

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 130 of 1986.

J.S. Kushwaha

..... applicant.

Versus

Union of India and others.

..... Opp. parties

Hon'ble D.S.Misra-Member (A)

Hon'ble G.S.Sharma-Member (J)

( By Hon'ble D.S.Misra )

This is an application under section 19 of the  
Administrative Tribunals Act/against the order dated  
24.2.1986 passed by the Collector Central Excise and Customs  
Kanpur ( herein referred as respondent no. 2 ) transferring the  
applicant from Kamalganj, District Farrukhabad to District  
Pilibhit.

The applicant has been working as Inspector Central Excise  
and Customs at Kamalganj (II), District Farrukhabad. He has alleged  
that on 15.2.1986 in the discharge of his duties, he had seized  
branded Bidis/worth about Rs. 5,50,000/- involving the government  
revenue of about Rupees one lac belonging to M/S Bhagwandas Sobha  
Lal Jain, Manufacturers of Balak Chhap Bidi, at Kamalganj. Seth  
Das Chand Jain Member of Parliament of Sagar, is managing  
partner of the aforesaid firm and Sri Maharam Singh, M.L.A  
(Congress-I) , Kamalganj, District Farrukhabad was persuaded by  
Seth Dal Chand Jain to write a note to the Assistant Collector  
Central Excise and Customs Fatehgarh on 20th February, 1986 making  
a complaint against the petitioner regarding harassment caused to  
his workers at Kamalganj and recommending the transfer of the  
petitioner to some other place. The applicant has alleged that the  
impugned transfer order made by the respondent no.2 has thus been  
passed under political pressure. The applicant has also stated that  
he is a patient of heart and is paralytic and he is receiving

*Bhmr*

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treatment at ~~at~~ Etawah. His transfer to Pilibhit would deprive him of proper medical treatment. It is further stated that his request to the respondents to transfer him either to Etawah or Firozabad on compassionate ground had also been turned down due to the above mentioned political pressure. He has requested for the cancellation of the transfer order and his posting to either Etawah or ~~Firozabad~~ <sup>Firozabad: Ph</sup>

In reply filed on behalf of the respondents, it is stated that the impugned order was passed on administrative grounds and it had nothing to do with the alleged incident of the seizure of Biris by the applicant on 15.2.1986. It is also stated that the request of the applicant for transfer to Etawah or Firozabad was considered but it could not be accepted.

The applicant had not submitted any information about his paralytic attack and heart ailment earlier to the passing of the impugned transfer order. The applicant has already been relieved on 9th May, 1986 but he is avoiding to handover the charge to his successor and is deliberately flouting the orders passed by the competent authority. The transfer order had been passed on the basis of administrative exigency and the applicant has no right of posting at the place of his choice. It is also stated that even from the medical point of view better medical facility will be available at Pilibhit in comparison to Kamalganj, his present place of posting. The allegation that Sri Moharam Singh, M.L.A. had written a letter for his transfer or that Sri Dal Chand Jain had exercised any political pressure for his transfer, has been emphatically denied by the respondents.

A rejoinder affidavit was filed by the applicant in which reference has been made to the medical certificates filed by him in support of his illness. He filed copy of adverse remarks in his confidential report for the year 1983 in which it is mentioned that he is paralytic and not fit for field work.

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The allegation of his transfer under political pressure has also been reiterated in the rejoinder-affidavit.

We have considered the arguments of the learned counsel for the parties and have also carefully perused the documents on record.

*Sh* The main contention of the applicant is that his transfer orders were as a result of a letter dated 20.2.1986 written by Sri Moharam Singh, M.L.A., to the Assistant Collector Central Excise and Customs Fatehgarh at Farrukhabad, (a copy of the said letter is filed as annexure-4 to the application). The receipt of the letter and the allegation that he was transferred as a result of this letter has been denied by the Assistant Collector Central Excise Farrukhabad, who has filed his affidavit on behalf of the respondents. The order, annexure-5 to the paper-book of the applicant is dated 24.2.1986 and has been issued over the signature of Collector Central Excise at Kanpur. In view of the specific denial by the Assistant Collector Central Excise that this letter was received in his office or that this letter had nothing to do with the impugned order, it is not possible to accept this contention of the applicant. The second contention of the applicant that the respondents should not be transferred on health ground has also been considered by us. The applicant has himself filed a copy of the adverse remark for the year 1983 communicated to him. While these remarks do support his contention that the Collector Central Excise Kanpur should be aware of his paralytic condition but these remarks also disclosed unsatisfactory performance of duty by the applicant. The following remarks in the annual character-roll for the year 1983 are worth quoting.

5. Discipline: No, He always uses filthy and abusive language to his superiors. 'Just Adequate'

6. Punctuality: Not upto the mark. 'Just adequate'

7(b) Special aptitudes: Nothing can be expected from him as he is paralytic. He may invite troubles to others at any time. 'Just, Adequate'

*Wh* These remarks disclosed that the work and conduct of the

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applicant in the department has not been satisfactory and the department could have taken a more serious view ~~of usefulness~~ <sup>of L</sup> of the applicant as a useful civil servant. In the circumstances mentioned above, we feel that the transfer order was passed as an administrative measure and there is no justification to interfere with this administrative arrangement.

The application is rejected without any order as to costs.

Member (A)

*S. Narine*  
Member (J)

J. Singh/ /9/1986.