

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**

## ALLAHABAD

Dated this the 6 day of August 1996

ORIGINAL APPLICATION NO. 1728/92

SINGLE MEMBER BENCH : Hon'ble Mr. S. Das Gupta A.M.

C/A Shri N. L. Srivastava

## VERSUS

1. Union of India through  
Development Commissioner(Handicrafts),  
Ministry of Textiles, West Block No.7,  
R.K.Puram, New Delhi.
2. Additional Development Commissioner(H),  
Office of the Development Commissioner  
West Block no.7, R.K.Puram, New Delhi.
3. Director, Centre Region,  
Office of the Development Commissioner, (H)  
46/3 Gokhale M Vihar Marg, Lucknow
4. Assistant Director (A & C),  
Office of the Development Commissioner(H),  
Service Centre 103, Allengunj,  
Allahabad. - - - - - Respondents

C/R Sri Amit Sthalkar

ORDER

By Hon'ble Mr. S. Das Gupta A.M.

This application is directed against the order dated 5.11.1992 passed by the respondent no.2, transferring the applicant among others from U.P. to Western region, Bombay. The applicant has prayed for quashing of the impugned order and a direction to the respondents to pay him salary month by month, as group D employee. He was posted as Chowkidar at the regional carpet store, Jhusi, Allahabad in which, according to the applicant, there are two sanctioned posts of Chowkidar, Sri P. N. Ram being posted against the other post. The applicant received the impugned order of transfer dated 5.11.1992 on 26.11.1992. By this order, he was transferred from Allahabad to Gwalior. Challenging this order, the applicant approached this Tribunal. At the time of admission, by way of an interim order, operation of the impugned order was stayed. This Stay order has been subsequently extended from time to time.

2. The impugned order of transfer has been challenged basically on two grounds. In the first place, it has been contended that the impugned order was passed by the Additional Development Commissioner ( respondent no. 2 ), whereas the power to transfer the applicant is vested in the Development Commissioner ( respondent no. 1 ). It is stated that the respondent no.1 had delegated his power of transfer in respect of ~~shift~~ group C and D employees to the Regional Directors but this delegation is only with regard to intra regional transfers and not for transferring outside

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the region. The power to transfer an employee outside the region remained vested with the respondent no. 1. Thus the impugned order having been issued by the respondent no.2 suffers from lack of jurisdiction.

3. The second ground taken by the applicant is that the impugned order is malafide. It has been alleged that the applicant alongwith others had earlier filed an Original application no. 558/92 before this Tribunal, claiming overtime payment for extra hours of work. The applicant also filed a contempt application no. 881/91, which was disposed of with a warning to the respondents to be careful in complying with the direction given by the Tribunal as it was noted that the direction given in O.A. No. 241/90 filed by the applicant and others was not complied with within the specified period. The applicant contends that as a result of this litigation and particularly the outcome of the contempt application, respondents were biased against him and therefore, he has been transferred from Allahabad to Gwalior although he is only a low paid group 'D' employee.

4. The respondents have contested the case by filing a counter affidavit. It has been submitted therein that the Development Commissioner ( Handicrafts ) runs Carpet Weaving Training Centre and Service Centres all over the country. Regional carpet store forms part and parcel of the carpet weaving training cum service centre, Allahabad. No post of chowkidar has been sanctioned separately for the regional carpet stores, Jhusi, Allahabad. Not only the applicant, but also Sri P.N.Ram, the other chowkidar at the regional carpet store, Jhusi

has been transferred due to the non-availability of sanctioned post of Chowkidar.

5. Respondents have further stated that the Development Commissioner vide his order dated 13.12.1991 and subsequently by another order dated 3.2.1992 ( annexure CA-1 & C.A.2 respectively) allocated the portfolios among the Additional Development Commissioner (respondent no.2) and Joint Development Commissioner. The additional Development Commissioner was allocated among other sections administration (I), (II), (III) and (IV), Thus, it is contended, that the Additional Development Commissioner was fully competent to pass the order of transfer out of U.P. region. Respondents have also vehemently denied the charge of malafide as totally baseless. It has been stated that the impugned order of transfer was not only in respect of the applicant, but in respect of several other persons and this order has been passed in public interest.

