

13/11

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. NO. 338 of 1987

Nand Lal Kushwaha Applicant

Versus

Union of India & Others. ... Respondents.

Hon. Ajay Johri, A.M.

Shri Nand Lal Kushwaha, the petitioner in this case, which is filed under Section 19 of the Administrative Tribunals Act XIII of 1985, has come up with a prayer for quashing of his transfer order dated 6.4.87 issued by the Director of Postal Services Allahabad and for issue of a direction not to transfer him from Chandauli to another place. He has also prayed for awarding of costs of the application.

2. The petitioner's case is that he had been posted to Chandauli in May, 1986, on his own request. During inspections of his circle he had taken action against certain staff for irregularities and had made several reports to higher authorities. In one case he had also ordered some transfers. These aggrieved officials, against whom the petitioner had taken action, moved the All India

12/5

- 2 -

Postal Employees Union who pressurized the higher officials for the petitioner's transfer from the District and he was ultimately transferred to Azamgarh by the impugned order. This transfer came within 10 to 11 months of his posting to the station, though rules envisage a stay of 4 years. The petitioner alleges that no reasons for the transfer have been given and that the Senior Supdt. Post Offices was siding with those against whom he had taken action, and thus, according to the petitioner, it was not the union but the Sr. Supdt. Post Offices who was feeling grudge against him for bringing reports against his own officers. In one case when he gave chargesheet for unauthorized absence to an official the Sr. Supdt set aside the order and directed the putting back of the delinquent. Similarly when the petitioner filed an application with the Tribunal for non-payment of his salary the Sr. Supdt. got annoyed and made it a personal prestige to relieve the petitioner though no such immediate ^{relieving} order was indicated against his name. His representation to Director Postal Services has also not been replied. Thus the order of transfer is to punish the petitioner and is colourable exercise of power. The petitioner has not been given any show cause notices before awarding the punishment. According to the petitioner this also hits Articles 14 and 16 of the Constitution as he has been discriminated against due to transfer against rules.

3. The respondents have denied that the Senior Supdt. was annoyed with the petitioner. The transfer order was passed in exigencies of service by the Director Postal Services. The representation of the petitioner is under disposal. Even in his application dated 20.4.87 the petitioner has requested for being allowed to stay at Chandauli upto 20.5.87. The Sr. Supdt. had denied ~~as~~ a colourable exercise of power in transferring the petitioner as the petitioner has been transferred by the Director Postal Services. For effecting a transfer order a show cause notice is not necessary. The order is not in the nature of punishment. According to respondents, Articles 14 and 16 of the Constitution are not hit in transfer case. Therefore the petition is devoid of merit. The petitioner has also not represented to the authorities and in accordance with the observations of the Hon'ble Supreme Court, the courts are discouraged to interfere in such matters.

30/

4. The petitioner in his replication has reiterated what he has brought out in the application. He has emphasized that the officials against whom he took action were the henchmen of the Sr. Supdt. and he has not taken any action against them. The cause of his transfer lies

- 4 -

behind those facts that he has brought out earlier in the application. There is no administrative exigency. His request for stay till 20.5.86 was in nature of interim relief and since no order has been passed on it, it has become infructuous.

5. I have heard the learned counsel for both parties. The submissions made by the learned counsel for the petitioner were that the transfer order is arbitrary and malicious and this is supported by the hurry in relieving the petitioner by deputing some one else instead of the person who was ordered to take over. The Administrative Exigencies have not been mentioned. It is more to accommodate the requests for transfers and the instructions on rotational transfers have been flouted, and its foundation is the move against the petitioner by those against whom he took action alongwith the Sr. Supdts. active part in the same. The learned counsel for the respondents repelled these submissions by saying that the transfer is in administrative exigencies and reason need not be recorded. Transfer being a condition of service it cannot be complained against. Moreover the petitioner in his application of 20.4.87 gave an undertaking that he will move on transfer on 20.5.87 hence it was not open to him to agitate the matter now. The allegations are bald statements. He has not been demoted and instructions on Rotational Transfers are mere guidelines and not rules.

