

Original Application No.232 of 1993.

Union of India & Others.	Respondents
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HON'BLE MR. JUSTICE R.K. VARMA, VICE CHAIRMAN.

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunal's Act 1985, the petitioner has sought the quashing of the order dated 2-2-93 (Annexure A-1 to the petition) whereby the petitioner has been transferred from S.I.S.I., Allahabad to R.T.C., Madras.

2. The facts giving rise to this petition, briefly stated, are as follows:

The petitioner was posted as Deputy Director (Mechanical) in S.I.S.I., Naini, Allahabad, where he was given the charge of the Institute on 1-6-1991. He was transferred vide order dated 2-2-93 passed by the Development Commissioner, ^{Govt} G.S.S.I., New Delhi, (vide Annexure A-1 to the petition) from S.I.S.I., Allahabad, to R.T.C., Madras. The order was issued under the signature of the Deputy Director Administration, New Delhi. It has been stated in the order that the transfer/posting has been ordered in public interest.

3. The petitioner has challenged the aforesaid order of transfer on the ground that the transfer has been ordered malafide and as a punitive measure, in colourable exercise of power. The contention of the petitioner is that the respondents have made departure from the Guidelines/norms adopted for posting/transfer of S.I.D.O. Officers issued by Government of India, Ministry of Industry, Office of the Development Commissioner, Small Scale Industries, New Delhi, dated 8-12-1991 (Annexure A-4 to the petition) not on account of any public interest but because of the background of the facts happening in a sequence which caused prejudice against the petitioner in the minds of the respondents and as such, the impugned order of transfer was issued in colourable exercise of power. These facts are narrated in the petition as well as in the misc. application No.522/93 for amendment and are as follows:-

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- (1) One Ajai Kumar, who claimed to be related to a Member of Parliament was working in the office of the petitioner and he had been administered warning in February, 1991. He made a complaint against the behaviour of the petitioner in July, 1991. In April 1992 there was a meeting of the Senior Officers of the Department and at that time the petitioner was told confidentially by the Joint Development Commissioner, New Delhi, that some V.I.P. had lodged a complaint against him. Later the nature of the complaint turned out to be the same as the complaint made by Ajai Kumar. After a preliminary enquiry conducted by the Director, S.I.S.I. at the instance of the Joint Development Commissioner, the petitioner was given written warning in December 1992 on the basis of the preliminary enquiry. The petitioner asked for a copy of the preliminary enquiry report on the basis of which the warning

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was given, so that he might make an effective representation^{for}, but he was not supplied the copy of the enquiry report. The stand of the respondents before this Tribunal is that the written warning given to the petitioner was administrative in nature and is not by way of punishment, but no provision for giving written warning otherwise than by way of penalty has been shown.

2. Earlier in September 1992, the petitioner had to file O.A. 1291/92 before this Tribunal against the Department for reimbursement of the amount paid by him to Military Hospital, Ranchi, under the Medical Attendance Rules since his claim was not settled.

3. In connection with one Contempt petition No.1025/92 in O.A. 1099/89 A.K. Srivastava Vs. Union of India, in which the respondents were impleaded as respondents, the petitioner had already written to the Higher Authorities for making the compliance of the judgment of the Tribunal. But because the compliance was not made, the Tribunal warned the contemnners, which caused annoyance to the Joint Development Commissioner, New Delhi, against the petitioner.

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4. On 5-1-93, the petitioner was told on phone by the P.A. of the Joint Development Commissioner, New Delhi, that the Joint Development Commissioner was very unhappy with the petitioner and wanted to talk to him on phone. When the petitioner contacted the Joint Development Commissioner on phone he was scolded by the Joint Development Commissioner and was asked how he dared to challenge the warning letter and how he dealt with the contempt case and said "remember, Departmental action shall be

taken against you and you must be ready to tie up your bag and baggage." Then on 6-1-93 the petitioner wrote a D.O. letter to the Joint Development Commissioner and prayed to him not to take such serious action against the petitioner, otherwise it would jeopardise his family's interest and the petitioner will suffer irreparable loss as the marriage of his daughter was under negotiation, but instead of giving any consideration to the petitioner's representation the petitioner has been ordered to be transferred to Madras.

4. The impugned order of transfer dated 2-2-93 has followed in the wake of the happenings in a sequence as stated above. The petitioner has averred that, although the transfer is made by the order of the Development Commissioner, it was really handled by the Joint Development Commissioner. The respondents have not made specific denial in reply to this averment nor in respect of the averment about the said telephonic talk as averred by the petitioner.

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5. It has, therefore, been submitted on behalf of the petitioner that in the circumstances of this case as stated above the petitioner has been ordered to be transferred for extraneous reasons and not on the ground of public interest as stated in the order. It is also submitted that the transfer order is arbitrary, being against the guidelines framed by the Government of India and adopted by the Organisation.

6. The Guidelines/Norms adopted for posting/transfer of S.I.D.O. Officers as framed by the Government of India, Ministry of Industry, Office of the Development Commissioner, S.S.I., dated 8th December, 1991 (Annexure A-4 to the petition) contained the following statements relevant for the purposes of this case;

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" Due to the absence of clear Norms/
Guidelines with regard to transfer/
posting in the organization many Officers
continue to remain at a particular station
without any disturbance, while some others
have faced transfers from one station to
another.
.....

