above judgment the Apex Court has spelt out that transfer is an implied condition of service, it has been clarified in the case of *B. Varadha Rao v. State of Karnataka*, (1986) 4 SCC 131, that reference to "condition of service" is a passing reference.)

(c) In the case of *Union of India v. H.N. Kirtania*, (1989) 3 SCC 445, the Apex Court has held, *Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides.*

62

(d) The above dictum was reiterated comparatively in more emphatic words by the Apex Court in the case of *Shilpi Bose (Mrs) v. State of Bihar*, 1991 Supp (2) SCC 659 as under:

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders

e. A symphonic sound has been struck in the case of *Union of India v. S.L. Abbas*, (1993) 4 SCC 357,

To reiterate, the order of transfer can be questioned in a court or tribunal only where it is passed *mala fide* or where it is made in violation of the statutory provisions.

f. And in one of the latest decisions in the case of *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, (2004) 12 SCC 299 the Apex Court has been holding as under:-

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4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa*. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it.

g. Thus, from 'E.P. Royappa' (1974) to 'Damodar Prasad Pandey' (2004), the consistent dictum of the Apex Court is that judicial interference in matters of transfer of a government servant is very much limited and such an interference, of course, is justified only if the transfer is accentuated by malafide, or is by an authority not competent to effect transfer or is against any professed norms or is punitive in character. Thus, all that we have to see is whether the case of the applicant falls within any of the aforesaid exceptions so as to quash the impugned order.

14. The applicant has relied upon the general guidelines of transfer and contended that his transfer is violative of the said guidelines. The response of the respondents for the same is that the said guidelines, apart from being only

(31)

directory, has not completely put an embargo to the authority to exercise their power to transfer. The words, "should not be shifted unless there were very special reasons" according to the respondents, give sufficient latitude to effect the transfer in this case inasmuch as the transfer is for the smooth functioning of the organization and to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. If the complaints etc., are taken into consideration, which the authorities are well within their rights to consider, even apart from any other method of dealing with such complaints, justification does exist in not allowing the applicant to function as S.P.O. Basti and transferring the individual. In order to ensure that the applicant does no longer serve as S.P.O. they have posted the applicant as "O.S.D." in the office of the Regional Post Master General Gorakhpur, to look after monitoring of BD & SB. This has been questioned by the applicant contending that the PMG has absolutely no power to "create" a post of OSD, as such a power to create a post rests only with the Director General of Postal Services. This cannot be questioned by the applicant as such an affair being of administration, if the Chief PMG



(32)

is not competent, the authorities would in the near future ratify creation of the post of OSD. All that is to be seen is that the post of OSD is not subordinate or lower to the post of SPO and that the pay scale attached to it is not less than that of SPO. As long as the post is comparable, the authorities have full powers to effect the transfer. In this regard, it is relevant to refer to the case of **E.P. Royappa v. State of T.N., (1974) 4 SCC 3** wherein it has been held that the positioning of the Chief Secretary as Deputy Chairman of the Planning Commission and officer on special duty cannot be agitated against since the posts carry the same scale of pay and the equivalence has been spelt out by the government. And it is not the case of the applicant that the post of OSD is subordinate or lower than the post of S.P.O. His contention is that the Chief PMG is not competent to create the post. As such, the applicant cannot have a grievance in this regard. Thus, the exemption available to the rotational transfer is not available to the applicant as the transfer effected is for "very special reason." The applicant cannot therefore derive any benefit out of the rotational transfer policy whereby exemption is given to those who are within one year of retirement.

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15. **Next is the question whether the transfer order is punitive.** It is to be noted that the transfer order is silent about the reason for transfer and it has only reflected that it is in the interest of service. The background of transfer, of course, reflects, as contained in para 9 to 11 of the short counter, that there are certain serious allegations against the applicant. The applicant is holding a responsible post and he is expected to follow full discipline and devotion to duty so as to stand as a specimen to his colleagues and subordinates to learn and excel by emulation. Once the authorities have come to a *prima facie* conclusion that there is some substance in the complaint, the authorities could well transfer the applicant and just because the transfer has been so effected, the same cannot be branded as punitive. In this regard, it is appropriate to refer to the case of **P.K. Dave v. Peoples' Union of Civil Liberties (Delhi), (1996) 4 SCC 262**. It was a case where the Director of G.B. Pant Hospital was sought to be transferred as there were serious allegations against him in matters of financial irregularities and consequently, the Secretary Health recommended either suspension or shifting of the Director. However, the Lt. Governor had rejected the same on the influence of the Principal Secretary to the Prime Minister. When the act of the Lt. Governor

