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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 1799 of 1993

Chandra Shekhar Misra Applicant.

Versus

The Union of India
and others Respondents.

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the relief prayed for is that the order dated 25.11.1993 passed by the respondent No. 2 (Annexure - A 7) transferring the applicant from Customs Gorakhpur to Central Excise Division, Faizabad be quashed. Since the pleadings were complete in this case and counter and rejoinder affidavits exchanged, it was decided with the consent of the parties, to finally hearing the application and dispose of the same.

2. The factual matrix in this case is that the petitioner was appointed as a Sepoy in Central Excise, Allahabad on 6.1.1984. Subsequently, he was posted in the Customs at Gorakhpur in December, 1990 and later to the department of Customs(P) Gorakhpur in November, 1991. He has since then been working at Customs(P) Circle Gorakhpur until he was transferred by the impugned order dated 25.11.1993 (Annexure- A 7) which is under challenge in this application.

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This transfer order came in the wake of certain complaints lodged against the applicant among others into which certain preliminary investigations were carried out.

3. The applicant has assailed the impugned order on several grounds. Briefly stated these are the following;

- (i) that the transfer is violative of the departmental guidelines in this regard;
- (ii) that the petitioner has been transferred on the basis of a complaint and as such, the transfer order is penal in nature;
- (iii) that no enquiry was held against the petitioner before transferring him;
- (iv) that the impugned order is violative of Articles 14 & 16 of the Constitution;
- (v) That Class-IV employees should not be transferred.

4. In their counter affidavit, the respondents have submitted that the entire anti-smuggling operation across the Indo-Nepal Border, is being looked after by a separate Preventive Collectorate, namely, Collectorate of Customs(Indo-Nepal Boarder) Preventive Patna. For the State of U.P., which also has a border with Nepal, there are more than 30 customs formations. All these customs formations lie within 3 groups located at Gorakhpur, Lucknow and Varanasi each headed by an Assistant Collector.

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The Collectorate of Customs(Preventive),Indo Nepal Border does not save a separate cadre of its own but draws its staff for anti-smuggling work in Uttar Pradesh from Central Excise Collectorate, Allahabad. This is how, the applicant who was staff of the Central Excise Collectorate, Allahabad was drawn by the Collectorate of Customs (Preventive) Indo- Nepal Border for anti-smuggling work at Gorakhpur.

5. The respondents have further submitted that on 7.10.1993 one R.S. Pandey and one Radha Raman Tripathi, appeared before the Assistant Collector, Customs Gorakhpur along with one Jhanwar Singh, a Nepali National and lodged a complaint about snatching of Rs. 80,000/- from Jhanwar Singh on 6.10.1993 by a checking party of the Customs Department. On preliminary enquiry, it could be established that the checking party in question comprised the applicant among others. However, subsequently, the complainants did not turn up and they all submitted written statements to the effect that they have not made any complaint. The statement of Jhanwar Singh was infact a sworn affidavit. The respondents submit that the anti-smuggling work on the Indo Nepal Border being of a very sensitive nature, the Government has provided for a quick turn over of the staff engaged in this operation and that personnel of high integrity can only be engaged on such operation. The applicant had to be transferred out since there was a prima-facie case of his involvement in the

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- 4 -

alleged snatching of Rs. 80,000/- from a Nepali National while carrying out checking and thus his integrity came under a cloud. The transfer was also necessary to facilitate the proper and detailed enquiry into the allegations.

6. I have heard the counsel for both the parties and carefully perused the record.

7. In the light of the averments made in the petition and the counter and rejoinder affidavits, I shall now proceed to deal with the various grounds on which the applicant has sought to assail the impugned order of transfer.

8. The first ground listed in para 3 of the judgment is regarding the violation of guide-lines in issuing the order of transfer. There are rival contentions of the applicant and the respondents as to what correct guide-lines are in this regard. The applicant has relied on the guide-lines issued by the Principal Collectorate, Kanpur on 27.3.1992, extract from which has been placed at Annexure-A 12. In terms of Clause-19 of these guide-lines, normal tenure in customs (Preventive) Collectorate would be 4 years. On completion of the tenure, the officer would be reverted to Central Excise Formations and be eligible for reconsideration for Customs (Preventive) Collectorate after a cooling off period. The applicant contends that these guide-lines are being violated

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by posting him out of the Customs (Preventive)
Collectorate before completion of tenure of 4
years. The respondents on the other hand, have
averred that clear cut instructions for the staffing
the posting Excise Staff placed at the disposal of
the Patna (Preventive) Collectorate have been laid
down in a letter dated 20.12.1983 by the Ministry of
Finance, Government of India. Though a copy of the
said letter has not been annexed to the counter
affidavit, a copy of the same was made available by Sri
C.S. Singh, learned counsel for the Respondents
during the course of arguments. This letter stipulates
that the services of officers shall be placed at the
disposal of the Collectorate of Customs(Preventive)
Patna ordinarily for a period of 5 years but such
officers can be reverted to their parent collectorate
even before the expiry of the period of 5 years. It
further stipulates that no officer in the field/land
custom station within the charge shall ordinarily
be kept in the same post/station for more than 2
years. The respondents claim that these guide-lines
have not been violated in transferring the applicant.

9. Whatever be the guide-lines which are
application in this case, there is no doubt that
these guide-lines are in the nature of executive
instructions. The question whether the transfer
order can be challenged for violation of such
Executive Instructions, has been set at rest by the
principle enunciated in the case of Shilpi Bose (Mrs)

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and others Vs. State of Bihar and others, 1992 SCC (L&S)127. In this case it was held by the Supreme Court that even if a transfer order is passed in violation of Executive Instructions or order, the court ordinarily should not interfere with the order. The applicant has not been able to make out any extraordinary ground that would warrant this Tribunal to interfere with the transfer order merely on the ground of alleged violation of guide-lines relating to transfer.