6. The applicant has filed rejoinder affidavit, in which it has been stated that in every regional carpet store, two chowkidars are posted. The applicant was posted at Jhusi, Allahabad Carpet Store for about one and half year prior of the order of transfer and he is still continuing there, by virtue <sup>of</sup> <sub>and</sub> interim order/performing his duties as Chowkidar. It has also been stated that annexures CA 1 and 2 are not orders of delegation of power of transfer to the Additional Development Commissioner, these but/merely indicate allocation of routine official

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work among different officers. In support of this contention, a copy of the transfer order dated 26.2.1992 in respect of one Sri S.S.Hasan has been annexed as R.A. I, which indicates that the order of transfer issued by the Additional Development Commissioner was with the approval of the Development Commissioner ( Handicrafts ). According to the applicant, this would not have been necessary, had the Additional Development Commissioner was exercising the power delegated to him for transferring outside the region. Rest of the averments are reiteration of the contentions in the original application.

7. I have heard the learned counsel for the parties and perused the records carefully.

8. It is well settled that the courts or Tribunal have very limited jurisdiction to interfere in the order of transfer of public servants issued in exigency of service. The order of transfer can be successfully challenged only on the ground of malafide. The applicant has no doubt raised the plea of malafide and sought to lay the foundation for the same, stating that the respondents were biased as a result of the earlier litigation before this Tribunal. This averment is not sufficient to show that the respondents had any bias against the applicant, particularly when the order of transfer did not single out the applicant, but was in respect of other employees also, who are not before this

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Tribunal. Moreover the respondents have not been impleaded by name, which is sine-qua non for establishing malafide. I have, therefore, no hesitation in rejecting the plea.

9. I, however, found considerable force in the plea taken by the applicant that the order of transfer was without jurisdiction. Respondents have not controverted the contention of the applicant that it was the Development Commissioner, who has the power of transfer of group C and group D employees outside the region. I am inclined to agree with the contention of the applicant that the orders contained in CA-1 and CA 2 are not in the nature of delegation of power to the Additional Development Commissioner. These orders are in the nature of distribution of work among the subordinate officers and ~~they~~ do not any where indicate that such officers would be competent to exercise the power of the Development Commissioner as his delegates. <sup>This fact is strengthened by the averments in</sup> Rejoinder affidavit, in which the order of transfer dated 26.3.1992 issued by the respondent no.2 specifically indicates that it was issued with the approval of the Development Commissioner. In the impugned order, there is no such indication. Therefore, prima-facie the order suffers from lack of jurisdiction.

10. It is, however, well known that the competent authority often issue order, authorising

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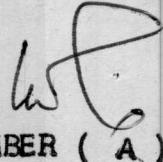
subordinate officers to exercise power on his behalf. It is possible that the Development Commissioner may have issued such authorisation in respect of the Additional Development Commissioner. However, in the absence of any pleading in this regard by the respondents, I am unable to come to a definite conclusion on this Issue. I am also acutely conscious of the settled principle of law that where an order of transfer is stated to have been issued in exigency of public service, such order should not be interferred with lightly. In the present controversy, respondents case is that there are no sanctioned post in the regional carpet store, where the applicant was working. This can be a sufficient ground for the transfer of the applicant. At the same time, however, I have noticed that there is no explanation as to how the applicant and another person were working as Chowkidars at the regional carpet store, ~~As~~ Jhusi for one and half year in case there are no post for that establishment. It is in-conceivable that stores, where presumably valuable items are stored, will not have any Watch and Ward staff.

11. Inview of the foregoing, while I refrain from quasing the impugned order of transfer in so far as it relates to the applicant, I direct that in case the applicant files a representation against his transfer within a period of two weeks from the date of communication of this order to the applicant, respondents shall

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consider such representation on merit, keeping in view the observations made by me with regard to the competence of the Additional Development Commissioner in issuing the impugned order of transfer. The Stay order already granted shall remain operative until such a representation is finally disposed of by a reasoned and speaking order.

12. The application is disposed of accordingly. Parties shall bear their own cost.

  
MEMBER ( A )

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