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THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD

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Original Application No.1273/1993

Jagdish Singh Dinesh .. ... .. Applicant

Vs

Union of India and others .. . Respondents

-:o:-

HON'BLE MR MAHARAJDIN, MEMBER(J)  
HON'BLE MR S DAS GUPTA, MEMBER(A)

( by Hon'ble Mr Maharajdin, Member-J )

This application has been filed by the applicant under Section 19 of the Administrative Tribunal Act seeking the relief to quash the order of transfer dated 20-08-93 (Annexure A-4). It is further prayed that the respondents be restrained from interfering with the working of the applicant as Superintendent of Post Offices, Mufassil Division, Kanpur.

The relevant facts giving rise to this application are that the applicant was posted as Superintendent of Post Offices, Mufassil Division, Kanpur (hereinafter referred as S.P.Os) on 28-05-92 on ad-hoc arrangements by respondent No.2 and thereafter vide letter dated 30-06-92 he was regularly appointed on the post (Annexure-1). It is stated that the Appointing Authority in case of the applicant is respondent No.2. After having taken over charge on the post, the applicant has been continuously performing the duties <sup>to</sup> with entire satisfaction ~~to~~ of his superiors and there is no complaint

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against the applicant in regard to his work and conduct. On 20-08-93 respondent No.3 asked the applicant to handover charge of the post of S.P.Os. without giving any order of transfer. Since the applicant has not received the order of transfer, therefore, he refused to hand over the charge and he claims that he is still continuing to work on the post of S.P.O.s. The applicant has stated that he somehow managed to get the copy of the transfer order unofficially in order to challenge the same before this Tribunal (Annexure A-4). According to him this order of transfer was passed to accommodate Shri G.P.Dwivedi respondent No.4 on the post of S.P.O.s. Respondent No.4 has been working as Deputy Chief Post Master Kanpur Head Post Office Kanpur who was declared unfit for holding the sensitive post while he was working on the post of Assistant Director in the office of the Post Master General, Kanpur. The applicant has alleged that the post of S.P.O.s is a sensitive post and the applicant has taken the charge on 31-05-92 and has hardly worked on that post for about one year. According to him as per policy of the department circulated vide memo dated 14-02-91 it was desired that the employees belonging to Scheduled Castes and Scheduled Tribes should not be harassed by frequent transfer. The applicant has further said that respondent No.1 has issued circular letter dated 12-04-91 regarding the rotation of the official working in the sensitive post, through which it was directed that instructions may be followed strictly and rotation of the

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staff, particularly those working in the sensitive post, should ~~strictly~~ be resorted to after having ~~serv~~ <sup>u</sup> for two or three years (Annexure A-6). The applicant has also alleged that respondent No.3 is annoyed with him because the applicant has been making request for having telephone facility at his residence so order of transfer passed by him is arbitrary, malafide and unjust. According to the applicant the transfer was made not in the administrative exigencies but it is passed to accommodate the respondent No.4 in place of the applicant. It is also stated that the transfer order is passed against the departmental instructions and the applicant has not been given an opportunity to represent against the transfer order.

*Applicant also states that the*  
The respondent No.3 who passed the order of transfer is not the Appointing Authority of the applicant as such he is not competent authority to transfer the applicant.

The respondents filed Counter Affidavit and resisted the claim of the applicant inter alia on the ground that the respondent No.3 has not passed the order of transfer malafidely rather it has been passed on administrative grounds. Respondent No.3 who is the Post Master General, is competent to pass transfer order of the officer of the rank of the applicant within the region. The respondent No.2 who is the Post Master General posted at Lucknow has power to pass the transfer order within the circle. It is wrong to say that respondent No.4

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Shri G.P.Dwivedi was found unfit to be posted as Superintendent of Post Offices, Mufassil Dvn. Kanpur and the impugned order of transfer has not been passed to accommodate him. It is also wrong to say that the post of S.P.O.s is a sensitive post and no classification has been made in any of such post.

We have heard the learned counsel for parties and perused the record.

