

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (O.A.) No. 1053 of 1988

K.N. Pandey

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Applicant.

Versus

Deputy Director Incharge
W.S.C. Varanasi & others

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Respondents.

Hon'ble Ajay Johri, A.M.

The applicant in this application received under Section 19 of the Administrative Tribunals Act, 1985 is working as a Block/Screen Maker/Dark-room Assistant in the Institute of Handloom Technology at Varanasi. He has challenged an order dated 7.8.1988 and another order dated 16.8.1988 transferring and relieving him to carry out a transfer from Varanasi to Meerut. The grounds for challenging the orders are that the transfer order is based on mala fide motive, as the circumstances and process adopted in passing the same indicate. According to the applicant, during the period July, 1985 to August, 1988 he has been transferred four times and his transfer was cancelled thrice in public interest. He has said that in normal course an employee is kept at a place for at least 3 to 5 years, but he has been subjected to transfer four times within a period of three years. Further the transfers have been ordered in the middle of the Educational Session, therefore, they were likely to affect the education of the children. According to him, the Government has already chalked out a policy that mid-session transfers should be kept to the minimum but in his case these instructions have been ignored. He has further said that there is another Block/Screen Maker, who is continuing

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at the Weavers Service Centre (WSC) since 1978 and though he had made several representation for his transfer to another place his requests have not been accepted and the applicant has been subjected to a transfer again and again. According to the applicant, there has been nothing adverse in his service record and his working has been always satisfactory. He has, therefore, sought relief for quashing of the transfer and relieving orders dated 7.8.1988^{3/} and 16.8.1988 and for him being allowed to continue at WSC, Varanasi.

2. The respondents' case is that the transfer has been made on administrative reasons. It is not a punishment and nor a mala fide exercise but it is required on account of urgency of the work at Meerut. According to the respondents, the applicant is a Block/Screen Maker (B/SM) which post operates in WSC only and there are only three such centres, viz. Chamoli, Meerut and Varanasi. The applicant can be posted in any part of the North Zone and only one post of B/SM is lying vacant at Meerut, therefore, the applicant was transferred there. The transfer order has been made by the Development Commissioner (DC) for Handlooms and the applicant has not said anything against the DC who is the competent authority to transfer the applicant. According to the respondents, originally the applicant was posted at Bhubaneshwar^{and} on his own request he was transferred to Meerut and thereafter to Varanasi. In 1985 he was transferred from Varanasi but the transfer was postponed on his request. Thereafter, for a very short while, the applicant joined at Meerut, but again requested for being permitted to continue at Varanasi and, therefore, he was temporarily accommodated at the Indian Institute

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of Handloom Technology (IIHT) even though there is no post of B/SM in that Institute. Since his posting at the Institute was on a temporary nature he had ultimately to go back to Meerut. The respondents have said that the present petition has been made against the relieving order because the applicant was already transferred on 20.4.1987 and the present posting at the Institute was only to accommodate him temporarily on his request. He has now been relieved to go and join at Meerut. His services, according to the respondents, are no more required at the Institute. The mala fide, alleged by the applicant against the Deputy Director (DD), WSC, is irrelevant because DD has no powers for posting and transfer. On his transfer from Bhubaneshwar and posting at Meerut it was on applicant's request that he was brought to Varanasi in June, 1983. He worked at Varanasi from June, 1983 to July, 1985. He was transferred in July, 1985 back to Meerut. In August, 1985, on his representation requesting for cancellation of the order on the ground that it was in mid-session and he was having some domestic problems, it was cancelled. He was also not relieved to carry out this transfer. The allegation made by the applicant that he was shouldered with double burden on cancellation of this transfer has also been ^{3/} ~~challenged~~ ^{offered} by the respondents. According to them, in WSC B/SM is a full time job whereas in the Institute of Handloom Technology it is only a small part of practicals where teaching is done for Diploma students only. Another transfer order was issued in July, 1986 but the applicant was never relieved and the transfer was postponed till further orders. Now, as a matter of policy, because the post of B/SMs does not exist in the Institute an order was issued in April, 1987 for transferring the applicant

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from Varanasi to Meerut and he was relieved to carry out this transfer. The applicant joined at Meerut but represented for posting back to Varanasi. In this representation he had made allegations against DD saying that he had illwill and ^{was} prejudiced against the applicant. The allegation was found to be baseless. When this representation was made the applicant was on leave from Meerut. The Director giving a sympathetic consideration to his request directed that he should be asked to work in the Institute. The respondents' case is that the work at Meerut is suffering for want of a B/SM where the post is lying vacant and the applicant is required at Meerut and ^{in this background} ~~therefore~~ the order dated 16.8.1988 was issued relieving the applicant from Varanasi to proceed to Meerut.

