

3

A3  
1

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

\*\*\*\*\*

Registration (O.A.) No. 1043 of 1988

Uma Shanker Pandey ..... Applicant.

Versus

Union of India & another ..... Respondents.

\*\*\*\*\*

Hon'ble Ajay Johri, A.M.

32/

The applicant in this application, filed under Section 19 of the Administrative Tribunals Act XIII of 1985, was working as a Cashier under the Telecom Divisional Engineer (TDE), Mirzapur. On 21.7.1988 he was shifted from the post of Cashier and asked to work as Telecom Office Assistant (Construction) (TOA(C)) and thereafter on 8.8.1988 he was transferred from Mirzapur to Ghazipur. According to the applicant this was done because of a strike of the employees which lasted from 8.7.1988 to 18.7.1988 and on account of which the officers got annoyed. He has claimed that the post of Cashier on which he was working is a tenure post and the tenure last<sup>d</sup> for 4 years and since he was appointed to work as a Cashier only on 30.6.1987 he could not be shifted before the completion of the tenure period. The applicant has relied on Rule 62 of the Post & Telegraphs Manual, Volume IV (Establishments) according to which the rotation orders contained in Rules 59 to 61 of the Manual, insofar as it relates to officials mentioned therein, have to be followed strictly and any deviation therefrom should not be allowed unless the Head of the Circle is personally and fully satisfied about the need for the same. It is the applicant's case that the Head



of the Circle was not fully satisfied and he had not given <sup>31/10/88</sup> ~~to the~~ thought <sup>31/10/88</sup> of shifting him from the tenure ~~xxxx~~ <sup>31/10/88</sup> post. It has also been said that the applicant is a Office Bearer of a Union and by virtue of being a Office Bearer he could also not be transferred for a period of one year. Moreover, the shifting of the applicant from the post of Cashier <sup>31/10/88</sup> ~~causes~~ <sup>sees</sup> him with evil consequences inasmuch as he loses the special pay which is admissible to cashiers for handling cash and that there is only one post of a Cashier in the Division, therefore, the averment made by the respondents that he has been shifted to <sup>31/10/88</sup> ~~an~~ <sup>an</sup> equivalent post does not hold good.

30

2. While opposing the application the respondents have said that the applicant has on his own showing indicated that he has worked as a Cashier since 1984, firstly in the Sub-Division then in the Division and, therefore, he has completed his tenure. According to the respondents Rules 61 and 62 of P&T Manual, Vol.IV on which applicant is relying do not come into play because the Cashier's post is not a separate isolated post. It is the same as a TQA, only special pay is admissible on a scale depending upon the disbursement made by the concerned officer. The respondents have further said that the Head of the Circle, i.e. the Director had given his consent for the rotation of the applicant.

3. I have heard the learned counsel for the parties. In the contentions raised before me by the learned counsel for the applicant it was said that the order dated 21.7.1988 rotating the applicant was issued by the Telecom Engineer (TE), who was not competent to issue the same because in terms of Rule 62 it could



5

(113/3)

-: 3 :-

be only the Head of the Circle, who, on the basis of the replies given by the respondents, was not fully satisfied and had also not given any thought <sup>at/to</sup> ~~on~~ the matter. While on behalf of the respondents the learned counsel submitted that the applicant had been paid for working as a Cashier since 1984 and no objections were raised by him at that time when he was ordered to work on cash disbursement. He also referred to the supplementary affidavit in which a copy of the applicant's representation has been placed as Annexure 'SA-1' wherein he has admitted that he had worked in the Sub-Division on the post of Cashier and, therefore, he should be paid the special pay from 1.5.1984 for handling cash in the Sub-Division. According to the learned counsel this amount was paid to the applicant.

4. On 21.7.1988 the impugned order<sup>at</sup> which is sought to be quashed was issued by the office of TE, Mirzapur. The order reads as follows :

"In order to maintain the efficiency as well as smooth functioning of the Divisional Office, the following seat arrangements and local transfers in respect of TQAs has been made with immediate effect....."

33

The applicant's name appears at Sl.No.9 of the list where he has been shown as having been shifted from the post of Cashier to the Construction Section. By a subsequent order dated 8.8.1988 which has also been impugned the applicant was transferred and posted under SDO, Ghazipur in the interest of service. The main stress for seeking quashing of these orders is on the grounds of tenure of the post of Cashier and the fact that he is a Office Bearer of the Union. In regard to immunity



(A3/4)

6

-: 4 :-

from transfers to the Office Bearers of the Union, a copy of letter dated 7.12.1970 has been placed as Annexure '6' to the application. Para 2(f) of the instructions says that the concessions<sup>2/</sup> are not guaranteed<sup>3/</sup> and cannot be claimed as a matter of right. They are subject to administrative exigencies. There are further instructions that these should be followed strictly except on administrative grounds and where it is not possible to observe these instructions a report should be sent to the Directorate indicating the circumstances leading to denial of this immunity even in the first year of the term of office with the Union.