The applicant has been transferred from the post of S.P.O.s and posted as Dy. Superintendent Railway Mail Service, Kanpur Division, Kanpur vide Post Master General, Kanpur memo dated 20/8/93. Thus the applicant has been shifted locally from one post to another post and this arrangement, according to the respondents, has been made due to administrative reasons. The applicant refused to hand over charge of the post which he held on the pretext that the order of transfer was not served on him, but this fact has been denied by the respondents when according to them the order of transfer was duly served in the office of the S.P.O.s and the receipt clerk of the office of S.P.O.s has received the transfer order on 20/8/93 and the same was also handed over to the applicant on 30-08-93 in the afternoon. The respondent No.4 who has been posted in place of the applicant as S.P.O.s has assumed the charge on 23-08-93, so the impugned order of transfer dated 20-08-93 has already been effected. The applicant is absconding from the office as he did not attend the office

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after 20-08-93 inspite of reminders and XP Docket dated 23-08-93 sent to his residence to report for duty. However, the applicant sent application for C.L. which was rejected, even then he did not attend the office. The respondent No.4 after having assumed the charge is working on the post of S.P.O.s from 23-08-93.

The post of Superintendent, Post Offices is equivalent to the post of Deputy Superintendent of Railway Mail Service and both belonging to P.S. Group 'B' cadre in the same pay scale and status. The office of the Superintendent Post Offices, Mufassil Division Kanpur as well as the office of Deputy Superintendent, Railway Mail Service Kanpur are functioning in one and the same floor of the building, as such, no change in the status at the place of working is involved. The order of transfer does not amount to any punishment nor it was passed to accommodate the respondent No.4, the order was passed due to administrative reasons.

The applicant has alleged malafide against respondent No.3 who passed the order of transfer on the ground that respondent No.3 became annoyed as the applicant said to have been insisting for installation of telephone at his residence. This fact is denied by the respondents and it is stated that every S.P.O.s is entitled for Telephone facility at his residence and it was for the applicant to insist and avail the facility. The contention of the applicant is that the order of transfer is

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mala~~fide~~ and is not sustainable because the respondent No.3 at no point of time refused to provide telephone facility to the applicant for which he was entitled.

The applicant has stated that the post of S.P.O.s is a sensitive post and the applicant has worked only for one year whereas according to Circular dated 12-04-91 (Annexure A-VI) regarding rotation of official working on sensitive post should be resorted to after every two or three years. The respondents have denied that the post of S.P.O.s is classified as sensitive post. The applicant has not produced any evidence to show that the post which he held was declared as sensitive post, so it cannot be said that the transfer order was passed against the departmental instructions and the rules and the case law cited by the applicant R.Jayaraman versus Union of India reported in 1991(17)A.T.C.-151 (New Bombay) is not applicable to the facts of the present case. It is also contended that an opportunity to represent against the order of transfer was not given to the applicant and for this purpose the reliance has been placed in a case of Ram Kumar Yadav versus Union of India 1991(17)-A.T.C.-529-Delhi as well as in case of Shanti Kumari Bajpayee versus Director of Post Offices reported in 1981-S.C.C.(L & S)-285 in which it was held that against the transfer order the Government employee has right to represent. The applicant himself has said in the application

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that before receiving the transfer order he approached this Tribunal seeking the relief to quash the transfer order. Thus the applicant before availing an opportunity to represent his case has approached this Tribunal for which the respondents cannot be blamed.

The applicant has referred a memo dated 14-02-91 while it is said during the course of deliberations of the first meeting of the National Committee for Centenary Celebrations of Dr. Bhimrao Ambedkar that the employees belonging to Scheduled Caste and Scheduled Tribes in Central Government are harassed by frequent transfers. On representation made by the employee the stereo type replies have been discouraged and it was desired that the cases should be considered with an open mind. The respondents in reply to the plea taken by the applicant have said that there is no any such direction that the employees belonging to scheduled castes and scheduled tribes may not be transferred, so the letter Annexure A-5 filed by the applicant is also of no avail which is an extract of letter of Senior Superintendent of Post Offices, Moradabad. The contention of the applicant that the impugned order of transfer has been passed in violation of the policy decision and against the executive instructions. This point has been set at rest by the pronouncement made in the case of Shilpi Bose (MRS) & Others ~~v~~ versus State of Bihar & others 1992-S.C.C.(L. & S.)-127 in which it was held by the Hon'ble Supreme Court that even if a transfer

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order is passed in violation of the executive instructions or order, the Court ordinarily should not interfere with the order. The applicant has not been able to make out any extra-ordinary ground that would warrant this Tribunal to interfere with the impugned order of transfer.