In order to overcome these impediments
and to mitigate as far as possible the
difficulties faced by the officers on
transfer from humanitarian or economic
considerations and also keeping in view
the over-all interest of the organization,
need has been felt to adopt some norms/
guidelines for transfer and posting in
the organization.

Accordingly, it has been decided to
adopt the undermentioned guidelines for
transfer/postings in the organization:-

(1) These guidelines are indicative and
general in nature and will not confer any
right on any officer for seeking or
resisting any transfer on the basis of
these guidelines. The Government reserves
the right to transfer any Officer to any
part of the Country, in the exigencies
of the Public service.....

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Of all other stations, not covered
by Para III above, the tenure will
normally be 5 years (Para III mentions
the Region comprising of Assam, Meghalaya,
Arunachal Pradesh, Nagaland, Manipur and
Tripura and provides that all officers
shall be posted at Stations in that region
for one tenure of 3 years)

Officers who are within 3 years of
their date of superannuation will not

be transferred unless it involves
promotion or unless exigencies of public
interest specifically demand such transfer
or to meet transfer request of the officers
concerned subject to availability of
vacancies at a particular station where
the officers propose to settle down
after superannuation."

(Underlining is mine)

7. The petitioner's contention is that within three years of his date of superannuation, he could not have been transferred. As such, according to the aforesaid guidelines for transfer/posting in the organization, the petitioner could not have been transferred unless exigencies of public interest specifically demand such transfer.

8. Before filing this petition the petitioner made a representation dated 8-2-93 to the Development Commissioner (respondent No.2) against the impugned order of transfer, but the said representation does not appear to have been decided, as the petitioner has not been informed of any action taken on the said representation. The petitioner has filed a letter dated 19-7-93 (Annexure A-1) issued from the office of the respondent No.2 whereby the petitioner has been directed to report to R.T.C., Madras, the transferred place of posting by or before 10-8-93. Apparently the respondents, till date, have not considered the petitioner's representation against the said order of transfer and without deciding the said representation insisted for compliance of the order of transfer.

9. The learned counsel appearing on behalf of the respondents has submitted that the representation could

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not be decided on account of pendency of this petition. It has been further submitted that the petitioner's representation should be presumed to have been rejected. I am unable to agree with this submission of the learned counsel for the respondents. The decision, whether of allowing or rejecting the representation, can be taken only after due application of mind and there can be no presumption of rejection of a representation which has apparently been ignored and not considered. In the circumstances, the petitioner's representation must be held to be still pending before the respondents for sympathetic consideration and decision.

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10. In the instant case the order of transfer states that the transfer has been ordered in public interest. The contention of the petitioner is that the mention of public interest has been made a reason of transfer to cover up and conceal the true reason which is founded on malafides. According to the learned counsel for the petitioner, the order of transfer has been issued as a result of annoyance of the Joint Development Commissioner and as a punitive measure against the petitioner.

11. The petitioner has narrated the facts in the Misc. Petition No.522/93, as stated hereinabove and if those facts were accepted to be true, the natural inference that can be drawn is that the order of transfer was not an innocuous order made bonafide or in public interest. Further, if personal whim of the authority instead of public interest be a reason behind the issue of transfer order, the departure from the aforesaid guidelines of the organization which prohibits the transfer of an

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officer like the petitioner who is within 3 years of his date of superannuation, is rendered arbitrary, and as such not sustainable in law.

12. According to the averment of the petitioner, the Joint Development Commissioner has got annoyed with him unreasonably and had given him warning of his transfer, on telephone, and that the order of transfer was really handled by the Joint-Development Commissioner though issued by the Development Commissioner, as stated by the petitioner.

13. The learned counsel appearing on behalf of the respondents has pointed out that the Joint Development Commissioner has not been added as a respondent and has contended that ^{no finding on} these allegations against the Joint Development Commissioner can be given unless the Joint Development Commissioner is personally impleaded by name in the array of respondents so as to enable him to answer the allegations of malafides made by the petitioner. In support of the aforesaid submission, the learned counsel for the respondents has placed reliance on a decision of the Jodhpur Bench of the C.A.T. in the case of Mahendra Kishore Sharma Vs. Union of India and Others (1992 - 20 A.T.C. 66). I find myself in agreement with the view taken in the case cited. Consequently, I hold that no conclusive finding of malafides or of colourable exercise of power in making the impugned order of transfer can be given in the absence of impleading the Joint Development Commissioner by name in the array of respondents.

14. In view of the above discussion and in the circumstances of this case, I deem it fit to direct and do hereby direct that the respondent No.2 shall consider the representation dated 8-2-93 of the petitioner sympathetically and decide the same with due application of mind, having regard to the fact whether the Joint Development Commissioner had anything to do in the making of the decision to order transfer of the petitioner, as well as the fact of personal difficulties as stated by the petitioner and having regard to his normal expectation, arising from the Organization's guidelines for transfer, of not being disturbed within last 3 years of his date of superannuation. It is also directed that the petitioner shall not be compelled to comply with the order of transfer before the aforesaid representation of the petitioner is decided.

15. With the above directions as aforesaid, the petition stands disposed of. No order as to costs.

R. K. Vaidya
VICE-CHAIRMAN

Dated: 13 /8/93.