





recommended transfer of the applicant in a malicious manner; that the applicant met with a serious accident <sup>lt</sup> on ~~on~~ 3.11.1986 and he remained on leave from 4.11.1986 to 25.11.1986; that the above mentioned serious accident on 3.11.1986 resulted in severe injuries to his brain and he had to take leave from 17.12.1986 for treatment in the All India Institute of Medical Sciences, New Delhi; that the petitioner's transfer at this stage has caused him great inconvenience as the purpose of <sup>lt</sup> his transferring ~~ing~~ to Allahabad has not yet been fulfilled. The applicant has prayed for cancellation of the transfer order dated 26.12.1986 and also sought the stay of the transfer order.

3. In the reply filed on behalf of the respondents to the show-cause notice against the prayer for interim relief, it is stated that the applicant had proceeded for three days leave on the ground of his Mother's illness on 17.12.1986 and he had not submitted any Doctor's advice for admission in the All India Institute of Medical Sciences, New Delhi. However, in the same paragraph 11 of the reply it is further stated that on 22.12.1986 the applicant intimated the respondent no.3 that he has proceeded to All India Institute of Medical Sciences for his own treatment. It is further stated that a leave application dated 21.12.1986 was received seeking extention of his leave upto 31.12.1986 on the ground of his Mother's illness; that thereafter also he extended his leave on the ground of Mother's illness upto 9.1.1987; that on 22.1.1987 the applicant gave an application for leave in which it was stated that the applicant is also consulting the authorities of All India Institute of Medical Sciences for his treatment;

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that the applicant was already relieved on 1.1.1987 and as such when he tried to resume his duties after his medical leave on 2nd April, 1987 he was asked by respondent no.3 that since he has already been relieved, he should accept the relieving order but he refused to accept the same; that none of the grounds taken by the applicant in order to assail the transfer order are sustainable in the eye of law and the applicant was transferred in view of administrative exigencies; that in view of certain decisions of the Hon'ble Supreme Court that the court should be reluctant to interfere in the transfer matter no relief can be granted to the applicant; that the applicant is also not entitled to any interim order.

4. In the rejoinder affidavit filed by the applicant it was reiterated that Sri S.N.Srivastava, Regional Director, had made recommendation for the transfer of the applicant and the order of transfer was passed by respondent no.2 on the basis of the recommendation of Sri S.N.Srivastava; that no action was taken by respondent no.3 on the various applications for grant of leave sent to him and that even the salary for the month of November, 1986 and the period beginning 17.12.1986 onwards has not been paid to him due to the bias and malafide attitude of Sri S.N. Srivastava, respondent no.3; that the Deputy Director (Administration) in the office of the Chairman, Central Board of Workers' Education had written to respondent no.3 on 10.3.1987 to relieve the petitioner after he resumed duty on the expiry of his leave; that when the applicant reported for duty on 2.4.1987 he was served with a copy of the transfer order but he was not

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informed that he had already been relieved on 1.1.1987; that the applicant made an application on 2.4.1987 claiming transfer T.A. and arrears but the respondents refused to give anything; that the respondent no.3 did not pay any heed to his applications dated 2.4.1987 and 3.4.1987 and vide his letter dated 16.4.1987 intimated the applicant to receive transfer T.A.; that the applicant has to receive arrears of salary, leave salary, advance T.A., etc. amounting to Rs.45,000/- before he should be relieved from Allahabad. The applicant ~~reiterated~~ <sup>reiterated</sup> that the transfer of the applicant is a result of malafide attitude of respondent no.3.

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5. In the supplementary counter affidavit filed on behalf of the respondents it is stated that respondent no.3 got the information of the applicant's treatment at New Delhi for the first time on 28.1.1987 when the letter dated 22.1.1987 of the applicant reached ~~in~~ <sup>le</sup> in the office of ~~on~~ 28.1.1987; that the orders of transfer were passed by respondent no.2 much earlier to the information of the treatment, etc. of the applicant at New Delhi; that the transfer order dated 26.12.1986 was received in the office of respondent no.3 on 31.12.1986 and the petitioner was relieved vide order dated 1.1.1987 in accordance with the order of transfer passed by respondent no.2. The allegation of the applicant that the relieving order dated 1.1.1987 is an after thought is denied and it is asserted that the order of transfer dated 1.1.1987 was sent at the residential address of the applicant and that the authority competent to sanction leave on medical grounds was some other person and not respondent no.3; that the arrears of salary of leave period will be given

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immediately on getting the compliance of the petitioner.

6. We have heard the arguments of the learned counsel for the parties and have also perused the record. Transfer being an incident of civil services we were reluctant to interfere but the records of this case disclose certain facts which requires close scrutiny of the matter. The applicant was on leave from 4.11.1986 to 24.11.1986. He joined office on 25.11.1986 but no leave was sanctioned to him. In this application certain definite allegations had been made against respondent no.3, the Regional Director at Allahabad, but the counter reply and the supplementary counter reply have been filed by one M.A. Ansari, Education Officer in that office. The specific allegation made by the applicant that the order of transfer issued by respondent no.2 was on the basis of a report sent by respondent no.3 <sup>has not been denied.</sup> The applicant was on leave on medical ground from November 4 to November 24, 1986 and he joined duty on 25.11.1986 and has claimed that he had filed the medical certificate and fitness certificate. This has been denied by the respondents, who have also stated that the applicant submitted a duplicate photostat copy of the medical fitness certificate and on receiving the said photostat copy the applicant was asked to furnish the original copy of the medical certificate as well as the medical fitness certificate. The respondents have not given any reason why the applicant was not asked to furnish the medical certificate and the fitness certificate on 25.11.1986 itself to sanction him leave for the period of his absence from duty. This has resulted in non-payment of salary to the applicant from the month of November, 1986