3. In his rejoinder affidavit the applicant has reiterated that the transfer is wholly mala fide and that he has been singled out by the Department proving the mala fide. According to the applicant, there was only one post at Meerut and that is already occupied and the plea taken that another man is required at Meerut is not correct. The applicant has further ^{reiterated} ~~said~~ that the transfer has been ordered in the mid-session leaving the applicant with great personal and financial hardship. He has further said that he should first be transferred to WSG, Varanasi before he can be sent to Meerut. He has also said that DC, Handloom has also no power or jurisdiction to transfer and that he has been influenced by DD at Varanasi, who is prejudiced against the applicant. There is also nothing on record to show that his services are not required at the Institute. It has further been claimed that this order is only a relieving order and not a transfer order because the transfer order issued earlier had already matured when he carried out the transfer and reported at

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Meerut and, therefore, it does not survive any more. The applicant has also annexed a copy of letter dated 12.7.88 as Annexure 'I' to the rejoinder affidavit written by the Director of the Institute indicating that the services of the applicant ought to be continued at Varanasi at this juncture and he cannot be relieved for transfer to Meerut. ³¹ The applicant ³¹ repelled ~~he~~ has ~~repeatedly~~ the allegations made against him that he is avoiding his posting at Meerut.

4. I have heard the learned counsel for the parties. Dr. R.G. Padia, learned counsel for the applicant, raised the following contentions before me :

(1) That the order is only a relieving order and it is not a transfer order and without a transfer order there can be no relieving.

(2) That another B/SM is working at Varanasi since 1975. He has made at least 4 requests for transfer out of Varanasi but his requests have not been accepted in order to frustrate the continuance of the applicant at Varanasi.

(3) That the applicant should be first transferred to WSC, Varanasi and only then he could be transferred to Meerut.

(4) That the transfer is ordered in the mid-session and, therefore, it affects the applicant adversely and that Director has been motivated by DD.

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The learned counsel for the applicant has further contended that in the counter affidavit the respondents have said in para 28 that the applicant did not work regularly at his posting place at Meerut and avoided his posting and this is a stigma for which no charge-sheet has been given to the applicant. Therefore, this also proves mala fide.

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These contentions were ³¹repe~~l~~led by the learned counsel for the respondents, Sri N.B. Singh. He has ³¹vehemently denied that there was any mala fide exercise of power and in any case no such allegation has been made against the Director. According to him, it is only after relieving that a person carries out a transfer and the two things ³¹are a joint process and that the transfer has been made in the interest of administration. To prove that there is no mala fide, he has cited the various transfers which were ³¹to be cancelled or postponed allowed on the applicant's requests by the administration. He has further said that in view of Annexure '8' to the Misc. Application filed by the respondents on 16.9.1988, the applicant has given an undertaking that he will resume duty at Meerut in due course with effect from 1.5.1988 or from the date he will be relieved from Varanasi whichever is earlier and in view of the same it is not open to him to file this application. I have also perused the application as well as counter and rejoinder affidavits and other papers available in the file.

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5. The main contention of the learned counsel for the applicant is that the transfer has been made in mid-session and that the order given in August, 1988 is only an order relieving the applicant without any transfer order and that a person cannot be relieved unless an order transferring him is served on him. This contention was ³¹repe~~l~~led by the learned counsel for the respondents on the ground that the transfer and relieving are a joint exercise and, therefore, if an order relieving a person has been issued it cannot be said that a transfer has not been ordered. It was further ³¹submitted by the learned counsel for the respondents that the original transfer order still existed and that the posting of the applicant to the

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Institute was only of a temporary nature to help the applicant to meet his commitments, as requested by him in the personal interview to the Director. It is not under dispute that the applicant is basically a B/SM and that that such post exists only in WSC. It is ~~on~~ also noted that the applicant's request for accommodating him at either Meerut or Varanasi and later on at Varanasi have been repeatedly met by the respondents and that the very fact that he was accommodated will go against the allegation being made by the applicant that the respondents, specially the officer competent to transfer him, has been influenced by DD with whom he does not seem to have good relations. According to him, DD has purposely not recommended the request for transfer by the other B/SM who had requested repeatedly for a transfer to Calcutta. This averment does not appear to be correct because the request for transfer by the other B/SM had also been forwarded by DD to the Director for necessary action and the Director being the competent authority it was for him to agree to the request or reject the same. Therefore, it will not be correct to assume that DD in any case also influenced the Director in not accepting the request made by the other B/SM for transfer out of Varanasi. It is also not under dispute that the job of the applicant is transferable and he can be posted anywhere throughout the country.

