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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. O.A. 573 of 1986.

Ram Bibhuti Tripathi . .vs. . Union of India and others.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.
Hon'ble Shri Ajay Johri, Member(A).

(Delivered By Hon. S.Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act (No. 13 of 1985), filed by Ram Bibhuti Tripathi on 14.10.1986 challenging the order dated 14.7.1986 transferring him from Bareilly to Agra.

On 22.10.1986 notice of this application was issued to the respondents to show cause as to why this application be not admitted and prayer for interim relief be not granted. Ultimately on 11.12.1986 the case was put up for admission. In the meantime parties exchanged their respective counter and rejoinder affidavits. It was stated by learned counsel for both the parties that the case be heard on merits and decided at the admission stage itself. Since the counter and rejoinder affidavits have been exchanged and as prayed by the learned counsel for both the parties, we are disposing of this application at the admission stage.

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Applicant Ram Bibhuti Tripathi was transferred as Assistant Engineer from Calcutta to Naini (Allahabad) on 31.5.1979. On 2.11.1982 he was transferred from Naini (Allahabad) to Allahabad (proper). On 25.5.1984 he was transferred from Allahabad to Bareilly. On 2.7.1986 R.V.Singh, Sub-Divisional Officer (Telegraphs), Kashipur (Nainital) came to the applicant and told him that he had been posted in his place, and as such the applicant should hand over charge to him. The applicant was not shown any transfer order, and, therefore, he refused to hand over charge. In spite of all that Shri M.D.Sharma, Divisional Engineer, Telegraph, Bareilly started treating the applicant as relieved and stopped paying his salary and on that score he has not been paid salary from the month of July, 1986 onward. On 14.7.1986 the Deputy General Manager, Telecommunication, Lucknow ordered applicant's transfer from Bareilly to Agra. This order was served on the applicant on 5.9.1986. On 17.7.1986 the applicant received a telegramme dated 16.7.1986 to the effect that he had been transferred to Agra. On receiving the telegramme the applicant made a representation on 17.7.1986 to the General Manager, Telecommunication, Lucknow. According to the Circular Letter dated 12.11.1981 an officer should normally be transferred after

four years of his stay at a station and well in advance of academic session. The applicant was transferred twice within a period of four years. His one daughter is studying in 6th class at Bareilly and his three sons are studying in B.Sc., 12th Class and High School at Allahabad where the applicant owns a house. Thus it is difficult for the applicant to maintain three establishments. On 5.7.1986 and 6.7.1986 the applicant filed complaints against the Divisional Engineer, Telegraph, Bareilly and the latter got the applicant transferred; and therefore, the transfer order is bad on account of malice and is in violation of the aforesaid Circular Letter dated 12.11.1981. The applicant prayed that the transfer order dated 14.7.1986 which was communicated to him on 5.9.1986 be quashed and the authorities concerned be directed to dispose of the representation of the applicant containing a request for his re-transfer to Allahabad.

According to the respondents, the General Manager, Telecommunication, Lucknow, vide his order dated 26.6.1986, posted R.V. Singh, S.D.O.(T), Kashipur in place of Sri Ram Bibhuti Tripathi (the applicant) at Bareilly as Sub-Divisional Officer(T) Bareilly to constitute a new Sub-Division on account of departmental policy. It was mentioned in the order dated 26.6.1986 under which R.V. Singh was to replace the applicant, that the order of transfer of the

applicant would follow separately. In compliance with the aforesaid order R.V.Singh reported for duty on 2.7.1986. The applicant was asked to hand-over charge to R.V.Singh and to report to the General Manager, Telecommunication, Lucknow for orders, i.e., for transfer and posting orders. When this order was shown to the applicant, he refused to receive it and denied to write any reason for such refusal in the 'Dak' register. A photocopy of that note of the peon to that effect has been annexed as Annexure-C.A.4 to the counter affidavit filed on behalf of the respondents. On 2.7.1986 a telegramme was given to the applicant since he had refused to take service and its delivery was recorded according to Annexure-C.A.5 to the counter affidavit. Ultimately the General Manager, Telecommunication, Lucknow issued the order of transfer on 14.7.1986 in which the place of posting of Ram Bibhuti Tripathi (the applicant) was indicated, that is, he was transferred from Bareilly to Agra. The applicant has not yet resumed his duties at Agra and, as stated above, he has already been relieved at Bareilly. The applicant intentionally avoided to take the transfer order. There was no malice and the applicant was transferred in the interest of telecommunication service and on administrative ground.