62

(34)

was agitated through a public interest litigation, the High Court had held that the Director ought to have been shifted and in the course of the judgment, certain strictures were passed against the Lt. Governor, challenge against which came up before the Apex Court for consideration. The Apex Court had, while dealing with the aspect of strictures passed by the High Court also dealt with the matter of shifting an officer from the post when certain allegations were leveled against the officer, and held as under:-

"..... the entire grievance was that notwithstanding gross financial irregularities committed by Dr Khalilullah no action is being taken and on the other hand he is being shielded and in the process he is obliterating the evidence in the case by destroying the relevant files. That there has been serious financial irregularities in the matter of purchase of instruments to the tune of crores of rupees cannot be disputed in view of the two reports of the two Committees. The reports, however, did not specify the actual role and responsibility of Dr Khalilullah who was the Head of the Hospital and, therefore, it became imperative to find out the involvement of the said Dr Khalilullah and taking suitable action against him. It is in this context when the Secretary (Medical), Shri R.S. Sethi submitted the proposal, he had suggested the course of action to be taken in the matter for the approval of the Lt. Governor. Clause V of the said note may be extracted hereinbelow in extenso:

"I would strongly recommend that Dr Khalilullah should be placed under suspension or immediately shifted from G.B. Pant Hospital as available evidence shows that he has played a major role in defrauding the Government. This step would also facilitate a fair and impartial enquiry/investigation by the Crime Branch. Also, we may initiate disciplinary proceedings for imposition of major penalty against him. I am told that a large number of doctors and professors are reluctant to speak out so long as Dr Khalilullah continues in G.B. Pant Hospital. In fact, we have to act firmly now after what has been

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revealed otherwise we would be sending wrong signals to other hospitals/Institutions."

Thus the Secretary came to the conclusion that Dr Khalilullah had played a major role in defrauding the Government and, therefore, he should be suspended or immediately shifted from G.B. Pant Hospital which would facilitate a fair and impartial enquiry/investigation by the Crime Branch. He had also indicated that doctors and professors are reluctant to speak so long as Dr Khalilullah continues in G.B. Pant Hospital. It also transpires from the note that before sending the proposal he had discussed the matter with the Lt. Governor. The Chief Secretary, Shri Takkar also agreed with the Secretary (Medical) that it is necessary to remove Dr Khalilullah from his present position in the interest of holding a fair and proper enquiry into the scandal but he did not agree with the suggestion of the Secretary to suspend him and, on the other hand, he suggested transfer of Dr Khalilullah from G.B. Pant Hospital. But when the file was placed before the appellant he did not agree with either of the suggestions and on the other hand passed orders that until CBI makes a suggestion after enquiring either for suspending or shifting of Dr Khalilullah he cannot be shifted. It is on account of the aforesaid order of the appellant that Dr Khalilullah was permitted to continue as the Director of the G.B. Pant Hospital. In the aforesaid premises the role of the appellant came directly under the scrutiny of the court when a complaint was made by the petitioners in the writ petition and relief to shift Dr Khalilullah from G.B. Pant Hospital was sought for. We are, therefore, of the view that the role of the appellant came under direct scrutiny of the court while deciding the writ petition in question.

10. At the outset we have no hesitation to come to the conclusion on going through the notes of the Secretary Health and modified by the Chief Secretary as well as the order of the appellant Shri Dave that the said order cannot be said to be reasonably arrived at by a man with vast administrative experience. The operative part of the order of the appellant indicates that he was not willing to agree with the suggestion of the Chief Secretary even to transfer Dr Khalilullah from his position as Director of G.B. Pant Hospital so as to have a fair and proper enquiry solely because of the fact that Dr Khalilullah happens to be a nationally recognised specialist and had been honoured with Padma Shree and

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Padma Bhushan. It is the common administrative practice that no enquiry into the conduct of the Head of an organisation can be impartially made so long he is allowed to continue as the Head of the organisation. In the case in hand the notes of the Secretary clearly indicated that several important files have been destroyed in the meantime and the doctors and other employees of the hospital are reluctant to speak against Dr Khalilullah so long as he continues as the Director of the Hospital. The Chief Secretary having considered the notes of the Secretary had, therefore, suggested that Dr Khalilullah should be transferred from his position in the interest of holding a fair and proper enquiry into the scandal. We are afraid, that if a nationally recognised specialist having been honoured with Padma Shree and Padma Bhushan gets involved in financial irregularities and an enquiry becomes imperative then administrative exigencies did require for his shifting from the place.