32

5. According to the averments made by the respondents in their reply they have said that the applicant was removed from the post of Cashier on account of his involvement in activities leading to misconduct, violation and irregularities and disobedience of orders for which he has also been served with a charge-sheet under CCS (CG&A) Rules. In the charge-sheet issued to the applicant on 27.7.1988, which is placed as Annexure 'CA-4' the incidents relate to the misbehaviour and misconduct of the applicant and also certain acts by which he sabotaged the telephone services and interfered with the work of the Department by indulging in unruly behaviour and even threatened to assault certain people. However, this would be a matter of disciplinary enquiry etc. and is not very relevant at the moment except the fact<sup>3/ that</sup>, the incidents go to indicate that the applicant, who was<sup>2/ an</sup> office bearer of the Union had lost sight of the fact that he had as much duty and responsibility as any other person not to do any act subversive of discipline. As rightly observed



AB  
5

7

-: 5 :-

by the Mysore High Court in Mysore Lamp Works, Workmen v. Management of Mysore Lamp Works and another (FIR 1971 (22) 53) that "An act subversive of discipline does not assume a different complexion merely because it is done on behalf of the employees' association." The Mysore High Court had further held that "the contention of victimisation and unfair labour practice will not be available where grave misconduct has been proved against the employee." In the applicant's case, however, this is not the position at present, but the incidents related in the charge-sheet can definitely form a basis on which an opinion may be formed by the authorities and they may take action to improve the general atmosphere and the working of the office and in this regard many other factors may weigh before their arriving at conclusion to shift a person from a particular seat or place.

31

6. In E.P. Royappa v. State of Tamil Nadu (AIR 1974 S.C. 555) the Hon'ble Supreme Court had observed that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. Where the operative reason for State action as distinguished from motive inducing from the ante-chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations it would amount to mala fide exercise of power. It is also clear that if a discretionary power, i.e. the power <sup>or to</sup> ~~of~~ transfer is exercised for an unauthorised purpose, it is immaterial whether its depository was acting in good faith but the reasons which are shown to have been taken into account, <sup>or really</sup> are matters which should not have been taken into account, the courts may adjudicate. In Satyavir Singh v. Union of India



2

(A3/6)

-: 6 :-

(AIR 1986 S.C. 555) the Hon'ble Supreme Court had observed that "where the Railway employees went on an illegal all-India strike and thereby committed an offence punishable with imprisonment and <sup>fine</sup> ~~fine~~ under Section 26(1) of the Industrial Disputes Act, 1947, and the situation became such that the railway services were paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, and the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for in order to bring the situation to normal.....The fact that the railway employees may have gone on strike with the object of forcing the Government to meet their demands is not relevant because their demands were for their private gain and in their private interest and the railway employees were not entitled <sup>to seek</sup> ~~to seek~~ to have their demands conceded, to cause untold hardship to the public and prejudicially affect public good and public interest and the good and interest of the nation." The charge-sheet which has been issued to the applicant indicates that situation similar to the railway strike but on a small <sup>er</sup> ~~er~~ scale, confined to TDE's office at Mirzapur, existed and the respondents had to take action to bring normalcy to the working of the office. It has been averred by the learned counsel for the respondents that the Head of the Circle had approved the shifting of the applicant from the sensitive post of Cashier. It will be relevant to point out that a number of aspirants may be wishing to work on this post because of the extra financial gains and, therefore, this post could be used as a <sup>tool</sup> ~~tool~~ to help bring normalcy in the situation.

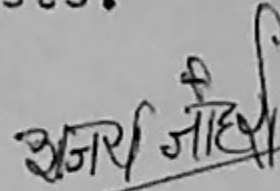


-: 7 :-

✓ In the result

7. I, ~~therefore~~, do not find much weight in the contentions advanced by the learned counsel <sup>✓ for the applicant</sup> and do not think that any interference is necessary at this stage. It is the respondents' duty to manage their affairs and to make suitable adjustments in the posting of their officials depending on the exigencies of the situation and in such matters what is important to see is that the organisation functions efficiently and actions of certain individuals do not prejudicially affect the public interest or public good.

8. On the above considerations I dismiss this application with no order as to costs.



MEMBER (A).

Dated: November 16<sup>th</sup>, 1988.

PG.