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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION (O.A) No. 334 / 1986

Kanhaiya Lal Agrawal

.....Applicant.

versus

Union of India, through its secretary  
Ministry of Defence, New Delhi, & others Respondents.

Hon'ble D.S. Misra, A.M.

J U D G M E N T

In this application under section 19 of the Administrative Tribunals Act XIII of 1985, the applicant has challenged the order of his transfer dated 11.7.1985 passed by the Chief Engineer, Central Command, Lucknow (respondent no.2) and subsequent movement-order dated 22.7.1985 served upon the applicant by Garrison Engineer, Kheria Agra, Airforce Station, Agra (respondent no.3).

2. The applicant has worked as Lower Division Clerk <sup>be</sup> (in the Military Engineering Service Department) <sup>be</sup> since 29th November, 1963 and has remained posted at the same station. By the impugned order, the applicant has been transferred from Agra to Mahrajpur District Gwalior and his representation against the order of transfer has not been replied to. The applicant had also sent a legal notice under section 80 CPC to the Union of

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India through its Secretary of Defence, Government of India, New Delhi on 19.9.1985 which is also pending without any order having been communicated to him. The applicant has prayed for quashing the order of his transfer and the movement order, issue of a direction to respondent no.3 to pay the pay and allowances to the applicant from 1.8.1985 by treating the applicant in continuous service, to allow the applicant to join and perform his duty at Kheria District Agra and to pay the medical expenses which the applicant would have been reimbursed, had he been allowed to join his duty either at Mahrajpur, or at Kheria District Agra.

3. In reply, filed on behalf of the respondents, allegations of arbitrariness, mala fide action, or harassment to the applicant by way of transfer, have been denied and it has been asserted that the transfer has been made on administrative grounds; that since January, 1968 to July, 1985 the applicant was given enough chance and time by posting him in other local offices at Agra under different officers, but he disobeyed all, did not work properly, and abused the officers; that after due verification of his behaviour past and present and deliberate inability to improve himself to the standard of sincere government servant, it was considered proper by the competent authority viz, Chief Engineer Central Command, Lucknow to transfer

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the applicant out of Agra on administrative ground; that a movement order dated 22nd July, 1985 was issued informing the applicant that he <sup>shall</sup> be relieved of his duties on 31.7.1985; that this movement order was served on the applicant on 29.7.1985 and he stood relieved at Agra with effect from the afternoon of 31.7.1985; that there were few typographical mistakes of a few alphabets in the movement order, which was amended vide letter dated 14.8.1985. The applicant reported for duty to the Commander Works Engineer (P) Mahrajpur District Gwalior and in his arrival report stated that 'he has not been served with the movement order' and when the Commander asked him to show his defence identity photo pass to verify his particulars and proof of being a bonafide defence employee, he stated that the identity photo pass was deposited by him at the place of his previous posting; that the Commander Works Engineer (P) Mahrajpur refused to accept the arrival report pending receipt of clarifications; that the applicant came-back to Agra same day and did not wait at Mahrajpur till the receipt of clarification sought by the Commander Works Engineer (P) Mahrajpur; that he came to Garrison Engineer Kheria Agra and requested to take him back on strength and allow him to join the duty at Agra; that as the applicant had been struck off the strength of the Garrison Engineer Kheria, Agra, it was not possible nor justified to take him back in the same office <sup>by</sup> and disciplined and congenial atmosphere is to be maintained in a government office.



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4. The applicant filed a rejoinder-affidavit in which it is stated that the impugned order of transfer was passed by way of punishment in a mala fide and arbitrary manner instead of initiating action under CCS(CCA) Rules 1965, if he was found indulging in undesirable activities as alleged in the reply, filed by the respondents, or if he was found to be not maintaining absolute integrity, devotion to duty, or doing anything which is unbecoming of a government servant.

5. On the date of final hearing, the applicant filed written argument which was replied to in the form of written argument by the respondents and a final written argument was filed by the applicant. I have carefully perused all the documents and written arguments filed by the parties. From a perusal of the reply and the written arguments filed by the respondents, it is noticed that the respondents have alleged that the applicant did everything which is out of ~~adequate~~<sup>be</sup> and unbecoming of a government servant vis (a) absenting from duty without leave, (b) running away from the office after making attendance in the attendance register, (c) late coming and unwillingness to do any office work, (d) quarelling and shouting abusive language, (e) spoiling the peaceful decorum due to which no office was willing to keep such a person, (f) cunning enough to apologise and after a couple of days again used to start the same nuisance ie, quarelling shouting, abusive language and undisciplined behaviour, (g) that in 1972, he was proforma posted



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to the office of CWE Agra to improve himself but he quarelled there with the Administrative officer and he was posted to the office of Garrison Engineer Agra. When Garrison Engineer Agra was fed up with the above kind of reapprehensive behaviour, he was returned back by them to the office of C.W.E. Agra. He remained shuttling from one office to another office in Agra like a rolling stone from 1972 to 1978. At last in 1979 office of CWE Agra posted him back to the office of GE Kheria where also he continued as belonging till his characteristics were reported to the appointing authority, i.e., Chief Engineer Central Command Lucknow. After due verification of his behaviour, past and present and deliberate inability to improve himself to the standard of sincere government servant, it was considered proper by the competent authority, i.e., Chief Engineer Central Command, Lucknow to transfer the applicant out of Agra on administrative ground. The allegations of misconduct alleged against the applicant, if true, should have been made subject of departmental inquiry and award of suitable punishment. Instead of taking action against the applicant for the above mentioned, the alleged misconduct, the competent authority (Chief Engineer) Central Command has passed the impugned order of transfer. Although the order states to have been made on administrative grounds, but considered in the light of the narration mentioned above. It is evident that the transfer has been ordered as the result of the alleged misconduct of the applicant. In my opinion that an administrative order does not become an administrative