10. This leads me to the consideration of the plea taken by the applicant that the transfer is penal in nature. This point has been argued for and against at considerable length by Dr. R.G.Padia, learned counsel for the applicant and Sri C.S.Singh, learned counsel for the Respondents. Both the counsel have sought to rely on a number of case laws. I shall refer to some of those.

11. Among the decisions cited by Dr.R.G.Padia, learned counsel for the applicant, one is that of the Supreme Court in the case of State of U.P. and others Vs. Jagdeo Singh, AIR1984 SC,1115.

In this case, the facts were that the respondent was working as Station House Officer at Chandpur Police Station in U.P. The respondent was transferred from Chandpur Police Station to Kotwali Police Station as second officer. The station of posting was later changed to Fatehgarh. He represented that he was entitled to be posted as Station House

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Officer but the same was rejected. He was later transferred as Second Officer to Kanpur. He filed a writ petition in the High Court at Allahabad for quashing the order transferring him as a second officer of a police station. The writ petition was allowed. In the appeal filed by the State of U.P., the Supreme Court held that it was because of the finding of negligence against the respondents and the entry of mis-conduct that he was transferred to the Fatehgarh police station as a second officer and not as a station house officer. In this manner, the respondent was deprived of a special emolument which was payable to a station house officer. On the basis of these facts, the Supreme Court held that the transfer was by way of punishment.

12. The present application is clearly distinguishable from the case of Jagdeo Singh on facts.

In the instant case, there was, yet no definitive findings as regards his involvement in the alleged incident of snatching of money during checking nor is there any entry regarding misconduct.

Moreover, it is not the case of the applicant that there is any loss of emoluments involved in the transfer. The decision of the Supreme Court in Jagdeo Singh's case is, therefore, clearly not applicable to the present application.

13. The next case cited by the learned counsel for the applicant is that of State of U.P. Vs. Sheshmani Tripathi, (1991) 2 UPLBEC, 1303. In this case decided

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- 8 -

by the Allahabad High Court, it was stated in the counter affidavit and in the original application that the transfer of the petitioner had been made on administrative ground and that a complaint was received against him in which it was alleged that the petitioner had physically assaulted a sub-ordinate security staff belonging to scheduled caste. The High Court held that since the transfer was merely on the basis of a complaint, it cannot be called a valid basis for transfer. The decision in this case also cannot apply to the present application since in this case, the order of transfer is not merely on the basis of a complaint but after a preliminary enquiry into the complaint which showed that there was a prima-facie case.

14. I shall now consider the decisions cited by Sri C.S. Singh, learned counsel for the Respondents. One of the decision cited is that of the Full Bench of the C.A.T. New Delhi in the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another, (1988) 3 ATC 352. It was held in this case that having regard to the position an employee holds and the influence he commands at the place of his posting, a proper enquiry into the complaint itself may necessitate a transfer instead of resorting to suspension. This ruling would appear to be clearly applicable to the present case, since

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- 9 -

the respondents have specifically averred that the transfer of the applicant is to facilitate investigation into the complaint against him.

15. Similarly in the case of A. Marimuthu Vs. Union of India and another, (1990)12 ATC 305, it was held by the Madras Bench of the Central Administrative Tribunal that the administration, having regard to the nature of complaint or allegation against a government servant, may come to the conclusion that it is better that he is removed from a particular work spot and transfer may be ordered. In such, circumstances, as long as the transfer itself does not visit the official concerned with adverse or penal consequences, such as reduction in emoluments, rank or status, any challenge of the transfer order would not merit consideration. This decision would also lend support of the contention of the respondents that the transfer in the present application cannot be challenged as being penal in nature, in view of the fact that the administration has come to the conclusion that it is better that the applicant be removed from his present work spot and as the transfer does not visit the applicant with any adverse or penal consequences.

16. In view of what has been discussed above, and in the light of the various decisions cited by the respondents, I am of the view that in the

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- 10 -

present case, the transfer cannot be challenged as being penal in nature, since the applicant has been transferred in order to facilitate enquiry into complaint against him and this transfer does not involve any adverse or penal consequences.

17. As regards the plea that no enquiry was held before transferring him, the same is clearly not tenable on the basis of the averments made both in the petition and in the counter affidavit which would indicate that a preliminary enquiry into the complaint was actually held.

18. The petitioner has contended that it has been held by the Supreme Court that Class-IV employees should not ordinarily be transferred and he has taken this ground among others to assail ~~the~~ the impugned order of transfer. The applicant has not, however, cited the case in which the Supreme Court has given above quoted ruling. In any case, there cannot be any rule against the transfer of Class-IV employees without any exception whatever. There have to be ^{exceptions} ~~acceptance~~ in exigencies of service and, as the applicant himself has stated, it is ordinarily that the Class-IV employees should not be transferred. The facts of this case make it clear that the transfer of the applicant is not ordinary or routine one but was warranted due to special circumstances.

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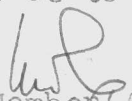
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- 11 -

19. This brings me to the ground taken by the applicant that the transfer order is violative of Articles 14 & 16 of the Constitution. As already discussed above, I do not find the order of transfer to be arbitrary or a colourable exercise of its powers by the concerned authority and as such, the same cannot be considered as violative of Articles 14 & 16 of the Constitution.

20. In the result, the petition fails, and the same is dismissed. In the circumstances of the case, I do not pass any order as to Costs.


Member (A)

Dated: 11 February, 1994.

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