Responsibility of good administration is that of the Government. We would not judge propriety or

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sufficiency of such opinion of the authority concerned by objective standards except where ^{-ive} subject/process is violated by mala fides etc. Transfer being the implied condition of public service, the authority concerned is the best judge to decide how to distribute its man-power. A variety of factors may weigh with the authority concerned in this connection which are normally called 'exigencies of service'. It is not for us to adjudicate about the advisability or propriety of transfer, but the ~~xxx~~ power of transfer must be exercised honestly, bona fide and reasonably. It should be used in the interest of public service and not for any oblique motive.

It is alleged that the applicant moved complaints against the Divisional Engineer, Telegraph, Bareilly on 2.7.1986, 5.7.1986 and 8.7.1986. In the complaint dated 5.7.1986 it is mentioned that the D.E.T. is treating the applicant relieved from the date R.V. Singh took over charge. At this stage it may be mentioned that on 26.6.1986 the General Manager, Telecommunication, Lucknow ordered R.V. Singh to take over in place of the applicant and in pursuance of that order on 2.7.1986 R.V. Singh took over in place of the applicant at Bareilly. Therefore, it cannot be said that on account of the complaints made in July 1986 the transfer order was passed maliciously in June 1986. However, these complaints of July 1986 are against the Divisional Engineer, Telegraph, Bareilly and

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the transfer order was passed by the General Manager, Telecommunication, Lucknow. It could not be established that the order of transfer is based on malice or was passed with some oblique motive.

The next contention of the applicant was that according to the Circular Letter dated 12th November, 1981 he should not have been transferred until he completed four years of stay at one station, but he was transferred twice in four years when several persons are staying at one station for more than four years. In this circular letter the word 'normally' has been used. These are guidelines for the authorities concerned regarding transfers. Of course, they should be normally followed, but due to exigencies of service authorities concerned may "deviate" from these guidelines laid down for the normal circumstances. For example, in this case a new Sub-Division was created at Bareilly and R.V. Singh was ^{selected} posted there as Sub-Divisional Officer(T) and the plaintiff was asked to proceed to Agra. This was done in the interest of administration. So, it is immaterial that the applicant has not completed four years at Bareilly. So far as ^{question} the of studies of the sons and daughter of the applicant is concerned, it is significant to note that the General Manager, Telecommunication, Lucknow, vide his order dated 26.6.1986, had ordered R.V. Singh to take over charge at Bareilly in place of the

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applicant with the remark that the transfer order would follow. The applicant was asked to hand-over charge to R.V.Singh and to report to the General Manager, Telecommunication, Lucknow to receive the orders. He refused to take the order. Then on 2.7.1986 a telegramme was sent to the applicant. Ultimately the General Manager passed a final order transferring the applicant and 11 other persons to various stations. Thus the order was passed on 26.6.1986 and it cannot be said that the applicant was transferred after the start of the academic session. On 2.7.1986 the applicant knew about this order. R.V.Singh had asked him to hand-over charge on 2.7.1986. Therefore, the applicant was himself to be blamed for the delay and the difficulty, if any, ^{that may} arise ~~due to delay~~, in getting admission of his children. The applicant owns a house at Allahabad and his three sons are studying there. They can continue at Allahabad. So far as the daughter of the applicant is concerned, she is simply ~~af~~ a student of 6th Class and in normal course, there should not be any difficulty in getting her admitted at some other station in 6th Class.

We find no good reason to quash the impugned order of transfer. This application has no substance and cannot be admitted.

In view of the above, this application is dismissed with the remarks that in case any repre-

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sentation of the applicant regarding his re-transfer to Allahabad is pending, it may be disposed of by an early date. There will be no order as to costs.

December 6th, 1986. Vice Chairman.
R.Pr.

बजरंग जैसवाल
Member(A)