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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

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REGISTRATION O.A. NO. 661 of 1988

Jagdish Upadhyaya ..... Applicant

Versus

The Union of India & others..... Respondents.

Hon'ble D.S.Misra- AM  
Hon'ble G.S.Sharms-JM

(Delivered by Hon. G.S.Sharma-JM)

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In this petition under section 19 of the Administrative Tribunals Act no.XIII of 1985, the applicant has prayed that his transfer from Varanai to Dhanapur under the impugned order dated 19.4.1988 passed by the Deputy Director (Administration and Coordination), Office of the Development Commissioner (Handi craft) Varanasi be quashed or be kept in abeyance for about a year.

2. The case of the applicant is that he was posted as Carpet Training Officer in the office of Carpet Weaving Training-cum-Service Centre, Varanasi on 23.1.1984. On 4.4.1986, the applicant was permitted to join the part-time regular course in Master of Management Studies ( for short MMS ) in the Banaras Hindu University by the then Deputy Director ( A & C ), which

is to be held in 6 Semesters in a period of 3 years. The applicant has already completed 4 Semesters and his only 2 Semesters are left to be completed. However, by the impugned order dated 19.4.1988, the applicant was transferred from Varanasi to Carpet Weaving Training Centre, Dhanapur in the same district and in the same capacity, which is at a distance of about 70 Km. from the campus of B.H.U. and it could not be possible for the applicant to continue his studies from Dhanapur. He accordingly made a representation to the Development Commissioner (Handi - Craft) New Delhi, but to no effect. He accordingly filed this petition on 26.5.1988 with the allegations that the pragmatic effect of the impugned order is to cancel the permission given to the applicant for completing MMS course and the order is, therefore, illegal, arbitrary and unjust and suffers from the vires of malafide as it was based on extraneous considerations and was passed with oblique purpose of frustrating the applicant's ambitions to complete three years' course of MMS.

3. The petition has been contested on behalf of the respondents and in the first reply filed on their behalf by the Assistant Director (A & C) Varanasi, it was stated that 'no objection certificate' issued on 4.4.86 about the applicant's joining the MMS course does not mean that he shall not be transferred from one place to another before completing the said course. In fact, the applicant was transferred to Dhanapur on administrative

grounds as he is involved in case of embezzlement amounting to Rs. 19,656/- and on 9.4.1987, the applicant was issued a notice to explain his conduct. The administration suspected that the continuance of the applicant at Varanasi may be used by him to influence the witnesses and to manipulate the evidence and as such, due to administrative exigency, he was transferred from Varanasi to Dhanapur and 'No Objection Certificate' issued regarding the studies of the applicant was withdrawn on 21.6.1988. The applicant was relieved of his charge on 20.5.1988 and his successor had already joined the duties on 25.4.1988 and the applicant has no case for the cancellation of his transfer order.

4. In his Rejoinder-affidavit, it was alleged by the applicant that on his representation against the impugned transfer, the Development Commissioner, Handicraft New Delhi vide his letter dated 6.6.1988 had directed the respondent no.2 to cancel the transfer order, but the said letter was cancelled by the respondent no.2 and he wrongly did not issue the cancellation order. The applicant had expressed his willingness to be transferred to Gangapur, Maruadih, Ram Nagar, Dulahipur, Shivpur and Mardaha Bazar which are close to Varanasi and he could manage to attend his classes from there in place of Dhanapur, but the respondent no.2 did not accommodate the applicant due to his malafides in order to disturb

the studies of the applicant and No Objection Certificate is virtually the permission to the applicant to join the classes in H.H.U. and such permission is given in normal course under the directions of the government and respondent no.2 was not justified in withdrawing the permission vide his order dated 21.6.1988 before the completion of the course in disregard of the principles of natural justice, <sup>and</sup> the order of withdrawing the permission is malafide. The Vth Semester of the applicant will be completed by 15.12.88 and VIth Semesters by 15.5.1989 and the Development Commissioner had directed the respondent no.2 to cancel the transfer order on the grounds of studies of the applicant. Regarding embezzlement case, it was stated that no such case is pending against the applicant and the mere correspondence in this respect will not amount <sup>to</sup> the institution of a case of embezzlement. The respondents have filed the correspondence in this respect simply to prejudice the mind of the Tribunal and in fact, the applicant has not committed any embezzlement or any other criminal act. Some other officials, namely Sri K.K.Srivastava, G.K.Srivastava and Rajendra Verma of the Carpet Training Centre, Varanasi are also involved in some cases of embezzlement, but they have not been transferred and the transfer of the applicant is, therefore, malafide, discriminatory, arbitrary and unreasonable. Sri B.S. Dixit was transferred in place of the applicant from Dulahipur and he was allowed to join his duties in the absence of the applicant when, he was on leave, but the applicant was

