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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 665 of 1993

Tara Shanker Lal Srivastava Applicant.

Versus

Union of India
and others Respondents.

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

This O.A. No. 665 of 1993 has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 15.4.1993 (Annexure- A 6) transferring the applicant from Basti to Kanpur.

2. The brief facts of the case are that the applicant while working at Basti as SDI was promoted on adhoc basis in situ as Assistant Superintendent of Post Offices. This promotion was against the newly upgraded post. Later, the petitioner along with others was considered by the D.P.C. for regular promotion and was recommended for such promotion. He was, however, allotted to Kanpur Region and was accordingly posted by the order dated 15.4.1993 which is under challenge.

3. The applicant's case is that he had been posted to Basti Division of Gorakhpur Region only in May, 1992 on transfer from Azamgarh Division on the ground that his wife is a teacher in Government Girls Inter College, Basti. He should, therefore, have been accommodated at Basti Division of Gorakhpur Region itself on his regular promotion to the post of Assistant Superintendent Post Offices (ASPOs for short). Instead of that he has been posted out to Kanpur while others have

been brought from out station at ~~Basti~~ Division to Gorakhpur Region. Infact, on his adhoc promotion to the post of ASPOs, he had submitted a representation dated 10.3.1993 (Annexure - A 3) in which he has made a specific request for being allotted to the Gorakhpur Region on his regular promotion and allowed to continue in the post in which he has already been promoted on adhoc basis.

4. In the counter affidavit, the respondents have contended that the allotment of the applicant to Gorakhpur Region has been in Public Interest. The vacancies available in Gorakhpur Region were allotted to other persons on various considerations. They have also stated that there is no compulsion to accommodate the applicant in the Gorakhpur Region merely because his wife is working in Basti. They have further stated that in his representation (Annexure - A 3) the applicant did not mention any reason for being accommodated in Gorakhpur Region.

5. It is now a settled position of law that transfer is an incident of service and unless a transfer is in violation of mandatory rules or actuated by malafide, the courts/Tribunals should not interfere with the transfer order. In the instant case, the applicant had taken a plea that the departmental instructions entitled him to allotment in the same region. However, the copy of the circular letter (Annexure- A 5) relied on by him

in this regard does not appear to be relevant to the subject. Moreover, even if, any such instructions are in existence, it has been made very clear in the case of Shilpi Bose (Mrs) and others Vs. State of Bihar and others, 1992 SCC (L & S), 127, that even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. In this view of the matter, transferring the applicant from Gorakhpur Region to Gorakhpur Region ^{Kanpur} cannot be challenged in the absence of any malafide on the part of the respondents.

4. One point, however, needs careful observation. It is that the applicant was posted from Azamgarh to Basti only in May, 1992 on compassionate ground in view of the fact that his wife is working in Basti. It is also a fact that the applicant was already working on adhoc basis as ASPOs against the upgraded post at Basti. Keeping both these facts in view, the competent authorities ^{should} normally have allowed the applicant to continue in the same post on his regular promotion. While there is no doubt that the department has every right to post the employee wherever their services are required, It appears to mean that had the facts of his recent posting to Basti on compassionate Ground and his ^{being} already working on adhoc basis in ^{an} his upgraded post been brought to the notice of the competent authorities, he would perhaps been allowed to continue in the same post at-least for some more

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time. However, this Tribunal will not like to interfere with the transfer order already issued, as the same has been stated to be in public interest, but it would like the respondents to consider the matter sympathetically and ~~to~~ see whether he can be accommodated in Gorakhpur Region against a vacancy that may have since arisen or is likely to arise in the near future. If even after such reconsideration, it does not become possible to accommodate the petitioner in Gorakhpur Region, the transfer as ordered shall be given effect to.

5. The petition is disposed of with the above observations. Parties to bear their own costs.

Member (A)
Member (A)

Dated 9 December, 1993.
(n.u.)