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6. The finding of mala fide can only be reached if there is proper and sufficient evidence in support of the same. It cannot be reached on flimsy grounds. Except for the fact that the applicant has been transferred a number of times and each time his request for retention at Varanasi has also been accepted, the

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allegation made by the applicant that since DD was prejudiced against him he is being harassed by repeated transfers do not get substantiated. The responsibility of good administration is that of the Government^{3/} and the propriety and sufficiency of such action cannot be questioned or judged unless the process is vitiated by mala fide action or the transfer is ^{3/}ordered for some other co-lateral purposes. Courts will not normally interfere in a transfer which is a implied condition of service and depends on a variety of factors that may ^{3/ weigh} before the orders are issued. In this case the respondents' version is that a post of B/SM is lying vacant at Meerut and the services of the applicant are urgently required, therefore, it is in the interest of administration^{3/ that} the impugned order has been issued. I do not find that there is any dishonest or mala fide or unreasonable exercise of power. Equally on the other hand when the applicant had reported at Meerut and he represented to the Director it was a consideration of the request^{3/ made} ~~given~~ by the applicant that he was ordered to be posted to the Institute at Varanasi and this must have been in response to^{3/ Help him mitigate} the various difficulties^{3/ that} he must have put forward before the Director after reporting at Meerut. I also find that there is a request made in July, 1988^{3/ by} ~~from~~ the Director of the Institute wherein he has said that all classes have already started in full swing with particular reference to the^{printing} classes and the transfer of the applicant will disturb the printing practical classes of students considerably. He has further said that the joining of another Block Printer in WSC may not ^{3/}serve the purpose fully because a constant coordination may not be fully ensured. He has, therefore, recommended in this letter that the applicant can be relieved when the

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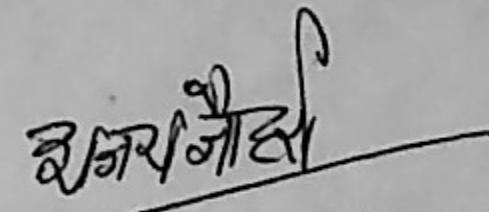
services of an other B/SM are made available on full time basis. While it is for the respondents to decide on this issue because they are the best Judge to decide how to utilise their man power, It is ^{or noteworthy} ~~noted~~ that there is a requirement for the applicant ^{to be} at Varanasi in the Institute for the time being and his departure from the Institute may adversely affect the training of the students.

7. There is also some force in the applicant's plea that this transfer has again been ordered in the middle of the session. There is no doubt that the applicant is bound by the undertaking given by him that he would move on transfer to Meerut on 1.5.1988 or earlier but no transfer order was given to him on the 1st of May. ^{or} ~~He~~ He has only been ordered to be relieved on 16.8.1988 by the impugned order. Therefore, the applicant's children are likely to suffer if a transfer is now effected, this being middle of the session. Though this may not be sufficient ground to give relief to the applicant it is a plea that cannot be entirely ignored. I, ^{or however} ~~therefore~~, do not find that there are adequate grounds to interfere with the impugned order on the basis that it is a mala fide order. ^{or But} ~~However~~, keeping in view the other circumstances specially the education of the children and the need of the Director of the Institute to have a person and the fact that the applicant has been discharging these functions in the Institute as a ^{or} ~~result of~~ sympathetic ^{or} ~~gesture~~ from the respondents in view of the difficulties he ^{or must have} ~~might~~ be represented to the Director, I feel that the interest of justice will be met if the applicant is allowed to continue at Varanasi in the Institute for a further period of a few months, i.e. till the end of school session. The respondents will be

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at liberty to transfer him after the end of school session.

8. In the above view I allow the application to the extent that the applicant will not be transferred till the end of the present school session. Thereafter the respondents will be at liberty to post him to Meerut or any other station, which they so desire. I quash the impugned orders dated 7.8.1988 and 16.8.1988. Under the circumstances of the case, I direct the parties to bear their own costs.


MEMBER (A).

Dated: November 3rd, 1988.

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