The above dictum holds good in the case before us as well. The Superintendent of Post Office is heading a particular Division of the Postal Department and when certain serious allegations are leveled against him, in order to ensure proper and dispassionate inquiry shifting of the superintendent out of the post of S.P.O. cannot be held to be punitive; rather, it would instill confidence in the minds of the general public that fair play dominates in matters of disciplinary proceedings initiated in pursuance of certain complaints from the general public. Again, such a transfer cannot be held to be punitive for, the same is not in lieu of any punishment. If suspension on the basis of contemplated disciplinary proceedings could be justified and held to be legal and valid, there is no reason as to why shifting instead of suspension

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(37)

should not be held so. In fact, the provisions of law as extracted in para 7 above clearly provides for the same. Thus, it cannot be stated that the transfer is punitive.

16. Now a look at the decisions relied upon by the applicant:

(a) The case of S.A. Khan Vs. Bhajan Lal & Ors (1993) 3 SCC 151, relates to evidentiary value of news paper report which has already been adverted to.

(b) In the case of Dr. Pushpa Mehta Vs Rajasthan Civil Services Appellate Tribunal, the Hon'ble High Court of Rajasthan has held that an employee should be given sufficient time, which may be of two years or so to plan peacefully his post retirement life. Any transfer contrary to above principal will lead to inference that order is malafide. The decision in that case was on the clear finding of the Tribunal that the transfer was malafide for the reason that it has been passed in order to only accommodate the appellant. Such is not the situation in the case of the applicant. Here the transfer was made though at the fag end of

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(38)

the career of the applicant, the same was in the exigencies of service.

c. As regards the decision in L.S.B.P Verma Vs. Union of India, 1997 (35) ATC 357 wherein it has been held that Rule 373 of the manual cannot be said to be just a guidance, in the instant case the authorities have invoked the provisions of "special reasons" occurring in the guidelines. The applicant had relied upon the following observations of the Tribunal and there is no dispute about the same. If the guidelines are statutory in character all the more it goes in favour of the respondents as they have, as stated above, invoke the provisions thereof (for special reasons).

The Rule 373 of the manual cannot be said just a guideline. If the other provisions of the manual have to forced of the statutory rules and executive instruction.

"This Manual is an attempt to provide information on the organization of the Defence Accounts Officer." Rule 373 clearly states "Persons above 54 years of age will not generally be subjected to transfer. Such persons, if not serving at their home stations or stations of choice, will be repatriated to those stations if so desired by them to the extent administratively feasible."

In addition to the above as an alternative the counsel for the applicant relied upon

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(39)

the decision in the case of [1989] 9 ATTC 122, HS Ajamani Vs. State of MP and others (Full bench), wherein it was held that in the absence of statutory rules, administrative instructions have binding force. Here again as clear provision exists to transfer a person even during the last year of the career for very special reasons the character of the notification in no way disables the respondents in invoking the same.

d. The next case is one reported in 2003 (1) ATJ 151, Laxman Ram Vs. Union of India & Others: The applicant relies upon the following portion:-

"The order of attachment does not disclose any reason for the transfer but in their pleadings, the respondents describe it as a transfer issued on administrative grounds and in public interest. One wonders what could be the public interest in transferring a low paid employee, who is nearing retirement from Delhi to Jaipur. Respondents have sought to explain that the individual hails from Alwar to hence the transfer to Jaipur.

Nothing is also brought on record either in the pleadings or during the oral submissions to the effect that the applicant was either an undesirable person or one facing any proceedings. In the circumstances I am to conclude that the transfer was an arbitrary and illegal action taken

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against a junior employee, without any justification.

Two things ought to be noted here. First, in the above case the applicant was a low paid employee and hence his transfer was not allowed, whereas in the instant case the applicant is a gazetted officer. Secondly, in the above case the pleadings did not reflect the reasons for transfer whereas in the instant case para 9 to 11 of the counter elaborately deals with eject reason for transfer.

e. The next case relied upon is that reported in **1999 (3) ATJ 55, Rajesh Talwar Vs. State Trading Corporation of India Ltd.** wherein it was held that the basis of anonymous letter that the petitioner had improperly availed of the LTC/medical facilities and therefore it was held that transfer order issued on extraneous consideration. This decision also is of least assistance to the applicant as in the instant case, there has been a full-fledged complaint and not anonymous and as such the authorities are not incorrect in effecting the transfer.

f. The case of 1984 (Suppl) SCC 413, **State of UP and others Vs. Jagdeo Singh** has been heavily relied upon by the applicant to substantiate that transfer by way of punishment is bad in law. This decision in fact supports the view of the respondents as in this decision the Apex Court has clearly stated that any and every transfer

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of a Police Officer from one place to another will not amount to punishment and if an officer is transferred from one charge to another, in the ordinary course of administrative exigencies, **A transfer simpliciter is not punishment.** The case of the applicant herein falls with the category of a transfer simpliciter on administrative exigencies. (Emphasis supplied)

g. The next case referred to by the applicant is that reported in 2003 (2) ATJ 658, T.L. Gupta Vs. Union of India & others wherein the head notes reads as under:-

"Transfer- Misconduct -Disciplinary Proceedings- For any misconduct disciplinary proceedings are to be taken and transfer is not the remedy - Transfer order quashed."

