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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD.

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Registration No. T.A. 537 of 1986

Hira Lal Dhar Dubey . .vs. . Jokhu Singh and others.

Hon'ble Justice Mr. S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Mohri, Member(A).

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

Regular Suit No. 226 of 1984, pending in the Court of Munsif, Gorakhpur, has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

Hira Lal Dhar Dubey, to be described as the plaintiff, filed this suit against Jokhu Singh, Assistant Superintendent of Post Offices, Senior Superintendent Post Offices, Gorakhpur Division, Gorakhpur, Post Master (Gazetted) Gorakhpur and the Union of India, for declaration that the order of allotment (transfer) dated 13.1.1984 is illegal, without jurisdiction and ineffective, and, therefore, the defendants be restrained from giving effect to that order. It is said that the order of transfer was mala fide and was based without any good ground and without prior consent of the plaintiff. It is further alleged that this irregular order of transfer is likely to affect plaintiff's future seniority and promotion in going outside Gorakhpur. The plaintiff

has been transferred from Gorakhpur to Barhalganj L.S.G. Unit, vide the communication order dated 13.1.1984. The defence is that the plaintiff was serving as Postman in the Head Post Office Gorakhpur and on 12.1.1984 the Senior Superintendent of Post Offices, Gorakhpur, defendant no.2 transferred the plaintiff from Gorakhpur to Barhalganj L.S.G. Unit on administrative ground. ~~The~~ Defendant no.2 was competent to allot and transfer any official on administrative grounds as per powers conferred upon him under Schedule-3, P.& T. Manual, Volume III. ~~The~~ This suit, as stated above, has been transferred to this Tribunal.

The Court would not judge the propriety or sufficiency of formation of opinion as to the existence of exigencies of service in matters of transfer by objective standard except where the subject process is vitiated by mala fides, dishonesty etc. The right to transfer an employee is a powerful weapon in the hands of the employer. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee. When the Court is alerted, it has necessarily to tear the veil of deceptive innocuousness and see what actually motivated the transfer. The Court can and should in cases where it is satisfied that the real object of transfer is not what is apparent, examine what was behind the transfer. A transfer can uproot a family, cause irreparable ~~xxxx~~ harm to an employee and drive him ^{to} desperation. It is on account of this that transfers when affected by way of

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punishment are to be quashed by the court. ((1979) 1 SLR 309 (Kerala) P. Pushpakaran v. Chairman, Coir Board, Kochin.).

On 19.12.1983 the plaintiff moved an application before the Commissioner, Gorakhpur ~~thx~~ with the allegation that in his case under Sec. 145 Cr.P.C. Ram Vyas Pandey, Senior Superintendent of Post Offices, Gorakhpur, Jokhu Singh, Assistant Superintendent of Post Offices, and Lakshmi Narain, Post Master Gorakhpur, and Ramesh Chandra Srivastava, Public Relations Inspector, Head Post Office, called him and held out threats in connection with the aforesaid case under Sec. 145 Cr.P.C. This application was sent to the Commissioner. The Postal receipt of the same date was also filed showing that the application addressed to the Commissioner was posted. The copy of this application was issued from ^{the office of the} Superintendent of Police from which it can be inferred that it was sent to the police for inquiry and from the police office the plaintiff obtained that copy. The copy of the judgment dated 14.8.1984 shows that the case under Sec. 145, Cr.P.C. between the plaintiff and others was pending when this ~~ap~~ complaint dated 19.12.1983 was sent by the plaintiff against defendants no. 1 to 3. So, it is clear that on 19.12.1983 the plaintiff sent a complaint against the aforesaid four persons, namely, Sarvasri Ram Vyas Pandey, Jokhu Singh, Lakshmi Narain and Ramesh Chandra Srivastava. Ram Vyas Pandey has filed affidavits and objections on various dates admitting that he passed the order of transfer. It appears that Ram Vyas Pandey,

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defendant no.2, passed the order of transfer and defendant no.1 simply conveyed it to the plaintiff. It may be repeated that the complaint is dated 19.12.1982, against defendant no.2 Ram Vyas Pandey, and the transfer order is dated 12.1.1984. It is normally difficult to prove malice by direct evidence. Malice is inferred from the circumstances of the case. In the replication it was clearly stated that a complaint was made against defendants no. 2, defendant no.1 and defendant no.3, who had held out threats to the plaintiff for doing 'Pairvi' in the case under Section 145 Cr.P.C. and in that connection the plaintiff gave an application to the Commissioner, Gorakhpur Division, on 19.12.1983 which ~~in~~ infuriated the defendants. The plaintiff did 'pairvi' in that case and from the judgment it appears that it was in his favour. It has nowhere been asserted that defendant no.2 was not influenced due to this complaint. It is the sweet say of the Department only that the order of transfer was passed on administrative grounds. Of course, defendant no.2 ^{claims to have} ~~did~~ pass the order of transfer on administrative ground, but from the facts and attendant circumstances it appears that this Postman was shunted ^{due to malice,} out of ~~the~~ the unit (from Gorakhpur to Barhalganj) which, we are told, is more than 20 km. apart, in the mid-session (January 1984). ² ~~So~~, From the facts and circumstances it can be safely inferred that the complaint dated 19.12.1983 filed by the plaintiff against defendants no. 1 to 3 irritated them and on that score the transfer order was passed by defendant no.2 and ~~the~~ since it was not passed in the interest of administration and was on the basis of malice, so it is bad in law and liable to be struck down.

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This application (O.S.No. 226 of 1984) is
communication ~~is~~
allowed. The impugned/order dated 13.1.1984 is quashed.
The authorities concerned are directed to pass necessary
orders in this ~~concerned~~ ^{matter}. Parties shall bear their
own costs.

November 12^K, 1986. Vice Chairman.
R.Pr.

अनुराग शर्मा
Member (A).