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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A.No. 1368 of 1993

Murari Lal Applicant.

Versus

Union of India
and others Respondents.

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(By Hon. Mr. S. Das Gupta, Member(A))

In this Original application No. 1368 of 1993, the petitioner has challenged the order dated 26.8.1993 passed by the respondent no. 3 (Annexure- A 8) transferring the petitioner from Lakhimpur Kheri to Faizabad.

2. The petitioner in this case is a Divisional Accounts Officer, Grade-I and was working as such since 26.6.1990. Vide letter dated 13.2.1993 (Annexure- A 1), the petitioner was asked to furnish his option for place of posting under annual general transfer, 1993. The required proforma was filled by the petitioner on 20.3.1993 (Annexure- A 2) by which he indicated Faizabad, Sitapur, Kanpur and Lakhimpur, in that order, as his option for posting. He also requested therein that he be allowed to stay for one more year at Deoria. Subsequently, under annual general transfer scheme of 1993, the petitioner was transferred from Deoria to Lakhimpur Kheri vide order dated 22.6.1993 passed by the respondent no. 3 (Annexure- A 3). On receipt of transfer order and also the entire transfer list, the petitioner

submitted a representation dated 19.7.1993 in which he inter alia requested that he be posted to Minor Irrigation Division, Lucknow instead of Lakhimpur Kheri since he felt that the posting at Lakhimpur Kheri as ordered was not commensurate with his status of Grade-I Divisional Accounts Officer (D.A.O. for short) in view of the fact that the person he was to relieve at Lakhimpur Kheri was a D.A.C. Grade-II. He made similar submissions to the respondent no.3 during personal interview while handing over the said representation. The petitioner's case is that he sent a letter on 26.7.1993 withdrawing his application dated 19.7.1993 and reported at Lakhimpur from where he wrote another letter dated 20.8.1993 (Annexure- A 6) in which the withdrawal of his application dated 19.7.1993 was referred to. He requested that his posting to ^{Lakhimpur} Faizabad may not be disturbed. Despite this, the impugned order was issued transferring him from Lakhimpur Kheri to Faizabad in which it was indicated that this transfer will not be in public interest.

3. The case of the respondents is that the subsequent posting from Lakhimpur Kheri to Faizabad was ordered on the basis of the petitioner's own request made in the representation dated 19.7.1993.

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They have further stated that his request was one of 1987's requests for change in posting and all these requests were considered together and appropriate posting orders were issued. They could not take into account the letter dated 26.7.1993 by which the petitioner sought to withdraw his earlier request in view of certain discrepancies in the date of application referred to therein. His subsequent letter dated 20.8.1993 was received too late to be considered.

4. I have heard the counsel for both the parties and perused the documents carefully. Sri K.C. Seth, D.A.O. I who was posted to Lakhimpur ^{against} for the vacancy to be created on transfer of the petitioner to Faizabad impleaded himself as respondent no. 5. Though, no separate counter affidavit was filed on his behalf, His counsel made verbal submissions during hearing of the case.

5. Several case laws have been cited by the counsel for both the parties in support of their rival contentions. From a reading to these case laws, it appears that the apex court and other courts and Tribunals ^{consistently} have followed the principle that in public service, the transfer is an incident of service and the appointing authority has wide discretion in the matter. However, this power must be exercised honestly, bonafide and reasonably. It was applying this principle that the apex court upheld the transfer

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order in the case of B. Varadha Rao Vs. State of Karnataka and others, AIR, 1986 SC page 1955 cited by the respondents. The other cases cited were the case of Prakash Chandra Saxena Vs. State of Madhya Pradesh & Others decided by M.P. High Court and in the case of Ramachar Pandey Vs. State of U.P. and others, 1993(4) SC page 72 (Judgment Today), decided by Hon'ble Supreme Court. In both these cases, the transfers were set aside on the application of the same principle has indicated above.

6. In the instant case, the order of transfer has admittedly been issued not in public interest but on the request of the petitioner, As such, the case law cited above are not applicable to this case. The respondents have averred in their counter that they have the right to transfer any Divisional Accountant at any time on administrative ground or on the request of the applicant. While such a right is not disputed, the same must be exercised in a reasonable manner. Even if it is accepted that the petitioner did make a request for the change in his posting, the fact remains that he had issued a letter dated 26.7.1993 withdrawing his earlier request. While the respondents have not denied that there was a letter dated 26.7.1993 from the petitioner, they have averred that the same could not be taken into account as it was received late and there was discrepancy in the date of earlier

representation referred to therein. There is, however, no doubt about the fact that the petitioner did make a request that his posting need not be changed.

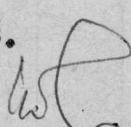
7. The matter can also be looked at from a slightly different angle. Even if it conceded that the subsequent change in his posting order was done on the basis of his request contained in the representation dated 19.7.1993, the relevant request for posting to Faizabad was not but to Minor Irrigation Division, Lucknow. The request was quite specific and had he been posted to Lucknow on the basis of this request, there perhaps should have been no dispute.

8. The respondents, however, have not posted him to Lucknow but to Faizabad. Admittedly, this was one of the places mentioned in his option but this was not the request he mad in his letter dated 26.7.1993. The respondents have every right to post the petitioner to any station in the exigency of public service, though too frequent transfers may not stand judicial scrutiny. The learned counsel for the petitioner, during the course of argument, indicated that the petitioner would abide by the order of transfer to Faizabad provided the same is ordered in public interest. The respondents, infact, in their submissions in the counter have mentioned more than once that the transfer of the petitioner to Faizabad was done to accommodate him in a station commensurate with his status, though there is a post-script that the same

was done at his request. Even if it was at his request, as long as the transfer was done to give him a posting commensurate with his status, the same would appear to be in public interest. During the arguments, it appeared that the respondents may not be disinclined to treat the transfer as in public interest.

9. In view of the foregoing discussions, the impugned order dated 26.8.1993 cannot be upheld as it is worded. The same is, therefore, quashed and set aside. The respondents, however shall be at liberty to issue a fresh order of transfer of the petitioner to Faizabad in public interest, if the exigency of public service so warrants.

10. There will be no order as to Costs.


Member (A)

Dated : 25 November, 1993

(n.u.)