

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 633 of 1987

D.P. Shukla Applicant.

Versus

Director, Central Board for Workers
Education, Nagpur & another Respondents.

Hon'ble Ajay Johri, A.M.

This application filed under Section 19 of the Administrative Tribunals Act XIII of 1985 is against an order dated 15.5.1987 transferring the applicant from Kanpur to Dhanbad. The applicant is a trained teacher and was selected as a Education Officer by the Ministry of Labour in the year 1964. He was posted to Dhanbad in 1964 and was transferred to Kanpur in the year 1980. According to him the Regional Director at Kanpur, one L.N. Awasthi, had become mentally and physically crippled and in the later part of 1982 he was not able to work or take any decision and his son who was working as a Clerk in a bank looked after his father's work and also wrote the Annual Confidential Reports of the Education Officers. Ultimately the said L.N. Awasthi died. The son of late Awasthi behaved rudely with all the officers of the Directorate and since the applicant was aggrieved with the behaviour of the son he complained to the Regional Director in October, 1984 but his complaint was not attended to. When the matter was reported ~~to~~ ^{regarding} the son of Awasthi to the Director he felt displeased with the action of the applicant and as alleged by the applicant he threatened him with serious consequences for making the complaint and then the harassment and humiliation of the applicant started. The applicant has also referred to a visit by the Director and the Zonal Director

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during 1985 during which the Director is reported to have insulted the applicant by using unparliamentary language. The Director also took up with the applicant for not keeping his diary properly, but nothing was communicated to him when the diary was sent for his inspection to the Head Office. The applicant has further mentioned of an incident where his inspection notes were also asked to be put up for inspection by the Director and since they were not available in the office he had to re-write the same. According to him his original inspection notes were deliberately misplaced by the son of Awasthi at the time when he was virtually working for his father. The Director thereafter debarred the applicant for doing field work. The applicant has further alleged that one Additional Director also ^{W. with} inspected the Kanpur Centre and he also misbehaved ~~X~~ and humiliated the applicant. The applicant had represented against the remark given in the inspection report by the Addl. Director. Ultimately he brought all these matters to the notice of the Chairman of the Central Board of Workers Education in 1986. However, since the Director and Addl. Director, who later took over as Director were against the applicant and were bent on humiliating him his promotion was also held up and a number of his juniors were promoted, so according to the applicant he was victimised. The applicant went on medical leave from 26.5.1987 but during his leave period he was transferred to Dhanbad, although no transfer order was served on him. He represented to the Chairman for cancellation of the transfer order. He was, however, during the leave period, advised by a letter dated 15.6.87 that he had been relieved on 8.6.1987 and ultimately he received the transfer order on 3.7.1987, i.e. after the relieving orders. According to the applicant this transfer is wholly mala fide and arbitrary and was passed in colourable exercise of power to harass him. He had further said that norms laid down in connection with transfers

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say that an incumbent shall be retained at one place nearly for 10 years and if necessary the transfer may be made thereafater. Also that if a period of 4 years are left for superannuation the incumbent may be kept near to his home town. The applicant's retirement is due in February, 19⁹². He has, therefore, prayed for setting aside of the impugned orders dated 15.5.1987 and 13.7.1987.

2. In their reply the respondents have denied that the said L.N. Awasthi was sick. According to them he was keeping normal health though he later developed Parkinson disease but he continued to attend the office. They have denied that the son of Awasthi ~~was~~ was doing the work of his father and interfered in the administration of the office. According to the respondents the applicant has concocted the entire case to get out of the transfer and most of the allegations made by him are far from truth and baseless. They have further denied that the applicant submitted his inspection reports regularly. They have said that because the reports were not available he was ~~32~~ ³² ~~afresh~~ asked to submit the same. During the visits of Kanpur Centre by the Director it was observed that the applicant had not been doing field work properly so he was stopped from making all tours for 5 months. They have denied that any threats were extended to the applicant by the Director or by the Additional Director. According to them the communication sent by the applicant to the Chairman was on baseless contents and as such no attention was paid to it. The applicant could not be promoted because he did not come within the ambit of the procedure. There were also a number of senior persons who were available for being considered for the post of Regional Director and the Departmental Promotion Committee normally screens the eligible candidates and gives the recommendation for promotion. In regard to the leave with effect from 26.5.1987 the respondents have said that the applicant continued extending his leave and, therefore, the transfer order could not be served on ~~32~~ ³² ~~32~~ ³² him and ~~receiving~~ ³² ~~receiving~~ ³² order was issued after the Regional Director had

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him and relieving order was issued after the Regional Director had met the applicant and informed him of the transfer. It has been further averred by the respondents that the transfer was in public interest and with the approval of the Chairman. They have denied that there are any norms laid down which says that a person should be kept at a place nearer to home when he is nearing retirement. The Director has already informed the applicant on 10.7.1987 that his transfer order cannot be cancelled and, therefore, he should report to Dhanbad immediately.

