(NS)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

经外外外外外外外外的

Registration (O.A.) No. 976 of 1988

R.S. Pandey

Applicant.

Versus

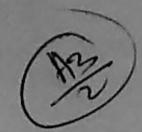
Sr. D.P.O., N.Rly., Allahabad & ors. .. Respondents.

Hon'ble Ajay Johri, A.M.

This is an application filed under Section

19 of the Administrative Tribunals Act XIII of 1985. The applicant, R.S. Pandey, is working as an Assistant Teacher on the Northern Railway and was presently posted at A.T.P. School in Ghansyam Nagar at Allahabad. By this application the applicant is seeking cancellation of the transfer order dated 1.8.1988 and praying for a direction to be issued to the respondents to let him continue at Allahabad.

The brief facts of the case are that the applicant was asked to take over charge from another brother teacher who was retiring on 31.7.1988. Since the applicant could not take charge from the said teacher, an explanation was called from him regarding dis-obeyance of the orders of APO, N.Railway in regard to taking over charge from the teacher who was retired. According to the applicant when he went to take charge from the brother teacher at about 12-30 P.M. on the scheduled date he found the school closed and the said teacher was also not available. He, therefore, reported the matter to APO by post as the office was closed on Saturday and Sunday. However, on



-: 2 :-

31.7.1988 at about 12 O'Clock in the afternoon one K.N. Tripathi and one K.N. Katiyar came to the residence of the applicant and enquired the reasons from him for not taking charge from Sri Sharma. The matter was explained to them by the applicant. The applicant also told them that he was not aware under whose direction the said Sri Sharma handed over charge to Sri Srivastava. After he had clarified to his position to APO, Allahabad he was given an order in the evening transferring him from Allahabad to Chunar. It is this order which has been challenged by the applicant on the ground that not only it is a punishment for the alleged disobeying of the orders but the order is also mala fide. It has been made in mid-session and it results in the separation of husband and wife because the wife of the applicant is employed as a teacher under the State Government. It was further alleged that the transfer was not for administrative reasons.

I have heard the learned counsel for the parties at length and catena of judgments have been relied upon by either side to support their cases. The learned counsel for the applicant contended that the mala fiddes in the order is also proved by the fact that the respondents had ordered two persons to take the charge from Sri Sharma and perhaps that is why Sri Sharma was not present when the applicant went to take charge from him and that quickness with which the transfer order has been issued shows the mala fiddes of the order and further that there was a conspiracy to get the applicant punished. According

34

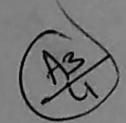
133

-: 3 :-

to the learned counsel whether the transfer is by way of punishment or not will depend on the circumstances 34 Should 3 veil and the court tear the wheed to assess the situation. It was further contended by the learned counsel that the allegation made by Sri Sharma that when no-body took over charge from him he went to see DRM at the Rest House and met him and was directed to go to DPO is also not supported by the facts because BRM was not in station on that date which further proves that the contract of the respondents is not straight. According to the learned counsel the transfer has been made for extraneous considerations and arbitrarily and is, therefore, bad in law. On behalf of the respondents' submissions were made that it sould not be presumed that if an employee is asked to explain his conduct and thereafter an order is issued the order is mala fide. According to the learned counsel for the respondents the applicant never went to take over charge and the said Sri Sharma was always present. He further contended that the Government's instructions in regard to the mid-session transfers and the posting of the husband and wife at the same station will also have no applicability in the case of the applicant because the applicant's wife is working with the State Govt. and the applicant is working under the Central Govt. Moreover, since the applicant had already worked for about 9 years at Allahabad and the fact that his wife who is working at Allahabad will continue to look after his children, thus the mid-session transfer has no meaning, we've forther phas delen day the deserved comment. He further said that no allegation of mala fide

24

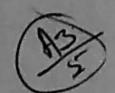
8



-: 4 :-

has been made in the entire petition and there is no loss of emoluments in the transfer and, therefore, the transfer cannot be challenged.

