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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.426 of 1986

Mahmood Ali Applicant

Versus

Union of India through Respondents.
Secretary, Ministry of Defence,
New Delhi & Others.

Hon. Justice S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

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This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner Mahmood Ali was working as a Security Asstt. grade 'B' in the Collectorate of Inspection General Stores (in short CIGS) Kanpur. He has challenged the order dated 20.6.86 issued by the Director General of Inspections transferring him from C.I.G.S. Kanpur to I.G.S. (SI) Madras. According to the petitioner he was declared quasi permanent w.e.f. 12.2.72 and was confirmed as a Security Asstt. grade 'C' w.e.f. 1.8.79. Having been ignored for promotion to grade 'B' in 1974 he filed a suit in the Court of Munsif City Kanpur against the supersession but during the pendency of the suit he was promoted to grade 'B' w.e.f. 8.12.78. The suit was ultimately decreed on 28.4.79 and the Court held that the petitioner was entitled to promotion to grade 'B' post with effect from 1.3.75. This judgement was challenged in

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an appeal by the Union of India but the appeal was dismissed on 19.8.82. Since his entire claim as set out in the suit was not decreed by the trial court the petitioner also went in appeal and his appeal was allowed on 14.5.80 where by the ^{entry of} adverse remarks in his ACR for the year 1973 was declared illegal and ultra vires and the Union of India was asked to expunge the same and he was also promoted ^{with effect} from 19.11.73. The Union of India went in Second Appeal which was dismissed by the Hon'ble High Court of Judicature at Allahabad on 25.7.83 as no substantial questions of law was involved for consideration. The petitioner was granted consequential reliefs as a result of his promotion etc. consequent to the decree issued by the Court. The petitioner feels that concerned officers were annoyed and as a result they started harassing him by issuing false and frivolous memos. One memo was issued to him on 2.2.82, another on 13.2.84 and still a third on 6.7.84. Thereafter a confidential communication was issued to him on 9.3.85 communicating some adverse entries for the year 1984 and that he was 'not fit for promotion' in view of the said remarks. He represented against the same on 27.3.85. He was advised on 30.3.84 that the remarks have been expunged but the portion declaring the petitioner 'Not Yet Fit' for promotion were not expunged. Later on on 30.4.85, ⁱⁿ the letter of 30.3.84, an amendment was

made in the orders expunging the remarks whereby the major portion of the remarks were maintained in tact. He was issued yet another letter of 14.8.85 and he was warned. The petitioner feels that all this was done with a view to spoil his career with ulterior motives and on account of the ill will and malice. The petitioner thereafter represented to the Controller of C.I.G.S. Kanpur expressing his regret and disappointment at the vindictive attitude and seeking permission to make representation to the Director General. He was advised to represent to the Controller C.I.G.S. Kanpur which he did on 18.12.85. The petitioner says that he was again issued a memo of false and frivolous grounds on 20.3.86 to which he replied on 4.4.1986. A memo was also issued to him on 3.4.86 warning him and he submitted a reply to the same on 4.8.86. Another memo was issued to him on 13.5.86 and he submitted a reply to the same on 14.5.86. On 4.6.86 yet another memo was issued alleging misbehaviour by the petitioner with some visitors ^{of who had come to see} an officer. He replied to the same on 10.6.86. According to the petitioner all these memos were issued to harass him and to spoil his career and to ~~de~~ ^{to} stall his promotion ^{to} grade 'A' and ultimately to deprive him of the said promotion. ^{and} In order to seek vengeance against the petitioner, ^{in the end} ~~that~~ he was transferred. The petitioner has said that no class III ^{employees} have ever been transferred to other distant establishment except on their own request. The seniority being maintained at