In view of the fact that the Apex Court has in the case of A.K. Dave (supra) had held diagonally opposite, we are bound to follow the judgment of the Apex Court.

h. The next case referred to by the applicant is [(1992) 1 UPLBEC 223] Pradeep Goyal Vs. Regional Manager, Region II, State Bank of India, Zonal Office, Meerut and others the head notes of the same reading as under:-

"Service-Transfer-Order for-Not to be passed as a measure of punishment-In the instant case, petitioner, a bank employee was transferred on ground of his suspected involvement in fraudulent involvement- Thus, order of transfer quashed-Relevant law-Stated."

This decision took support from the judgment of Jagdeo (supra) and as such the

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observation made as above would hold good in respect of this case also. The other judgment i.e. reported in 1999 (2) ATJ 647, Shri Bhupenendra Kumar and others Vs. The General Manager, Northern Railway, New Delhi & Ors: wherein it has been held that Orders being punitive and stigmatic are quashed is also equally not helpful to support the case of the applicant.

i. The next case refer to by the applicant is 2001 (3) ATJ 49 D.K. Gupta Vs. Union of India & Others, the head notes carrying as under:.

"No enquiry made-Transfer order held punitive in nature and vitiated by malafide and illegalities- Order quashed."

No where the respondents in the case of the applicant stated that no enquiry would be held on the basis of the complaints. All that the respondents have done was to immediately shift the applicant from the scene in the interest of administration. Hence, the fact in this order also is distinguishable from the instant case.

(j) The applicant relies upon the decision reported in 2004 (1) ATJ 328, Shri Sanajy Namdeorao Dhakre Vs. Sr. Divisional Manager (Oper.), C. Rly., Bhusawal & Ors. Wherein the ratio was, "Transfer cannot be made by making allegations of misconduct against the Govt. employee-For such defaults authorities have to put the

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concerned official on notice and initiate disciplinary proceedings against him if necessary." Telescoping this decision over the decision of the Apex Court in the case of A.K. Dave (Supra) this decision also gets eclipsed and the decision of the Apex Court fully supports of the case of the respondents.

(k) Next is a case wherein it was held that Violation of principles of natural justice entails order of transfer to be quashed. Transfer being only incidence of service and there being no civil consequences by way of depletion or truncation in the pay and allowance etc., there is no violation of principles of natural justice.

1. Equally misplaced by the applicant in this case is the decision reported in 2003 (3) ATJ 36, B.B. Biswas Vs. Union Of India & Ors: wherein the court had held, "the applicant was never charge-sheeted for any irregularities earlier but Transferred to a post which is lower in status than the post presently held by him and thus, Transfer order is held not passed in administrative exigencies or in the public interest rather it is biased and passed in colourable exercise of power" inasmuch as there

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is no lowering of the post of the applicant.

In the case in hand, admittedly, it is not a case of reversion but posting to an equivalent post. Hence, this decision also does not support the case of the applicant. Rather, the Case of E.P. Royappa decided by the Apex Court, which has already been referred to above, fully applies in the case in hand and the same goes in support of the respondents.

17. In the end, there is absolutely no illegality in the order of transfer effected by the respondents. The O.A. is therefore, devoid of merits and is dismissed.

18. However, one aspect at this stage. In the case of **Laxmi Narain Mehar v. Union of India, (1997) 3 SCC 87, at page 88** the Apex Court has observed,

"It is further contended that the petitioner had made allegations against the officers and the transfer is a vindictive measure of punishment. It is seen that he was transferred on account of administrative exigencies.

3. Under these circumstances, we do not think that there is any justification to interfere with the impugned order. The petitioner, if so advised and is desirous, may make a representation before the appropriate authority and the appropriate authority may consider it on merits."

The applicant has to superannuate by 31st May, 2006. He may be given an opportunity to make a representation before the appropriate authority who may consider it on merits sympathetically within two months. This observation is not in the nature

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of any mandamus but it is purely taking into account the fact that the applicant is nearing superannuation by May, 2006.

19. Under the above circumstances, there shall be no order as to costs.



MEMBER-J



MEMBER-A

GIRISH/-