not posted in his place as he could continue his studies from Dulahipur. This further shows the malafide intention of the respondents. No charge sheet has been served on the applicant so far and the allegation that the applicant will influence the witnesses and temper with evidence is totally false. The applicant was wrongly and illegally relieved of his charge with malafide intentions though, he has not yet completely handed over the charge of his post so far.

5. In the supplementary reply filed on behalf of the respondents, this time, by Deputy Director (F.A.C.) Varanasi, it was stated that the impugned transfer order was issued in administrative exigency as the applicant was involved in an embezzlement case. The applicant had made a representation to the Development Commissioner (Handicrafts) direct and in the absence of the knowledge of the applicant's involvement in embezzlement case, the <sup>Development</sup> Deputy Commissioner had passed certain orders but when correct facts were brought to his notice, suitable orders were passed by him. The other officials of Varanasi Centre are not similarly situated and their cases are distinguishable. There has been no discrimination against the applicant in the matter of the transfer which is a condition of service. On his resuming his duties from leave on 17.5.1988, when the applicant was served with transfer order, he did not hand over the charge and he was accordingly relieved on 20.5.1988.

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6. The applicant thereafter filed two supplementary rejoinder-affidavits. In the 1st supplementary rejoinder, it was stated that transfer order dated 19.4.1988 was not communicated to the applicant till 17.5.1988 and the respondent no.2 did not even allow the applicant ~~the~~ joining time and the order of his transfer is malafide, arbitrary and is based on extraneous considerations and his relieving order dated 20.5.88 was passed with ill intention to harass the applicant and to disturb his studies. In the second supplementary rejoinder, it was stated by the applicant that his transfer order is not based on administrative grounds but has been made by way of punishment. There was no occasion to transfer the applicant before completion of his studies. The permission was withdrawn only after the transfer of the applicant from which, the malafide intention of the respondent no.2 is evident. The respondent no.2 did not wrongly comply with the directions of the Development Commissioner about the cancellation of the impugned transfer order in order to defeat the purpose of the applicant. The efforts of respondent no.2 to get the order dated 6.6.1988 of the Development Commissioner cancelled is sufficient to prove his malafide intentions. Embezzlement is alleged to have been committed in 1984, but for the first time, the notice was given in this connection to the applicant on 9.4.1987 by the respondent no.2 and he has started concocting and fabricating evidence against the applicant.

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7. For the first time, in this second supplementary

rejoinder, the applicant made certain personal allegations against the respondent no.2 and it was stated that the permission to the applicant for MMS course was granted by his predecessor Shri R.N.Misra. The relations of respondent no.2 were strained with Shri Misra and the applicant is in good books of Sri R.N.Misra. The respondent no.2 made his aim to undo everything done by Sri R.N.Misra and it is on account of this fact that the permission of the applicant was cancelled by the respondent no.2 and the applicant was transferred and relieved illegally by respondent no.2. The reply dated 16.11.87 of the applicant (Annexure-II) to the counter-affidavit of respondent no.2 is another reason of the malafide actions of the respondent no.2 and to the best of the knowledge of the applicant, no order has been passed by the Development Commissioner contrary to his letter dated 6.6.1988.

