IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Original Application No.116 of 1993

&

Original Application No.576 of 1993.

Shri Raj Kumar Das ... ... Applicant.

Versus.

Union of India & others ... ... Respondants.

Coram:

Hon'ble Mr. A.K. Sinha, Member (J),

Hon'ble Mr. B.K. Singh, Member (A).

For the Applicant: Shri R.C. Shukla, Advocate.

For the Respondants: Shri A.K. Gaur, Advocate.

J U D G M E N T.

(By Hon'ble Mr. A.K. Sinha, Member (Judicial)).

1. These two Original Applications filed by the applicant aforenamed were taken up together for hearing as the parties in these cases are common and the reliefs claimed by the applicant are against the common respondants and, as such, for the sake of convenience, the parties have been heard and by this common judgment the two O.As. are being decided/disposed of accordingly.

2. In O.A. 116 of 1993 the applicant has sought for the following reliefs:

1. That the respondants be directed not to interfere with the workings of the applicant on the post of Typist.

2. That the respondants be directed to regularise the services of the applicant on the post of Typist with consequential benefits of seniority and arrears of salary etc.

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3. That the order dated 24.9.92 (Annexture A-12) passed by the respondant no.2 be quashed.

4. That the respondants be directed not to change the designation of the applicant from the post of Typist to the post of Gestetner Operator and pay salary of the post of Typist in the grade of Rs.950-1500 as and when the same is due with all arrears.

3. The facts of this case, on short campus, may be stated as follows:

Admittedly, the applicant, who is a graduate, was alleged to have been appointed as a casual typist by the respondant no.5 on 12.8.83. against a regular post of English Typist in the grade of Rs.260-400 and since then, the applicant has been working as such under the respondants. He was issued casual labour card bearing no.35827 (Annex. A-1) showing him as casual typist. It is alleged that while working as such at Kanpur, in the month of April 1990, he received allotment order for quarter dt.16.4.90 wherein the applicant was designated as Gestetner operator (hereinafter referred to as G/operator). On inquiry by the applicant, it was learnt that he has been redesignated as such and has been given temporary status as G/operator w.e.f.9.2.85vide order no.570-Sig/CNB/W/11/C/2 dt.17.2.87.

4. The case of the applicant is that his designation was changed to his great prejudice without giving him any opportunity which is violative of principle of natural justice. He met the authorities several times to rectify the said irregularity but all went unheeded and the last representation was made by him on 8.8.91 at the time of the inspection made by the S.P.O.(S & T)/C/HQ. And while the matter was pending before him, he was transferred to Allahabad. The further case of the applicant is that he filed representation on 17.3.92 for regularisation of his service as typist but instead of doing so, the respondants have passed the impugned order dt.24.9.92 (Annex.A-12), the relevant portions of which are quoted below:-

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" No.561E/222/26/EiiD(113)

Head Office,
Baroda House,
N. Delhi.
Dt.24.9.92.

The Dy.CSTE/Const.,
N. Railway,
Allahabad.

Subj: Regularisation of Shri Raj Kumar Das Gestetner Operator, Allahabad.
Reference: your letter No.Dy.CSTE/C/ALD/Estt. dt.23.7.92.

It is advised that Cost.wings in which Sh.R.K. Das is working falls within the jurisdiction of DRM/ALD, and his name has already been included in the priority list of Ald. Divn. As such Shri Das should wait for his turn for screening. The employee may be informed accordingly.

Sd/Illegible.
For General Manager.".

And being aggrieved by the said impugned letter, the applicant has filed O.A. No. 116/93 for the above reliefs.

5. The respondants have appeared and filed their counter affidavit repudiating the claim of the applicant and it is stated inter-alia that the applicant is working as temporary status G/operator in the office of S.S.E.T. Special, N. Railway, Allahabad and he was initially appointed as casual labour by the signal Inspector, Kanpur, on 12.8.83 purely on daily rated basis @ Rs.15/-per day. He worked as such upto 14.6.84 with breaks and during this period he was asked to carry out typing work and as he was not found to be satisfactory in typing work, he was asked to carry out the work of G/operator w.e.f. 15.6.84 @ Rs.12/- per day. It is averred that the applicant was purely on casual basis so no appointment letter was issued to him. It is further stated that the applicant had worked as casual typist from 12.8.83 to 14.6.84 and from 15.6.84 onwards he worked as casual G/operator.