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order merely by using the words 'Administrative Officer' <sup>b</sup> ~~in public interest~~ <sup>by</sup>, but this has to be examined on the facts and circumstances of the case. There are several decisions of the High Courts and the Supreme Court in which it has been held that a court of law is to consider the matter on the facts and circumstances of the case, before it can come to its own conclusion whether the order was passed as a punishment or as an administrative measure. In the present case, there is no doubt in my mind that the facts and circumstances clearly go to establish the motive of the competent authority in passing the impugned order of transfer. The applicant has filed copies of several complaints made by him to the higher authorities against the conduct of his immediate officers Major M.S. Bedi Garrison Engineer, who must have felt annoyed by these complaints made against him by the applicant. The follow up action, taken by Major M.S. Bedi, Garrison Engineer on receipt of the impugned order of transfer of the applicant from respondent no. 2 clearly discloses prejudice on his part, ~~and~~ soon after the receipt of the impugned order of transfer, <sup>by</sup> ~~and~~ the order dated 22nd July, 1985 was served on the applicant informing him that he would be relieved of his duty on 31st July, 1985 (copy annexure 2). The applicant's representation dated 29.7.85 against the order of his transfer and seeking interview with him was merely forwarded without waiting for its consideration and reply by the competent authority. From a perusal of the copy of the impugned order of transfer dated 11th July, 1983 (copy annexure CA H) it would be noticed that the



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order did not specify any particular ~~candidate~~ date, by which the applicant must be relieved. Para 2 of this order merely states that the move will be completed as early as possible. This order does not mention that the applicant was transferred to Maharajpur District Gwalior on a permanent basis but the movement order dated 22nd July, 1985 (copy annexure CA H1) states that "You are hereby permanently transferred to CWE (P) Maharajpur in the interest of state on administrative grounds" The words 'permanently' and 'on administrative grounds' had been added without its existence in the original order of transfer dated 11.7.1985. The movement order dated 22nd July, 1985 seems to have been issued in great haste as the correct MES number of the applicant which is 425039 was mentioned as 415030. The sequence of events and the issue of order<sup>s</sup> of relief of the applicant w.e. from the afternoon of 31.7.85, seems to have been issued with <sup>a</sup>the prejudiced mind. It would be relevant to quote the concluding portion of para 37 of the counter-reply filed on behalf of the respondents. "If the posting/transfer of defence civilian personnel are not kept outside the tribunals' jurisdiction, all defence civilian employees will rush to Hon'ble Tribunal for stay order/litigation, and no one will go to forward operational areas/difficult areas/ places away from home station for duty" It discloses the mental <sup>b</sup>attitude of the respondents in the service matters of civilian defence employees working under them.



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6. From the above discussion, I come to the conclusion that the order of transfer dated 11.7.85 and the movement order dated 22.7.1985 are neither on administrative ground, nor in public interest and as a result of prejudice and as a measure of punishment for alleged misconduct of the applicant. Instead of taking necessary disciplinary action against the applicant under the relevant service rules, for his alleged misconduct, the respondents have resorted to dubious method of transfer. For the reasons mentioned above, the transfer order dated 11.7.1985 and the movement order dated 22.7.85 are hereby quashed. The respondents are directed to allow the applicant to join and perform his duty at Kheria District Agra.

7. In the reliefs sought by the applicant, he has also sought a direction to treat the applicant in continuous service and to pay <sup>him be</sup> the pay & allowances from 1.8.1985. I have examined the request and I find that on his own admission, the applicant returned the copy of the movement order along with his representation against the order of transfer without any justification. On reporting for duty at Mahrajpur, he did not produce a copy of the movement order, although two copies of the movement order were served on him. Similarly he did not produce the identity photo pass and in his rejoinder affidavit, he has merely stated that the identity photo pass issued to him earlier was surrendered by him without producing any documentary evidence that he was asked to do so, or he had done it.



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Although he was not allowed to join duty at Mahrajganj, he was asked to wait until the reply to the clarification sought by him from his previous office at Agra was received by him. The clarification became necessary due to the failure of the applicant to produce necessary documents to establish his identity. The applicant has failed to specify <sup>as to why</sup> ~~that~~ <sub>he</sub> did he make a written statement that he had not received any movement order. The conduct of the applicant in not producing the necessary documents in his possession discloses his motive in not joining duty at his new place of posting. His conduct in returning to Agra again without any order from the competent authority at Mahrajpur office discloses his motive in not staying at Mahrajpur. From the above mentioned facts, I come to the conclusion that the applicant is himself responsible for not being allowed to join duty at Mahrajpur <sup>and</sup> ~~and~~ returning to Agra, <sup>he</sup> ~~and~~ wanting to join duty in his previous office without the orders of the competent authority.

8. For the reasons mentioned above, the applicant is not entitled to draw full pay and allowances for the period 1.8.85 to the date of his rejoining duty with the Garrison Engineer Kheria Agra. Although he will be treated as being in continuous service, but he will be entitled to pay and allowances as if he was on leave as may be due to him for the intervening period. He will also not be entitled



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to the medical expenses incurred by him for  
treatment under unauthorised medical attendant  
during this period.

The application is disposed of accordingly,  
without any order as to costs.

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(D.S. Misra)  
A.M.

Dt. 2.5.1988  
JS.