8. It is apparent from the supplementary pleadings of the applicant stated above that the applicant had filed a simple case challenging the validity of his transfer order using the technical terms "Arbitrary", "Malafide", "Extraneous considerations", and "Oblique purpose" only to create grounds for interference by this Tribunal. He <sup>had</sup> laid no foundation to establish the charges of malafide, oblique purpose or arbitrariness. The petition is conspicuously silent about the reasons why respondent no.2 or any body else became displeased with the applicant or why the respondent no.2 all of a sudden decided to

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harass the applicant by making his transfer before the completion of his studies. Only in the last supplementary rejoinder, the applicant made certain personal allegations against the respondent no.2 and stated that as the applicant was in good books of the predecessor of respondent no.2 and the respondent no.2 wanted to undo everything done by his predecessor, the respondent no.2 had behaved with the applicant like this. There is nothing on the record to show as to when the respondent's ~~now~~<sup>predecessor</sup> Shri R.N.Misra had left the charge at Varanasi and since when respondent no.2 is working as Deputy Director. The letter dated 9.4.1987 (Copy Annexure-I) to the 1st reply filed on behalf of the respondents shows that this letter was written by the present Deputy Director Sri A.K.Singh and as such, atleast for more than a year before <sup>the</sup> impugned transfer of the applicant, the present respondent no.2 is occupying the post of Deputy Director. Had he been malicious in his approach and was determined to undo everything done by his predecessor specially concerning the applicant, the applicant should have raised hue and cry much before his filing the second supplementary rejoinder on 26.9.1988. Thus, the own conduct of the applicant falls much short to prove the malafide of respondent no.2. The guilty <sup>once</sup>conscience of the applicant became clear from the allegations made in the last sub-para of para-8 of his second supplementary rejoinder, in which it was stated that the second reason for malafide transfer is the reply

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given by the applicant vide his letter dated 16.11.87 (Copy Annexure-II) to the Counter-affidavit filed by respondent no.2. This Annexure-II is a reply of the applicant himself to the respondent no.2 regarding his explanation about the disposal of 101 Carpets.

9. To appreciate the controversy, we will first take up ~~(Annexure-I)~~ to the 1st Counter-Affidavit which is letter dated 9.4.1987 of respondent no.2 to the applicant asking him to explain by 13.4.1987 about his receiving 101 pieces of Carpets and disposal of 107 pieces of Carpets. In his letter dated 12.9.84, ~~(Copy Annexure-II)~~ to the Counter-affidavit, the applicant had explained that he had received 101 pieces of design Carpets from Lucknow on 29.6.1984 and 6 design carpets were received from Bhadohi Centre and in this way, 107 pieces of Carpets were in stores. He explained further that out of 107 Pieces, 74 pieces of design carpets were sold to the parties and their details were enclosed alongwith the Bank Drafts with the letter. 25 Carpets were sent to Bhadohi Centre for washing. With this letter, a statement of Carpets sold is attached. The reply is not complete as the last page of it is missing. It is, however, apparent from this reply that the applicant not only admitted the receipt of 107 pieces of design Carpets in his this letter, but also admitted about the sale of 74 Carpets and also furnished the details of their sale. The applicant, however, took a *somersault* ~~saumur shot~~ in his subsequent reply dated 16.11.1987 (Annexure-II(a)) which has been mentioned by him in his

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rejoinder as above. In this reply, it was stated by him that the order for receiving and keeping in Stores 101 Carpets were issued by the Deputy Director to the Assistant Director on 29.6.84 and the applicant had nothing to do with the matter. The applicant further stated in this letter that under the oral instructions of Deputy Director, he got 101 Kalins unloaded and placed in the Show Room of the Deputy Director and had issued the receipt to the Store-Keeper of Lucknow. The applicant totally disowned his liability about the keeping of the account of sale of the said Carpets and stated that he was given no instructions for their sale and the sale is made through the Regional Administrative Office. The applicant had further stated that he had no place for storing the Carpets and the Deputy Director could himself infer from the circumstances as to how the applicant could make any arrangement for storing the Carpets. The applicant further pointed out that on <sup>the</sup> taking over of his charge by the Deputy Director, the Carpets were made available in his Show Room and the Deputy Director may see the details of 83 Carpets made in the Books of the Office Show Room . In the later part of letter, the applicant admitted that original receipt of 17 Carpets has not been received by him and will <sup>he</sup> <sup>produce</sup> ~~please~~ the same when available. In the end, the applicant expressed his regret for the harassment caused for following the oral orders of Superiors by the faithful subordinate. According to the contentions of the applicant, respondent no.2 <sup>had</sup> <sup>take</sup> malafide action on account of this

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letter. In case, the applicant crossed <sup>the</sup> his limits of decency or deliberately made any false statement or made any counter allegations against the Deputy Director in this letter, the blame cannot be put on respondent no.2, but the applicant should think himself for the same. If <sup>in</sup> case a subordinate misbehaved <sup>with</sup> with the superiors and <sup>if</sup> some <sup>panel</sup> action is taken by the superior, the junior cannot plead the malafide in his defence as in such cases, the action taken <sup>even</sup> with <sup>his</sup> best intentions and caution by superiors in administrative interest, can be termed malafide and biased. In any case, even from this letter, we are not convinced that respondent no.2 would have taken any malafide action against the applicant regarding his transfer about five months after this letter.