3. I have heard the learned counsel for the parties. The contentions raised by the learned counsel for the applicant were that the transfer is to harass and victimise the applicant and has been made for mala fide reasons. The main emphasis ~~regarding~~ ^w ³¹ regarding mala fides was based by the learned counsel on the grounds that it was the complaints that he was making against the ~~rude~~ behaviour of the son of the Regional Director and thereafter against his Addl. Director and Director that has resulted in his transfer. He has supported it by the fact that though the transfer orders were issued on 15.5.1987 they were not served on him and when he was on leave with effect from 26.5.1987 he was relieved on 8.6.1987 and the fact that he was not the person with longest stay at Kanpur and, therefore, he should not have been transferred. The learned counsel for the respondents, however, opposed these contentions on the ground that the applicant has not impleaded the Director, Addl. Director and the Regional Director against whom he is alleging mala fides and the department cannot throw any light on any personal grudge that may exist ^w between the parties. It was further submitted by the learned counsel for the respondents that the promotions are made by DPCs and there is no system of having any tenure at a particular station, as far as the Department is concerned, ~~and~~ the

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transfer has been made in the interest of service. The learned counsel for the applicant further contended that the Department wanted to make some change in the transfer orders but on account of the pendency of this application they have refused to do the same and serve that the applicant has about 3 years more to ~~go~~ and, therefore, a transfer away from his home station, which is Kanpur, is hardship for him. I have also gone through the replies and the counter replies filed by both the parties.

4. The applicant's effort at making representations and reports to his superiors against some officers who took up with the applicant during the course of inspection etc. and which was taken by him as an effort to hurt him in the matter is definitely not the correct approach which a subordinate has to follow in case he is aggrieved by any reprimand or adverse remarks given by his superiors. He has not shown that he was given any communication in writing and the best course of action for him should have been to wait for a communication in writing and then put in an appeal. If the communication was adverse to his working he could have explained his point of view rather resorting to campaign of making lengthy complaints to his superiors on matters which cannot form a subject matter for such an action. This only shows that he has been ~~rather~~ ^{over} sensitive to the remarks that were given by his superiors and did not want to even accept being taken up for any lapses that may have come to the notice of the superiors. The incidents that he has brought out cannot lead to a conclusion that there was a prejudice or an attempt on victimisation and harassment of the applicant on the part of his superior officers.

5. The transfer order dated 15.5.1987 pertains to the transfer of four Education Officers in public interest who have been posted at various stations and the applicant appears at Sl.No.3. The order

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only says that the transfer has been made in public interest. In his representation against this transfer order to the Chairman, Central Board of Workers Education which he submitted on 7.6.1987 the applicant has brought out the following points against the order :-

- i) That the applicant has been transferred a number of times and, therefore, he has already suffered much.
- ii) That the transfers are usually affected after 10 years of stay and since he has done only 7 years and transfer is also not within the home State, ^{3/} the transfer is against the policy and there were other who had done more period of service than him at the same station have not been touched. ^{3/} ~~was~~ ^{3/} ~~was~~ ^{an} ~~an~~ ^{of}
- iii) That the cause of transfer ~~was~~ annoyed the superiors on account of the complaints he has been making.
- iv) That it is not in public interest because Dhanbad is a punishment station and he had already worked there earlier in 1964.
- v) That his wife has been confined to bed.

This representation is still lying with the Chairman and evidently no decision has been taken on the same. He had further submitted a telegram on 9.7.1987 and on 13.7.1987 he was advised that the transfer could not be cancelled and he should report at Dhanbad.

6. It is the administration's responsibility to ensure efficiency and proper functioning of the Department under its control. The propriety or sufficiency of reasons of transferring a person cannot be judged by objective standards. Transfer is also an implied condition of service and the authority concerned would be the best Judge to decide how to distribute and utilise its man power. There may be a number of factors which it may take into consideration, viz. exigency of service requirement of a particular person for a particular type of job, etc. The only thing that has to be ensured is that this power to transfer is not exercised in a mala fide and unreasonable manner.

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The fact that the applicant has been complaining against the attitude of certain superiors without even waiting for any adverse communication from them will not support the plea of mala fide. As a matter of fact the applicant has failed to show any document whereby any unreasonable action has been taken against him. Pleas for mala fide are very easily made but they are difficult to substantiate. A finding of mala fide can only be reached if there is proper and sufficient evidence in its support. It cannot be reached on flimsy grounds and I find that the applicant has failed to make out any solid grounds to support his plea. His effort to give a colour to the transfer order by referring to the various complaints he has made against his superiors is only to build up a case of harassment and mala fide action on the part of respondents which, according to him, ultimately resulted in his transfer. I do not think that such is the situation. The transfer is also not to a lower post with any discriminatory preference given to a junior at Kanpur and, therefore, it is not open to attack. ~~and~~ Orders of transfer are also ~~decided~~ ^{normally not within} the perview of a court of law except for a limited contingencies when the legal provisions are violated and the mala fide is proved. Therefore, this application has no force and is liable to be dismissed.

7. In regard to the submissions made by the learned counsel for the applicant that the respondents were prepared to consider the request of the applicant for a posting adjacent to Kanpur but they have restrained themselves on account of this application which was filed by the applicant before this Tribunal in July, 1987, ^{the} the respondents will be at liberty to consider the request of the applicant, if they so desire, and the orders in this application will not debar them from the same.

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8. On the above considerations I dismiss this application
with costs on parties.

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MEMBER (A).

Dated: August 30th, 1988.

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