In the impugned order of transfer it is clearly mentioned that the transfer of the applicant has been ordered on administrative ground and in a case of Union of India versus H.R.Kirtania reported in 1989(4)-S.L.R.-9 it has been held that transfer on administrative ground or in public interest should not be interfered with unless there are strong pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on grounds of malafide. As regards malafide we have already discussed above that the applicant has failed to establish malafide against the respondent No.3 who passed the order of transfer.

The another aspect of the matter on which the impugned order of transfer has been assailed is that it has been passed by the authority other than who is empowered to pass transfer orders. The order of transfer has been passed by the Post Master General of the region, who is authorised to make local transfers and postings within the region of Class 'B' officers. The applicant is Class 'B' officer, hence transfer and posting is to be done by the Post Master General.

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The applicant on the contrary has said that the Chief Post Master General, Lucknow is empowered to pass transfer order of Class 'B' officer.

The applicant in his application has said that while he was working as Senior Post Master, Moradabad was reallocated to Kanpur Region in Group 'B' cadre vide Chief Post Master General, U.P.Circle, Lucknow, memo dated 09-01-92 and was posted as Deputy Chief Post Master, Kanpur Head Post Office under Post Master General, Kanpur memo dated 22-01-92. The applicant was ordered vide Post Master General Kanpur memo dated 28-05-92 (respondent No.3) to take over charge of Superintendent, Post Offices, Mufassil Division, Kanpur due to superannuation of Shri K.B.Sharma on 31-05-92.

The respondents have enclosed copy of letters dated 04-09-89 and 20-03-90 along with the Counter Reply which are marked as Annexures 3 and 3-A, according to which each Regional Post Master General including the Chief Post Master General has been delegated all financial and administrative powers of the Head of Department. Thus each Regional Post Master General has been delegated the administrative powers of the Head of the ~~Region~~ <sup>circle</sup> and he is fully empowered to transfer the officers below the rank of Director of Postal Services within the <sup>2</sup> circle. In Schedule No. ~~12~~ <sup>2</sup> of the Posts and Telegraphs Manual Volume III the powers of ~~Regional Post~~ <sup>a Head of a Circle</sup> Master General are enumerated under the head of 'Transfers' in sub-para (vi) of the schedule which is reproduced as under :

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" 6. Power to transfer  
Gazetted Officers

Full powers to transfer within his jurisdiction Class II Officers of all services, officers of the Telegraph Traffic Service Class I, Assistant Divisional Engineers, Telegraphs & Junior Time Scale Officers of the Indian Postal Service, Class I, including officers in charge of R.M.S. Divisions."

Thus the contention of the applicant that the Post Master General, Kanpur who is not the appointing authority has no power to pass transfer order is not sustainable as the same has not been passed in violation of the mandatory statutory rules // In Vardharao versus State of Karnataka and others reported in A.I.R.- 1986 - 1955, it has been laid down that "It is an accepted principle that in public service transfer is an incidence of service. It is also an implied condition of service and the appointing authority has wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the services of his employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving an alien purpose or in oblique motive, it will amount to malafide and colourable exercise of power....." The applicant has alleged that he has been transferred from the post of S.P.O.s to accommodate Shri G.P.Dwivedi respondent No.4. The respondents have denied this fact emphatically and have stated that the respondent No.4 never applied for posting as S.P.O.s.

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The Deputy Chief Post Master and Superintendent of Post Offices, Mufassil Division Kanpur are equal in status and the transfer of the applicant from the post of S.P.O.s Kanpur to the post of Dy Superintendent, R.M.S. Kanpur Division, Kanpur is not passed in any violation of the statutory rule nor the status of the applicant otherwise is affected by this Tribunal. The working of the applicant on the post of S.P.O.s was not found satisfactory, therefore, he has been shifted and posted as Deputy Superintendent, R.M.S. Kanpur Division, Kanpur in the same Floor of the building.

Thus in view of the discussions made above the impugned order of transfer cannot be termed as arbitrary, malafide and without jurisdiction. In the result the application of the applicant seeking the relief to quash the order of transfer is devoid of merit which is hereby dismissed with no order as to cost.

MEMBER-Administrative

MEMBER-Judicial

DATED: Allahabad, February 23, 1994.  
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