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unit level in different establishments he apprehends that he will suffer due to such transfer as he will become junior most in the unit to which he is transferred. According to the petitioner his appointing authority is the Controller, C.I.G.S. and not the Director General and therefore he cannot be transferred by him. The petitioner has got his own personal problems of a large family with ³² ~~depend~~^{ing} school going children, marriageable age ~~of~~ daughters and sick wife. One of the tenant in the house owned by the petitioner is a criminal and his family will be in constant danger if he moves out of Kanpur. Since he has his own house a transfer to ^a distant place^s will also mean financial hardship in the matter of accommodation, Boarding etc. On 20.6.86 he was ordered to be posted to Madras by the Director General and an order was issued on 28.7.86 transferring him to Madras. The petitioner has termed the transfer order as malafide, arbitrary and vindictive. The petitioner has said that he fell sick w.e.f. 2.7.86 and since he has not opted for transfer he fears that when he will resume duties he will be asked to move out. He will thus lose his chance of promotion to grade 'A' at Kanpur being the senior most at the Kanpur Unit. At Madras one grade 'C' Security Asstt. has already been promoted and thus the vacancy meant for him has already been filled. He is not ~~also~~ ³² conversant with the local language and it will be difficult ³² ~~to~~ ^{for} him to discharge the duties at Madras. Since he had mostly stayed in Uttar Pradesh and belonged to U.P. his family will also be put

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3/ 3/ into ~~the~~ undue harassment and marriage negotiations for his daughters are likely to be hampered and the education of his children will also suffer. He has further given a plea that since a disciplinary enquiry is pending against him his transfer even on this account is illegal. He has therefore sought relief that the transfer of the petitioner from Kanpur to Madras be declared mala fide, wrongful and illegal & orders quashed.

2. In their reply the respondents have said that even during his probationary period the performance of the petitioner was not found satisfactory and thereafter for promotion from grade 'C' to grade 'B' the Departmental Promotion Committee did not find him fit and a number of disciplinary cases were instituted against him from 1968 onwards. These show that he has been an indisciplined person from the very beginning of his career and thus the warning issued to him cannot be treated as false and frivolous. There was no post of Security Asstt. grade 'A' vacant at Kanpur nor is ^{one} likely to fall vacant in the near future and therefore the contention of the petitioner that he was issued several warnings to mar his chances of promotion is not tenable. He has been transferred to Madras by the Director General on administrative exigencies. The movement order which was served on

the petitioner was not accepted by him and he has been avoiding to accept the same and has sent four applications for medical leave. In these applications three different addresses had been given and when the transfer orders were tried to be served on the addresses given they were received back with various remarks like :

- (i) Kahin doosare jagah chale gaye hain pata nahin malum.
- (ii) Gast ke samay nahin milte na ghar wale milne ka pata hi batate hain.
- (iii) Daryaft se pata chala ki praptkarta likhit pate par nahin rahta hai.

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The respondents have said that there is no such rule which provides that the employees in class III cannot be transferred to distinct places. The petitioner is a Central Government employee and is liable to be transferred from one establishment to another. A transfer made on administrative exigencies can also not be challenged. They have also repelled the fear in the mind of the petitioner that he will lose his seniority on being transferred to Madras. The powers for transferring non-scientific staff are vested in the Director General and therefore the order has been made by a competent authority. The petitioner has also not made any representation or appeal to the appellate authority against his transfer and his application is liable to be dismissed on this ~~very~~ ² ground alone. The respondents have said that the transfer has been made in public interest and in bonafide exercise of powers. According to the

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respondents the name of the petitioner has been struck off from the strength of the C.I.G.S. w.e.f. 4.7.86. The contention of the petitioner that there is no vacancy at Madras is ³² ~~also~~ wrong. One post is still lying vacant. The petitioner will not face any language problem because ³² ~~of~~ the correspondence in the office at Madras is made in English and the domestic problems he has to face but he has to take advantage of the facilities available to attend to his problems.

3. In his rejoinder the petitioner has reiterated his earlier averments saying that all the disciplinary cases were fabricated against him on account of ill will and malice and he has never been indisciplined. He has repeated ³² his earlier arguments that he is the senior most at Kanpur and is eligible for promotion to grade 'A' when said promotion will become due and in case he is sent out his chances of promotion will be marred. The petitioner has said that he is not seeking to avoid to receive the transfer order and he cannot be blamed for what the Postman writes. He is still sick and is continuing under medical treatment.

4. We have heard the learned counsel for both sides. The main contentions of the learned counsel for the petitioner were that the transfer is malafide with oblique motive and the petitioner has been

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By from July 36 onwards
deprived of the salary. He has not been given any transfer grant even though he had wanted to go. His letter requesting for transfer grant has not been ~~granted~~ ^{accepted}. These contentions have been repelled by the learned counsel for the respondents on the point that the movement order was sent to him but he has not accepted the same and he is still absconding from duty. Letters sent to him have been received back undelivered.

