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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 189 of 1986

Vijay Singh Applicant

Versus

Chief Controller of Explosives,
Nagpur and Another Respondents.

Hon. Ajay Johri, A.M.

Hon. G.S. Sharma, J.M.

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

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This is a petition under Section 19 of the Central Administrative Tribunals Act XIII of 1985. The petitioner Shri Vijay Singh is posted as Upper Division Clerk in the office of the Deputy Chief Controller of Explosives, Agra. He has come to this Tribunal with a request for quashing the order dated 21.4.86 passed by the Chief Controller of Explosives transferring him to Bombay and for a direction to be issued for his retention at Agra. In his plaint he has alleged that this transfer order is in the nature of punishment in the background of two adverse entries given to him during the year 1984 and 1985 as well as in the background of bias on the part of Shri N.G. Kundu, Deputy Chief Controller of Explosives who had also used language decrying the caste of the applicant.

2. The respondents' case is that the petitioner has not come to the Tribunal with clean hands as he had suppressed the material facts that he was awarded

the adverse entries in the in the year 1984 and 1985 and that he had tried to build up his case on account of alleged malafide of Shri N.G. Kundu. The adverse entries given to him^{by} ~~him~~ on the basis of his over all performance against which he had preferred a representation on 16.4.86 which has been forwarded by the Deputy Chief Controller of Explosives, Agra to the Chief Controller of Explosives, Nagpur. According to the respondents, being a Central Govt. ^{by} ~~employee~~ service the petitioner is liable to be transferred throughout the country and he can have ^{by} ~~any~~ ^{no} cause of action against the transfer order. Also the transfer has been made on the basis of administrative exigencies and ^{by} ~~is~~ not as a measure of punishment.

3. Shri Palok Basu the learned counsel for the petitioner has emphasized that the transfer to Bombay is in fact a camouflage for punishment. There were two more U.D.Cs who have longer stay than the petitioner but they have not been moved. There is no one who has moved out of Bombay and no one has been posted vice the petitioner. He belongs to the weaker section of the society and the Government policy is to keep the employees belonging to the weaker section of the society as near their homes as possible. A reference has also been made of the decrying language used by the Deputy Chief Controller of Explosives Agra against the petitioner. Shri K.C. Sinha the learned counsel for respondents has argued that the petitioner's claim is liable to be rejected because the transfer has been made in the exigencies of service and the petitioner has not represented to the authorities. We have heard both the counsel.

4. The petitioner was appointed in March, 1960 as Typist. According to his terms of appointment his services were liable to be transferred anywhere in the Indian Union. So in terms of his appointment and after having a stint of nearly 25 years at Agra, he should normally have no grouse against his transfer. The plaintiff got promoted to the post of Upper Division Clerk in 1976. His tale of woe started from the year 1984 when the first memo was given to him. He got yet another memo for the year 1985. Both these memos are similarly worded and have brought out his improper maintenance of diary, slow disposal of work and lack of keenness to learn though he has been said to be an intelligent officer. Both these memos warned him of drastic action against him if he did not improve and continued to behave irresponsibly. Both of these had been issued by Shri N.G. Kundu, Deputy Chief Controller of Explosives. His transfer order has closely followed on the heel of these adverse entries. It has, however, been maintained by the respondents that the transfer has been made in the exigencies of service while the petitioner feels that it was a colourable exercise of power.

5. The burden of establishing malafides is very heavy on the person who alleges it. Such allegations are often more easily made than proved. As the degree of seriousness of such allegations increases the proof of high order of credibility will be necessary. We have not found anything

of this nature in the evidence put up by the petitioner. His assertion that Shri Kundu has been behind his woes is not supported by facts. However, if one looks at the sequence of events it would give ^{31/ not very} a reasonable inference ^{32/ perhaps} that there exists a nexus between the issue of the memos and the transfer order.

6. The learned counsel for respondents has justified the transfer in the exigencies of service. We have no doubt in our minds that if a transfer is made in the exigencies of service, if it does not mean posting to a lower post and if it does not give discriminatory preference to a junior it could not be open to attack ^{at}, but if it smells of a mala fide exercise of power or dishonesty it can be subjected to a review. The only allegation that the petitioner has made is that his relations with the Deputy Chief Controller of Explosives have not been cordial and there were persons with longer stay than him who are available at Agra and who have been retained in preference to him. It is not a case of a junior who is being given preferential treatment but of those with longer stay being allowed to stay. Except for the memos given to him there has been no other evidence which will show that there were ^{33/ The right of the superior to take up the subordinate if exercised justly cannot be challenged 34/} strained relations between the petitioner and his boss. ^{35/ decrying the caste and calling names 36/} The factor appears to have been introduced by the petitioner to build up his case and can rightly be ignored. Shri Kundu has denied that there was any such situation and that the allegations of him having called names or showing disrespect to his caste are ill founded. We find no reason to disbelieve this statement.

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7. In his representation of 30.4.86 addressed to the Chief Controller of Explosives, Nagpur, against his transfer orders the petitioner has brought out following factors for sympathetic consideration :-

- i) Disturbance of education of his children.
- ii) Cost of Living.
- iii) Difficulty of getting residential accommodation at reasonable rent.
- iv) Some other family problems.

The learned counsel for respondents had argued that the petitioner could have represented instead of coming to the Tribunal. Evidently this representation has not yet been considered by the authorities (Encl.4 of petition).

8. We thus find that but for an inference on the basis of timings of issues of memo and the order of transfer mala fide has not been satisfactorily established but the compassion and reasons why the impugned transfer would be a hardship to the petitioner cannot be said to be entirely without basis. However, it is for the department to look into the problems of its employees. Being a relationship of master and servant, it will be loath for the department if it gives a wink to the genuine problems of its employees. The acerbity at lower levels should not influence the decision at higher levels.

9. Under the circumstances we find no reason to interfere with the transfer order. The petition is dismissed. We will however like to make an observation that the Chief Controller of Explosives may consider the factors brought out by the petitioner in his representation ^{of 30.4.86} with sympathy keeping in view the Govt. directives on the welfare of the weaker section of the Society and the difficulties of the petitioner. Parties will bear their own costs.

RKM

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