6. The further case of the respondants is that the applicant came to know in the month of April 1990 that he was given temporary status as G/operator but he filed his representation on 8.8.91, and as such the application is

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barred by limitation and, on that score, it should be dismissed. On all these grounds, it has been sought to be urged that the application is liable to be dismissed as without any merit.

7. The contention of the learned counsel for the applicant, in pith and substance, is that the applicant was initially appointed as casual typist and has been working as such till today and has acquired the temporary status as such and having worked for more than 9 years should be regularised on the post of typist and should be allowed all the consequential benefits of seniority and arrears of pay. In this connection, the learned counsel drew our attention to Annexture A-5 dt.27.10.84 whereunder similar circumstances, it was urged, that the respondants had regularised the services of daily wage typist working in reservation office at New-Delhi. The learned counsel further drew our attention to the labour card no.39827 (annexture A-1) issued by the respondants to show that the applicant was initially appointed as typist. On that basis, it was urged that from the own document of the respondants, it is proved that the applicant was initially appointed to the post of typist and it was further submitted there there were various correspondances which took place between respondant no.5 and 3 which would clearly show that for the post of typist which was lying vacant on which the applicant was working and steps were being taken to post one steno and one typist in the office of S.S.T.E/Works/N. Rly.,Kanpur.

8. On the contrary, the contention of the learned counsel for the respondants was that the applicant was initially appointed as a casual daily rated basis and he was never appointed as typist. It was submitted that while working on daily rated casual labour, he was sometimes employed to do typing work in respect of which he was found to be not satisfactory and as such he was asked to carry

carry out the work of G/operator w.e.f.15.6.84 and till today he is working as such and having acquired temporary status as G/operater, he is also paid salary for that post as it is evident from the muster roll produced in court, a photo copy thereof is on the record. It was further submitted that if the applicant, on his own admission, came to know for the first time on April 1990 that he was given the temporary status as G/operater, he should not have wasted his time in filing unnecessary unstatutory representations and could have filed his case before this tribunal within time and, therefore, it was urged that the application is barred by limitation.

7. On the question, as to whether the appointment of the applicant initially was as casual labour typist or as G/operater, on this issue, the only document shown by the applicant is the labour card (Annex.A-1) wherein it was mentioned as 'typist'. No appointment letter of the year 1983 has been produced by him to show that the respondants had appointed him as casual labour typist on regular post. On perusal of the said labour card, it is true that therein it is mentioned as regards the applicant that he is 'typist' but in the absence of any proof of the original document on the basis of which the labour card was prepared, the labour card which is generally filled in by the candidate or the employee himself and that cannot be a conclusive evidence on this issue. On behalf of the applicant, reliance were placed on the several correspondances passed on between respondant no. 3 and 5 as regards the posting of permanent typist in the said section of the respondants where the applicant was said to be working and our attention was even drawn to the fact that while there was inspection of the section going on, the applicant had made his complaint before the inspecting authority in this regard which fact is also noted down in the inspection report (annexture A-3) at paragraph 5 but all these facts and circumstances which emerge from these corr-

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correspondances (annextures 2,3,4,6,7,8,) donot prove the point, according to our consideration, that the applicant was appointed as casual labour typist.