5. *By* Transfer is an incident of Government service ^{by}. It cannot be said that since a person does not belong to a particular State he will be inconvenienced if he is transferred to a station in that State. The petitioner's argument in this regard has been that if he is transferred to Madras he will be inconvenienced because of the language problems and because of the education of his children as also he will be handicapped in the marriage negotiations for his daughter and lastly since he has his own house in Kanpur he will be financially hit by moving to Madras ^{by} ~~and~~ by having to hire residential accommodation there. Another plea taken by the petitioner is of the malafides of the transfer. He has tried to build up ^{the} ~~his~~ ^{of malafides} case on a number of chargesheets that were given to him at various times and on the fact that he got his promotion to grade 'B' as a result of a Court order which annoyed the respondents. On his own showing the petitioner has brought out a list of memos that were given to him at various times. The respondents have

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also listed out the chargesheets given to him over the years. The respondents have said that the working of the petitioner has not been satisfactory. Chargesheets are issued with a view to correct an erring employee. The petitioner had sadly ~~lost~~^{failed} to improve his performance as the spate of charge memos ~~would~~^{could} go to indicate. It will be difficult to accept the plea taken by the petitioner that these chargesheets were issued only with a view to spoil his career and to stall his promotions. The petitioner was taken up even when he was under probation. There have also been adverse entries in his Confidential Reports. These confidential entries are also made with a view to give an opportunity to the concerned person to improve himself. The petitioner has been able to get ~~a~~[✓] particular remarks expunged and has also been able to get his promotion from a back date. A Confidential Report gives a general assessment of the work performed by the Government Servant. These report serve as a data for comparative merit when the question of promotion or confirmation arises. The object of maintaining these reports is to put an officer on a proper line while pointing out his defects. The adverse entries are acted upon only after they have ~~been~~^{✓ been} communicated and the representation received has been disposed of. In the absence of the judgement of the trial court expunging the remarks from the Confidential Report and granting promotion to the petitioner from an

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earlier date it is difficult to say what factors ³²~~made~~ prevailed in the mind of the learned Judge to grant that relief. If there would have been any case of malafide or prejudice or arbitrariness the petitioner would himself have highlighted those issues to support the contentions made by him in his application. Whatever it may be, the petitioner has already got the benefit of his promotion consequent to the Court order on that subject.

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6. What the petitioner is challenging is his transfer and he is challenging it on the basis ~~on~~ that it is malafide and with oblique motives. There is no doubt that the power of transfer is vested in the controlling authority but as long as it is exercised honestly, bonafide and reasonably it will not be open to attack. If it is used on extraneous considerations or for achieving alien purposes it would be malafide. For proving malafide there should be proper and sufficient evidence. It should not be reached on flimzy grounds. The responsibility for efficient and good administration is that of the Govt. This Tribunal will not like to judge the propriety or sufficiency of such opinion except where the process is violated by malafide. We have already remarked that transfer is an implied condition of service. The petitioner has not shown us any rule under which persons in his category are

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not transferred. The controlling authority will be the best judge to decide how to distribute its man power. There is no doubt that a transfer does involve certain hardships but then one cannot take shelter behind the reason that he will be subjected to hardships and therefore he should not be transferred. The respondents have already averred that the petitioner will not lose his seniority. There are no rules that when a transfer is made in the exigencies of service a person is made to lose his seniority. It cannot be so. It is only when a person moves on transfer on request that his seniority is disturbed. Therefore the contention of the petitioner that the transfer would result in his seniority being disturbed cannot be accepted and does not hold ground. Orders of transfer are normally outside the purview of the court of law. The appointing authority being the best judge it has to take into account various factors which may be the reputation, the period of posting, the exigencies of service etc. This Tribunal cannot sit and adjudicate. The pleas taken by the petitioner to build a case of oblique motives or of malafides have sadly failed. We do not find any extraneous considerations. It is for the petitioner to make definite allegations of malafides. He has also to establish that the order has been made for extraneous

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considerations or to accommodate another employee if it is challenged on these grounds.