10. It is apparent from the above discussions, that <sup>in</sup> one way or the other, the applicant admitted the fact of his having received 108 pieces of design Carpets from Lucknow and Bhadohi. Copy Annexure-II(b) to the 1st counter-affidavit of the respondent is the reply dated 27.4.1987 of the applicant to the letter dated 9.4.1987 (Copy Annexure-I) of respondent no.2. The tone of the applicant in this letter was totally different than the one adopted by him in his subsequent letter dated 16.11.1987 discussed above. In this way, if the applicant himself invited trouble by misconducting himself with the superior, he cannot charge the superior, with malafide or harassing attitudes.

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11. The applicant has admitted in one of his letters stated above that original receipt of his giving 17 Carpets for washing was not available with him and it appears that he is being charged for embezzlement amounting to Rs. 19656/- in respect of these Carpets. Prima-facie, there is thus some case of misappropriating certain numbers of Carpets by the applicant and it cannot be said that the charge of embezzlement is being made against the applicant simply to create grounds for his transfer. His transfer from Varanasi thus, appears to have been made in public interest and in exigencies of service and all the allegations of arbitrariness, malafide and harassment by the applicant against respondent no.2 are devoid of any force, and in <sup>a</sup>case of transfer, unless the malafide is proved, the court or Tribunal should not interfere.

12. The applicant has <sup>reposed</sup> ~~reposed~~ much confidence in his Development Commissioner (Handicrafts), New Delhi and according to him vide his letter dated 6.6.1988, the Development Commissioner had directed the respondent no.2 to cancel the transfer of the applicant. It appears from the Supplementary Counter-Affidavit filed by the Deputy Director that such order was in fact passed by the Development Commissioner, but in ignorance of the complete facts and when the full facts were brought to his notice, the order was changed. <sup>the changed order has not been produced before us.</sup> One thing is, however, apparent that no departmental or police charge sheet has

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been served on the applicant so far regarding the alleged embezzlement and the actual stage of the proceedings being processed against him is not known to us. The applicant is interested in staying at Varanasi or at some other place near Varanasi till 15.5.1989 i.e. for about 7 months only to complete his MMS Course. As the full facts are not before us, we leave it to be decided by the Development Commissioner (Handicraft), New Delhi whether, it will be advisable to post the applicant at any place near Varanasi for a period of 7 months. The question of cancelling the transfer of the applicant does not arise as his successor has already joined at Varanasi. Regarding the withdrawal of the permission or 'No Objection Certificate' earlier granted to the applicant for MMS Course, we are of the view that no malafides can be attributed to the respondent no.2. As the new place of posting of the applicant is situated at a distant place about 70 Kms. from Varanasi, <sup>and the</sup> the government <sup>work of</sup> is likely to suffer. <sup>on his attending the class from</sup> In <sup>there.</sup> case, the Development Commissioner feels inclined to change the posting of the applicant, such permission/ No Objection Certificate can be issued to him again. However, on merits, we find no ground for interference in this case.

13. The petition is accordingly dismissed. We, however, direct the Development Commissioner (Handicraft) West Block 7, R.K. Puram, New Delhi to examine the case of the applicant and in case, he feels that the applicant can be accommodated at one of the Carpet Training Centres

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at Gangapur, Maruadih, Ram Nagar, Dulahipur, Shiv Pur or Mardaha Bazar till 20.5.1989 to complete the MMS Course without any adverse effect on the embezzlement case pending enquiry against the applicant, he be so accommodated subject to such conditions, if any, as may be found necessary. The parties shall bear their own costs of the petition. A copy of this judgment be sent to the Development Commissioner.

*Shahid*  
MEMBER (J)

*Shme*  
MEMBER (A)

Dt/ 17 th October, 1988/  
Shahid.