8. On the contrary, the original mustered roll produced by the respondants at the time of hearing of the argument, a photo copy thereof is substituted in its place which is on record and, on perusal of which, it would be abundantly clear that the applicant is a G/operater and he has been given the status of temporary G/operater w.e.f.9.2.85 (vide order no:570-Sig/CNB/W/11/C/2 dt.17.2.87) which fact is also corroborated by Annexture RA-I dt.22.7.91, and it further gets crystallized from the muster roll pay sheets dt.15.12.88 to 14.01.89 which, on perusal, would show that the applicant, designated as G/operater, had drawn his salary as such for that period and had even put his signature thereon without any objection to his being designated as G/operater. It is also significant to note, as we have seen from the muster roll pay sheet dt.15.6.86 to 14.7.86 wherein too the applicant had drawn his salary as G/operater and put his signature without any objection. Thus, on a consideration of the entire facts and circumstances flowing from the relevant documents, there could not be any doubt that the applicant was throughout a G/operater and was described as such and paid his salary/wages as such and he had signed the muster roll pay sheets which are on record.

9. Where, therefore, the applicant, from the relevant documents, is proved to be a G/operater and wherein he had acquired the temporary status as such, he cannot be declared to be typist and his prayer in this regard cannot be allowed. All the decisions to which the learned counsel had referred to us during the course of argument, which we donot consider to refer to, are not applicable to the facts of the instant case. To crown all, the applicant had even in the case of his transfer, put in his representation before the

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respondants describing himself as G/operater which fact is borne out from his representation petition dt.19.2.90 vide annexture A-2 to compilation no.1 of O.A. Case No.576/93 wherein he has challanged the impugned order of his transfer from Allahabad to Kanpur.

10. In that view of the matter and considering the conspectus of facts and circumstances of this case, we are absolutely clear in our mind that the application has got no merit both on facts and law and, as such, is liable to be and is being dismissed without costs.

11. Now, coming over to his O.A. No. 576 of 1993, the case of the applicant is that while he was posted at Kanpur, his father met with an accident as a result of which he was confined to bed due to fracture. The accident had occurred on 2.7.91. As the father of the applicant was the only care-taker of the mother of the applicant, and as his mother was suffering from diabeties, the applicant had no option but to move an application for his transfer from Kanpur to Allahabad on compassionate and humanitarian grounds before the respondant no.3 and the applicant was transferred from Kanpur to Allahabad vide order dt.22.7.91 passed by the respondant no.3 (vide Annex.A-1 to the application), and accordingly on 13.8.91 a direction was issued that the applicant be spared on humanitarian groun to join his new place of posting.(vide Annex.A-4). The applicant joined his duties at Allahabad in the Office of the respondant no.3 on 3.9.91 and since then he had been discharging his duties with utmost devotion.

12. The further case of the applicant is that he was allegedly working as typist (English Typist) in the grade of 950-1500/-(RPF) and he had moved representation for his regularisation as such before the General Manager (P) N. Railway which was rejected vide order dt.24.9.92 and as the applicant had no way out, he had filed the O.A.116/93

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O.A.116/93 aforementioned before this Tribunal which was listed on 12.2.93 for admission and while issuing notices to the respondant, the Hon'ble Tribunal had ordered for maintaining Statusquo as regards the work of the applicant was concerned. It is further averred that the interim order dated 12.2.93 passed by the Tribunal was served on the respondant no.3 along with the copy of the application personally on 18.2.93 and since thereafter trouble arose with the applicant. It is alleged that the applicant was asked to discharge some personal work of the respondant no.4 such as for depositing his money in the Bank etc which was neither within the official duty of the applicant nor was permissible under the law. It is further alleged that the applicant persuaded the respondants 3 and 4 to allow him to do his work in the post of typist as per direction of the Hon'ble Tribunal's order but they did not care and started harassing him and in consequence of that the applicant was transferred from Allahabad to Kanpur by the impugned order dt.8.4.93 (Annexture A-9). It is said that on receipt of the said transfer order, the applicant was greatly shocked and on account of mental tension, he was hospitalised in the Northen Rly. Medical Department and since then he was on medical leave and could not resume his duities till the doctor advised.

13. On the basis of all these material facts, it has been alleged that the impugned order of transfer was illegal, erronious and with malafide intention and that it had no approval of the respondant no.2. On all these grounds, the applicant has prayed that the impugned order dt.8.4.93 passed by the respondant no.3 be quashed and the respondants be directed not to interfere with the working of the applicant on the post of typist.