7. The learned counsel for the petitioner has contended ~~that~~ during the course of arguments that when the petitioner wanted to move on transfer he was not given any transfer grant and therefore he could not move and also that the petitioner has not been paid since July, 1986. These are matters which should have received the attention of the employers. The petitioner has also got some domestic problems which also need sympathetic consideration and with this thing in the background we ~~have~~ asked the learned counsel for the respondents to find out if it ^{is} possible to accommodate the petitioner at some station in Uttar Pradesh or at Delhi. The petitioner has also brought to our notice that there is a vacancy at Delhi on account of the promotion ^{of an officer from} as Security Asstt. grade 'B' to grade 'A'. The learned counsel for the respondents showed us a telegram issued by the Director General that no vacancy was available at Bombay, Calcutta and Delhi. The petitioner has also been pleading that in case he moves to Madras he will lose his chance for promotion to grade 'A' at Kanpur where he is the senior most and where a vacancy may fall due in due course. The Govt. is ~~a~~ ^{in normal course} model employer and it should be ~~but~~ ^{be} ~~natural~~ for the Govt. to consider the problems of its employees and

see in what way help could be given to the employee. No light has been thrown on these aspects except that it has been said that the petitioner could avail of the privileged ³ leave which is admissible to him to visit Kanpur if he leaves his family there. The distance between Kanpur and Madras is not a small distance and if a person has to travel on its own expenditure it is neither convenient nor possible at frequent intervals. There is no doubt that a transfer is a condition of service and one cannot take a plea that since he has got his domestic problems he would not like to move on transfer.

8. Reliance has been placed by the learned counsel for the petitioner on R.Kapoor Versus Union of India (ATR 1986 CAT 31). In this case the Principal Bench of the Central Administrative Tribunal had held that when an allegation is made that the impugned order of transfer though innocuous was by way of punishment the Tribunal was not precluded from going behind the order to see whether it is by way of punishment or based merely on assessment of suitability of the public servant to hold the post as claimed by the respondents. We have already commented on the transfer being not ³ tainted ~~tempted~~ with malafide ³ or not being ³ as a result ³ of ³ punishment. There is no doubt that the petitioner has been getting a spate of chargesheets for

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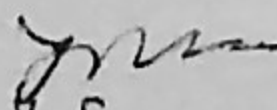
an inefficient working. These may have prompted the respondents to send him to a new surrounding where he could improve his performance but the petitioner has not been able to prove that his case was a case of transfer of punishment.

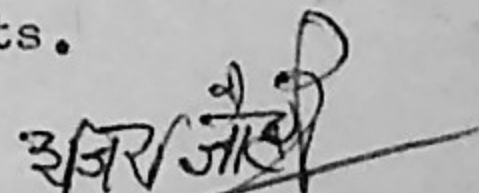
9. Reliance has also been placed on K.K.Jindal Versus General Manager, Northern Railway(ATR 1986 CAT 304).

30/ The Principal Bench of the Central Administrative Tribunal in this case had observed that a transfer order can uproot a family, cause irreparable hardship and drive an employee into desparation. When a transfer is effected by way of punishment, though on the face it may bear the insignia of innocence, exigencies of administration and public interest must take precedence over individual inconvenience or hardship. But a welfare State has to ensure fairness and equality of treatment and eliminate arbitrary action by enunciating a policy. But then on the other side if a policy is enunciated, an action not conforming to it, would prima facie be unsupportable. Normally like any other administrative order an order of transfer should also conform to rules, if any framed, and policy if any enunciated but even if this was not done an order of transfer cannot be termed arbitrary or discriminatory. Even the ratio of this judgement does not apply to the petitioner. Because he has been issued a number of chargesheets and because his performance has not been satisfactory as reflected by the action taken against him and by remarks in his Confidential Reports which were conveyed to him, he cannot say that this transfer order has been made as a punishment and is malafide.

10. The petitioner has shown a fear that he may suffer in his next promotion to grade 'A'. The respondents have said that since he is going in the same unit his seniority will not get disturbed. However to safeguard the interest of the petitioner we will like to direct that as and when the vacancy is available at Kanpur for Security Asstt. grade 'A' and if by virtue of his posting at Kanpur in the grade 'B' being the senior most the petitioner was to be considered for that post, the respondents will move him back from Madras if he is otherwise fit for promotion to give him a promotion at Kanpur. His request for quashing the transfer order is not on solid grounds and is rejected. However the respondents will assist the petitioner in carrying out his transfer order by handing him over the necessary movement order etc. and also arrange to make payment for his salary which may be due to him and which has not been paid to him for all this period when he did not move on transfer and reported sick.

11. The petition is disposed of accordingly. Parties will bear their own costs.


V.C.


A.M.

Dated the 24th April, 1987

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