30

There is no discrimination. The learned counsel for the petitioner closed the arguments by saying that since the petitioner has been discriminated against Articles 14 & 16 are hit. Nothing else was submitted before me.

6. The contents of para 6(vi) of the petition are very clear. The petitioner has said that the All India Postal Employees Union of which all the others officers against whom he had initiated action are active members, ^{He and other employees} ~~became~~ became one and made a point to see that the petitioner is penalized for taking action against ^{of them} ~~them~~. It is the office bearers of this Union that brought pressure on the higher officers, on the threat of serious consequences to follow, in case the petitioner is not transferred from the District. These office bearers were not satisfied with some reversal of orders ordered by Post Master General and they were seeking for some severe action to be taken against the petitioner. These office bearers prevailed on the Sr. Supdt. for order of transfer of the petitioner. This is how the petitioner has seen the whole matter from his own angle. Thus this statement clearly brings out that the numerous actions taken by the petitioner against his subordinates resulted in the matter being taken up by the All India Postal Employees Union with higher authorities. It was perhaps a case of over-enthusiastic discharge of his functions by the petitioner. To create such a situation against himself by his poor administrative

acumen the petitioner himself is to be blamed. But he is throwing the blame on his immediate boss. Even the transfer order has been issued by the Director Postal Services and not by the Sr. Supdt. Can the Sr. Supdt's action to implement the transfer orders by 15.4.87 by relieving the petitioner by some local arrangement, though nothing is mentioned about the same in the transfer order, tantamount to malice? The answer is no. The plea taken by the learned counsel for the petitioner that in the back-ground of the myriad orders issued by him which were reversed by the authorities, this extra ordinary action to see the implementation of the transfer order by 15.4.87 was another point to the fact that Sr. Supdt. had malice against the petitioner fails. The case of malice is not proved. The grounds are very feeble and do not give any advantage to the petitioner.

7. The instructions on 'Rotational Transfers' do permit, in certain situations the transfer of officials in the interest of service or departmental interest. The scenario in petitioner's case is that he has created too many opponents, so much so that the employees Union has become siezed of the problem and of the unrest resulting from the petitioner. When such a situation gets created the department has to find a solution. It should

not result in the corrupt being allowed to go scot free. But then there are ways to set the matters right and one has to steer his way through the hurdles without getting himself hurt. The petitioner's case is not of unsatisfactory performance of work but of creation of a situation of unrest by his hasty actions. The department would be well within its right to take corrective measures and such actions cannot be branded as being malicious. The responsibility of good & efficient administration is of the Department.

34/ 8. The petitioner came on transfer from Ghazipur on request. But the reasons given at that time have not been brought out again in his petition. Instead he had asked for being allowed to remain at Chandauli upto 20.5.87 the end of schoolastic session. It has been contended that this request was as an interim measure and that it has since become infructuous. This stand is erroneous. His letter does not bring out that he had any objection to move out after 20.5.87.

9. The circumstances bring out that it may be in the petitioner's own interest to work in better congenial atmosphere than at a place where sizeable number of subordinates are against him and an atmosphere of hostility exists.

10. On the above considerations the plea that there has been discrimination against the ³⁸ petitioner ~~has~~ ^{has hardly any substance and must} fail. There is no doubt that normal Rotational Rules mention of a transfer after four years of stay but nothing precludes an earlier transfer if it is in administrative interest. It cannot be said that there is arbitrariness in the action of transferring the petitioner. The proviso of earlier transfer applies to all. No irrelevant considerations have surfaced. Even if the motivation was the unrest created by mass actions ^{38 taken} by the petitioner, a transfer made to improve the working of the district cannot be termed as not legitimate. It is an action under administrative exigencies and such an action need not be explained by a speaking order.

11. There are also no penal consequences. The petitioner has not been demoted, and no alien purpose is being achieved. It is another thing that the respondents were able to find willing persons to move to other places as shown in the order. It is not a case that the petitioner has been shifted to accommodate them.

12. Under the circumstances, the petition has no merit and is liable to be dismissed. It is accordingly dismissed. Parties will bear their own costs.

अजय जीव
Member (A)

Dated the 31st July, 1987

RKN