14. The respondants have filed their counter affidavit, and have denied the allegation of the applicant. The

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case of the respondant inter-alia is that the respondants gave due regards to the court's order and the applicant was allowed to discharge his duties as G/operater having temporary status and that there was no interference in his work as such. It was further averred that the transfer of the applicant was purely on the administrative grounds inasmuch as the applicant was a surplus staff at Allahabad and there was vacancy at Kanpur unit and so the applicant was transferred on administrative grounds and the allegations contrary to it are all false and cock and bull story. It was further stated that the order of transfer passed by respondant no.3 was not without jurisdiction inasmuch as Dy.Chief Signal & Telecommunication Engineer (Construction) (Resondant no.3) is competent authority to transfer temporary status staffs within his own unit and for that no approval was needed from higher authority and in this connection our attention was drawn towards the clarificatory letter dt.26.3.93 (Annexture RA-II) which, on perusal, supports the averments of the respondants in this regard.

15. On the basis of all these material facts, it has been urged on behalf of the respondants that the order of transfer was passed on the administrative ground and there was no malafide intention nor was it a colourable exercise of the power of the respondant no.3. It was submitted that there is no merit in this case and is fit to be dismissed.

16. The question that arises for our consideration is as to whether the impugned order of transfer was illegal and whether it was passed with malafide intention and colourable exercise of power or whether it was on the ground of administrative exigency ?.

17. We have heard the learned counsels of the parties and also perused the respective pleadings together with the relevant documents annexed therewith and in consideration of the facts and circumstances of the case, we notice

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notice, on perusal of the transfer order dt.8.4.93 (Annex.A-9) that the transfer order clearly mentions that the applicant who is G/operater with temporary status in the grade of Rs.950 -1500 (RPS) is hereby transferred back under S.S.T.E.(W)/NB/ GNB in the present grade and pay with immediate effect. The contention of the learned counsel for the applicant was that in the transfer order it was not mentioned that the transfer was done on administrative reasons or on the ground of public policy. If , however, the order of transfer is read in the background of the letter RA-I dt.25.9.92 whereby request was made by the Sr.Signal & Telecommunication Engineer (Works), Kanpur to the effect that the post of G/operater is lying vacant since long and one G/operater be posted, it would obviously be clear that the impugned order of transfer was passed in the exigency of service and on the administrative reasons and merely these words are not mentioned in the order of transfer that would not, in our view, make the order ipsofacto bad in law or illegal. In every such transfer orders, it is not required to be mentioned that the order of transfer is on 'administrative grounds' or'exigency of services'. It is an admitted fact that the post of the applicant is transferrable post and according to the requirement of the administration, the applicant is liable to be transferred from one unit to another unit in the same department. The transfe being an incidence of service and as and when done in the exigency of services and administrative reasons, the employe (the applicant) could not have any grievances because he ha joined the service with all these preconditions.

18. Moreover, it is quite clear from the sequences of events detailed above that earlier, the applic ant was posted at Kanpur unit and on account of his represe ntation and consideration on compassion and humanitarian grounds, he was transferred to Allahabad unit in the year 1991 and since then he was posted here. But when the post

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19. The learned counsel for the applicant contended on the basis of letter dt.21.7.92 (Annex.A-11) and submitted that in view of the specific directions contained in the said letter, the respondant no. 3 could not have given effect to the impugned order of transfer unless he got an approval thereof from the higher authority, namely, the Railway Board. On perusal of the letter, we notice that the instructions as as follows:

> "In reference to the instructions issued vide CAO/C's letter no.940-E/1-S&T/Const. dated 2nd June'92 it is advised that now onwards the office orders regarding posting and transfer of the staff under field units are to be issued only by Dy.CPO/C/K.Gate/DLI and no promotion/Adhoc promotion of staff should be issued by the field units without the approval of this office CSTE/C has further desired that no staff should be taken under your control from division or elsewhere without the approval of this office so as to restrict your present strength for the year 1992-93 which already has already been submitted to CAO/C. Office".

