

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

O.A.No.1133 of 1988

Jagannath Pandey ... Applicant
Vs.
Union of India & others ... Respondents.

HON'BLE AJAY JOHRI-MEMBER (A).

The applicant Jagannath Pandey, who is employed as Head Cook in the Vending Unit of Northern Railway at Kanpur, has by this application made under section 19 of the Administrative Tribunals Act 1985, challenged an order dated 30.8.1988 issued by the Divisional Personal Officer, Allahabad transferring him from Kanpur to Delhi. According to the applicant the transfer order has been issued by the respondents on account of an incident that took place on 21.8.88 at the Loco Hospital, Kanpur and therefore the order is malafide and punitive. The applicant's case is that on 21.8.88 when his son suffered from sever pain in abdomen, he went to the Loco Hospital to get medical aid. The doctor on duty was attending to out door patients when his son made a request to examine him so that he may get quick relief. When the doctor did not pay any heed to the request of the applicant's son, his son got irritated and started shouting at the doctor. The doctor lodged a complaint against the applicant's son with the Station Officer of the police

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station. The applicant's son was arrested by the police and remained in custody for three days. He also complained to the police authorities about the pain. He was admitted in the hospital while in police custody and was discharged and referred to another hospital. On the applicant's giving assurance for good conduct on his son's behalf the doctor on duty was not passified. The applicant also applied for some leave on 5.9.88 as he fell ill. It is the applicant's case that he has not yet been communicated the order of transfer. According to the applicant, his transfer has been ordered as a revenge against his sons' behaviour and there is no administrative requirement for ordering the same. By his transfer to Delhi his son will not be able to prosecute his police case. He has further said that the transfer is bad because it has been ordered in mid session.

2. In their written statement the respondents have said that respondents No.4 was on emergency duty and when he was attending to a serious case the applicant's son came in the room and instead of telling the doctor about the nature of his complaint and his sickness he got up from the bench and assaulted the doctor on duty and thereafter tried to run away but he was prevented from doing so. The applicant was also present at that time and he took no action to prevent

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his son from assaulting the doctor instead he encouraged him in his misbehaviour and justified his sons' action. The respondents have denied that the doctor (respondents No.4) got infuriated. According to the respondents the doctor felt humiliated due to the unpleasant and uncalled for behaviour on the part of the son of the applicant. It has further been said that the transfer of the applicant is in administrative exigencies and is ~~and is~~ ³ not punitive. The applicant has also not exhausted the departmental remedies and therefore even on this ground the application is not maintainable. The respondents have also referred to the Board's letter of 1971 regarding guide lines of transfer and have said that these instructions are merely in the nature of guide lines and do not lay down any mandatory instructions.

3. The applicant has filed a rejoinder and said that when the applicant's son made the request to the doctor on duty (respondents No.4) to examine him and provide him relief from pain, respondents No.4 did not pay any attention and therefore the applicants' son who was in distress became irritated and started shouting. This infuriated the doctor (respondent No.4) and he complained to the police also. According to the

applicant, the vacancy at Kanpur still exists and the vacancy at Delhi has also not been filed, therefore, there can be no reason for administrative exigency in ordering this transfer.

4. I have heard the learned counsel for the parties. The contention raised by the learned counsel for the applicant was that if the ³veil is lifted it would be seen that the administrative power has been exercised for malafide reasons. The learned counsel further contended that for sons' misbehaviour the employee should not have been held responsible. On behalf of the respondents, the submissions made were that the transfer is not for malafide reason but in administrative exigencies and there is no denial of the fact that the applicants' son showed irresponsible behaviour and misbehaved with the doctor on duty. The learned counsel for the applicant also contended that the reply on behalf of the respondents has been filed by an Assistant Personal Officer and not by respondent No.4.

5. It cannot be challenged that the responsibility for good administration is that of the government. This Tribunal would not like to sit in

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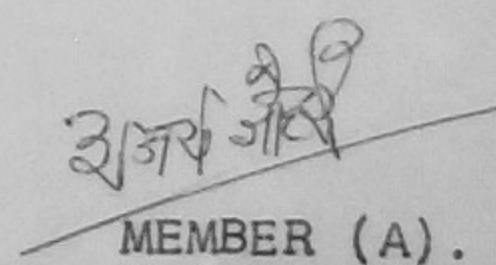
judgment over the propriety or sufficiency of such decision except where the process is vitiated by malafides. Transfer is also a condition of service. The authority concerned would be the best judge to decide how to distribute its own manpower. A variety of factors weigh in arriving at such decisions. What has to be seen is that the power has been exercised, honestly, bona fide and reasonably. Normally orders of transfer should be outside the purview of a court of law and they should not be open to judicial review nor should they be justiciable. I do not find any substance in the allegation made by the applicant that that the order has been issued as a punitive measure or for extraneous considerations. If a transfer is made with a view to affect improvement in working conditions or of the environments it will no doubt be in the interest of service. There is no doubt about the fact that the applicant has not been able to keep his wards under control./the incidents show the applicant was present at the time when his son who is a teenager assaulted the doctor and created a scene by his indisciplined behaviour and interference with the working of doctor (respondent No.4). The best curative action for the respondents in such case can only be

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shifting of the actors from the seen of action. If normal working is paralysed and superior officers are assaulted and such situation is allowed to go unnoticed, it will be difficult for the administration to perform its legitimate functions efficiently. It is also humiliating and demoralising if prompt action is not taken against persons involved in such unruly behaviour. The fact that the applicant was present at the time of the incident can also not be lost sight of. It also indicates that any assurance by the applicant who has been unable to control and educate his ward properly will have no value. If such persons are allowed to distract the peace and normal working of such an important place as a hospital other patients are likely to suffer. Under the circumstances it is the surrounding circumstance that prompt one to take action to bring about improvement in the atmosphere and in the conditions of working. I therefore do not find that the action taken by the respondents to create congenial working conditions needs any interference by this Tribunal.

6. In the above view I reject this application and under the circumstances I allow the parties to bear their own costs.

Dt. 15th Feb.
Jan., 1989.


MEMBER (A).