The facts that are not under dispute are that 4. the applicant was required to take over charge from a brother teacher who was retiring but he could not take charge for one reason or the other. He was then asked to explain and give his clarification which he did. It is not known what orders were passed on this clarification but a transfer/was handed over to the applicant in the evening of the day when he was asked to clarify why he did not take over charge from the said brother teacher. The law on the subject of transfers is com very clear. So long as the transfer is made in the exigencies of service is not to a lower post with discriminatory preference of a junior for the higher post, It would be a valid transfer and will not be open to attack. Orders of transfer are also normally outside the perview of the courts of law. Transfer is also an implied condition of service and it has been held in various judgments which have been relied upon by the parties that the Controlling Offix Authority will be the best judge to post a person and to utilise his services at a particular place which they may consider as the best urilisation of the man power under their control. After all the responsibility of good administration has to rest with the Government and the courts would not judge the propriety or sufficiency of such opinion by objective standards except where the subjective process is violated by mala fides etc. Courts



-: 5 :-

can interfere if the legal provisions are violated and arbitrary use of power is found to have been exercised. It is also very clear that the power to transfer should be exercised reasonably and fairly and in the best of interest of the administration and where it is exercised without due regard to the interest of administration or the interest of the public or the provisions of law or for extraneous irrelevant considerations or as a punishment the jurisdiction of the court would be wide enough to strike down the offending order. If a power is exercised perversely or improperly or unreasonably it will be subject to a judicial review.

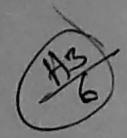
the respondents that the applicant has been at Allahabad for nearly 9 years and, therefore, he has no right to continue to be at this station. This contention was repetited by the learned counsel for the applicant on the ground that there are other persons who have got longer stay than the applicant and who are still working at Allahabad. This fact was not denied specifically by the learned counsel for the respondents. I do not thank the ground has much force.

3. Ground has much force.

6. In E.P. Royappa v. State of Tamil Nadu

(AIR 1974 S.C. 555) the Hon'ble Supreme Court had made

"Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State Action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but



-: 6 :-

is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in £ fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

Similarly in S.R. Venkataraman v. Union of India (1979 SLJ 1) the following observations were made by the Hon'ble Supreme Court :-

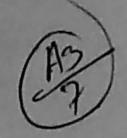
"(5) It is hower not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in Pilling v. Abergele Urban District Council, (1950) 1 KB 636 where a duty to determine a question is conferred an on authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter.

(6) The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in the Queen on the Prosecution of Richard Westbrook v. Vestry of St. Pancras, (1980) 24 QBD 371 at p. 375:-

duty by exercising their discretion take into account matters which the Court consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

This view has been followed in Sedler v. Sheffied Corporation, 1924 (1) Ch. 483.

- (7) We are in agreement which this view. It is equally true that there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done work under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.
- (8) The influence of extraneous matters will be undoubted where the authority making

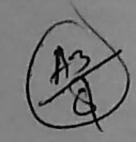


-: 7 :-

the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision forthe premature retirement of Government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power."

The above observations apply squarely in the case of the applicant. The applicant's transfer has been innocuously mentioned on administrative grounds but I do not find any such grounds. Nothing has been shown to me as to in what way the administration is going to gain by his posting at Chunal and where already a school is functioning and there is no vacancy. Moreover, the applicant and his family will definitely be disturbed if he is transferred now without following any principles, e.g. the period of bis stay at station or transfer to bring the improvement in the working at a particular die place where a person may be more suitable than the existing imcumbents etc. Though the instructions issued by the Government are maxx for guidance yet once they have been issued the key note thought behind such instructions cannot be lost sight of. hetance the Govt. has issued instructions that efforts should be made to keep the husband and wife together and in the cases where one's spouse is employed under the Central Govt. and the other under the State Govt. the spouse employed under the Central Govt. according to the Ministry of Personnel's letter of 3.4.1986, has to apply to the competent authority and the competent authority may post the said officer to the said station or if there is no post by the said station

.



reacted block to the most to the consideration where the other spouse is posted. These instructions which have been issued on the basis of certain circular of the Department of Social Welfare lay down that consideration to the question of posting husband and wife at the same station has to be given and they were cobeo issued in the background of representations having been received from the Department of Women's welfare in the Ministry of Human Resources

Development where the women were seeking intervention of of that department for a posting at a place where their husbands are posted. Thus it cannot be said that these instructions are merely on paper and they are to be sweetly ignored.

- adverse comment on the working of the applicant which might be disturbing the congenial atmosphere of the school where he is working having been highlighted and the foundation of the order being the fact that he did not take over charge from his brother teacher for whatever reason the order can only be termed arbitrary and without any administrative interest, and, therefore, the order of transfer is bad and is liable to be quashed.
- 8. I accordingly allow the application and quash the transfer order dated 1.8.1988. Parties will bear their own costs.

MEMBER (A).

Dated: September 30", 1988.

PG.