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onwards. The applicant proceeded on leave with effect from 17.12.1986 and intimated the respondent no.3 on 22.12.1986 that he has proceeded to All India Institute of Medical Sciences for his own treatment. The order dated 26.12.1986 transferring the applicant from Allahabad to Muzaffarpur was received <sup>by</sup> ~~by~~ <sup>by</sup> ~~by~~ by the respondents on 31.12.1987. A copy of this order was served on the applicant on 2.4.1987 when the applicant reported for duty on the expiry of the leave applied for by him from time to time. Prior to this respondent no.3 had received a letter dated 10.3.1987 of the Deputy Director (Administration) in the office of the Chairman, Central Board of Workers' Education asking respondent no.3 to relieve the applicant after he reports for duty on the expiry of his leave. Even on this date of 2.4.1987 the applicant is merely asked to comply with the orders of transfer and he is not informed that by a separate order dated 1.1.1987 he had been relieved of his charge at Allahabad. It has been stated in the supplementary counter affidavit of the applicant that a copy of the order relieving the applicant with effect from 1.1.1987 was sent to the applicant at his home address but it was received undelivered. However, no copy of this order and the said refusal of the applicant to refuse it has been filed before us. The respondents <sup>be</sup> have admitted that <sup>be</sup> they had information as early as <sup>be</sup> early as 22.12.1986 that the applicant had proceeded to All India Institute of Medical Sciences for his own treatment. The contention of the applicant that he had suffered head injuries as a result of an accident in the first week of November, 1986 and on the advice of the Doctors he had to go to All India Institute of Medical Sciences

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for this purpose was in the knowledge of respondent no.3. In the normal course a Government servant, under transfer to another station, is served with a copy of the order and given reasonable time to wind-up his personal affairs, receive payment of his outstanding dues, if any, draw advance T.A. etc. before proceeding on transfer. In the present case the respondents passed an order of the applicant being relieved from the next day of the date of receipt of the order of transfer without even serving a copy of the order on the Government servant. A copy of the <sup>transfer</sup> order was served only on 2.4.1987 on the applicant. An order of being relieved of duties against a Government servant is passed only in extreme circumstances when a Government servant under orders of transfer refuses to take the order of transfer or resorts to undesirable methods of <sup>not</sup> complying with the <sup>bl</sup> order of transfer. The existence of such a situation or any other situation necessitating the issue of an order of <sup>bl</sup> ~~relief~~ <sup>relief</sup> of applicant passed by respondent no.3 on 1.1.1987 has not been brought to our notice by the respondents either in their counter affidavit or the supplementary counter affidavit. It is also on record that when the applicant reported for duty on 2.4.1987 and when he applied for the payment of his dues, advance T.A. etc. he was asked to wait indefinitely without being assigned any work. It is only on 16.4.1987 that a letter was sent to the applicant by the respondent to draw advance T.A. & D.A. When the applicant wanted to know specifically whether he would be receiving his leave salary for the period of his leave and arrears of

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pay with effect from 1.1.1986 as a result of the revision of the scales of pay on the recommendation of the IVth Pay Commission; that he was informed by the respondents that his arrears of pay, leave salary, etc. would be paid to him only after he complied with the orders of transfer. This conduct of the respondent no.3 also discloses bias and malafide on the part of respondent no.3. It is well known that under the instruction of the Government of India, Drawing and Disbursing Officers were ordered to make payment <sup>of</sup> arrears of salary arising out of the implementation of the revised scales of pay with effect from 1.1.1986 before 31.3.1986. There is nothing on record to suggest that such payment was not made to other employees of this office but even that action would not support the case of respondent no.3 in refusing to make payment of the arrears of pay until the applicant made compliance with the orders of transfer. It is also well known that Government servants experienced great difficulty in receiving payments of dues from the office from where their transfers were ordered after their reporting to the office of transfer. These matters of payment remain <sup>bc</sup> under correspondence and bills for payment are very often subjected to objections seeking clarification, etc. resulting <sup>bc</sup> in avoidable delay in payment to the transferred Government servant. The apprehension of the <sup>bc</sup> applicant on this account appeared <sup>bc</sup> to be quite genuine and the refusal of respondent no.3 to make payment of his arrears until he complied with the orders of transfer does not appear to be reasonable and fair.

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7. We are of the opinion that the conduct of respondent no.3 discloses bias as well as malafide on

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his part. We are of the opinion that the order dated 1.1.1987, alleged to have been passed by respondent no.3 relieving the applicant with effect from 1.1.1987 is liable to be quashed and the same is hereby quashed. We <sup>be</sup> also hold that the applicant should be deemed to be on duty in the office of respondent no.3 with effect from 2.4.1987 and entitled <sup>be</sup> to receive salary and other benefits admissible under the rules. While rejecting the request of the applicant for cancellation of the order of transfer we direct that the applicant should be relieved only after the following action has been taken by the respondents :-

1. Arrears of salary due to the revision of the pay on the recommendation of the IVth Pay Commission be paid to the applicant.
2. The application for grant of leave for the period 4.11.1986 to 24.11.1986 and 17.12.1986 to 1.4.1987 be disposed of under the rules for grant of leave on medical grounds. The applicant will furnish copies of medical certificates including fitness certificate in original and other documents required by respondent no.3 within a reasonable period.
3. The applicant will be paid T.A. advance as well as advance pay as admissible under the Rules.
4. The application is disposed of accordingly. Parties will bear their own costs.

*(Signature)*  
 25/5/87  
 A.M.

*(Signature)*  
 25/5/87  
 J.M.