This letter was addressed to all the concerned officials including the Dy.CSTE/CN. Rly. Allahabad. In answer to that, the learned counsel for the respondants drew our attention to the letter Annexture CA-II dt.26.3.93 issued from the office of the Chief Administrative Officer of the Northen Railway addressed to Dy.Chief Sig.& Telecomm.Engineer (Const. Northen Railway, Allahabad, which was in respect of transfer of an employee namely Shri Laxmikant Tripathy, Temporary Wireman and in that letter, it was made clear that respondant no. 3 namely Dy.Chief Sign.& Telecomm.Engineer (C) is quite within his competence to transfer temporary status staff within his own units, and for that prior approval is not required. We have given our anxious consideration to all these material facts emerging from these letters read together in the back grounds of the sequences of events, and we are quite sanguine and are of the opinion that the impugned order of transfer was in the nature of routine transfer simpliciter on the requirement of administrative grounds.

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20. The learned counsel for the applicant submitted that because the applicant had filed O.A.116/93 for his regularisation on the post of English Typist and for a direction to the respondants not to interfere with this working as such for which he had obtained an order of 'Statusquo' from the tribunal which was personally served on the respondants, the respondant no.3 and 4 were annoyed on this account and they instead of taking official works from him started deploying the applicant in their personal works like depositing money in Bank etc. and, therefore, it was urged that out of malafide reasons, the applicant was ordered to be transferred from Allahabad to Kanpur.

21. It is now well established rule of law that Tribunal should not ordinarily interfere with an order of transfer when a Govt. servant is in a transferrable post and the transfer is the incident of service. It is only when a transfer of a Govt. servant is proved to be a malafide one or against the statutory rules or orders, then the Tribunal has to intervene with such order of transfer. In this particular case, as we have seen in our discussion above that the applicant is in a transferrable post and as a matter of fact he was posted earlier at Kanpur unit as G/operater wherefrom in the year 1991 he was transferred to Allahabad on his own request on the compassionate ground and the said transfer order was also passed by the respondant no.3 and that was said to be quite legal but now when the same authority on the administrative reasons has transferred him to Kanpur back to his post which was was lying vacant since long, the order has been challanged to be malafide. In the facts and circumstances, we are of the view and hold accordingly that the contention of the learned counsel for the applicant on this issue does not appear to us to be at all convincing.

21. It is now also a well established principle

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principle of law that malafide has to be proved as a fact like any other facts and the onus of proving the same lies on the party who so alleges it. In the instant case, the applicant has no doubt pleaded that the impugned order of transfer was malafide and stated that because the 'status-quo' order was served personally on the respondants 3 so he was annoyed and passed the impugned order of transfer against him. Courts of law cannot draw inference of malafide on such ipse-dixit statements in the pleadings. Inference of malafide must be based on firm foundation of facts pleaded and established and not merely on insinuations and vague allegations. When post is transferrable and no representation against the transfer on the ground of hardship was made and, on the contrary, on receipt of the order of transfer, sickness on medical ground was procured on the same date, it gives us an impression that in order to avoid the transfer, the applicant got a sickness reported and the allegations of malafide being vague and general in nature have not been substantiated.

22. In that view of the matter, we hold, in the conspectus of facts and circumstances, that the applicant has failed to prove and establish that the impugned order of trasfer dated 8.4.93 (Annexture A-9) was malafide and colourable exercise of powers by the respondants. We further hold that the impugned order of transfer was on the ground of administrative exigency.

23. The result, therefore, is that this application has got no merit and the same is hereby dismissed. But in the circumstances, there would be no costs.

24. For the foregoing reasons, both these two O.A.'s (O.A. No.116/93 and 576/93) are dismissed without costs

Member (A).

Ashok Kumar Singh.
Member (J).
13.-9-1993.

Allahabad:
Dated 13th day of September, 1993.