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THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

O.A. No. 133/93

Nand Kishore ... Applicant
Versus
Union of India & others ... Respondents

Hon. Mr. A.K. Sinha, J.M.

1. Nand Kishore, who is the applicant, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order of his transfer dated 13.1.93 contained in Annexure-I be quashed, being arbitrary and bias on the ground that he had joined Kanpur Office at his own request and cost and before completing the tenure of 4 years, he could not have been transferred. According to the applicant, the order of transfer has been passed arbitrarily and with malice in order to accommodate one Shri Ram Charen at Kanpur.

2. The respondents appeared, on notice, and filed their Counter Affidavit denying the allegations of the applicant's and stating the inter-alia that the transfer order has been passed in the interest of administration and that the completion of tenure does not come in the way in case the order has been

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passed in the administrative exigency. It has been
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stated that one Shri Shambhu Prasad, Dy./Director,
National Savings Organisation, Allahabad had retired
and in his place the applicant has been posted because
he is more senior as well as experienced Dy. Director
and, as such, his good services were very much required
at Allahabad and so he has been posted there as such;
it was submitted that there was no malafide intention
nor there was no colourable exercise of power by the
respondent No.2 for transferring the applicant by the
impugned order.

3. The respondents have also denied the allegation
that the transfer order was passed to accommodate
one Shri Ram Charan, a junior person as Dy. Regional
Director, Ghazipur to Kanpur. It is stated that
since the post of Dy. Director, Ghazipur where Shri
Ram Charan was working has been abolished and a senior
experienced Dy. Director was to be posted at Allahabad
to fill the resultant vacancy consequent upon the
retirement of Shri Shambhu Prasad, the impugned order
dated 13.1.93 was passed transferring the applicant
to Allahabad as he is more senior and well experienced
Dy. Director and considering his good services in the
administrative exigencies his services were required
at Allahabad.

4. The question for consideration is whether the
impugned order of transfer of the applicant from

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Kanpur to Allahabad is illegal, arbitrary and malafide and whether it is fit to be quashed.

5. It is a settled law that the scope for judicial interference in the transfer matter is no doubt limited to malafide arbitrariness and colourable exercise of powers of authority. In the instant case, after, ^{having} heard the Learned Counsel for the parties and going through the various annexures and the documents filed, I do not find that any case of malice, arbitrariness or any colourable exercise of jurisdiction by respondent No. 2 was made out or proved by the applicant.

6. The Supreme Court in Gujrat Electricity Board's case reported in A.I.R. 1989, S.C. Page 1433 has clearly laid down that whenever, a public servant is transferred he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty

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in moving from one place to other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to a disciplinary action under relevant rules.

7. In a very recent decision of this Tribunal held in O.A. No. 1088/91 Dr. G.R. Sethi Vs. Union of India, it has clearly been laid down that the formation of the opinion to the existence of exigency of service is left to the subjective satisfaction of the Government Authority and the Court would not judge the propriety or sufficiency of such opinion by objective standards.

8. The post of the applicant is transferable post and he can be posted anywhere in India and where, therefore, the administration has chosen the applicant in the interest of administration and exigencies of service considering his experience and good work and posted him at a more onerous job and place, it can not be said by any stretch of imagination that the order of transfer passed by the competent authority was a colourable exercise of power in order to accommodate another person.

9. It is quite clear from the averments of the parties made in their pleadings, that the post of Dy. Regional Director, Ghazipur, where Shri Ram Charan was working, was abolished and consequently in the

vacancy caused due to the retirement of Shri Shambhu Prasad at Allahabad, a more senior and experienced person, the applicant, was required to be posted and, as such, in the resultant vacancy, the said Shri Ram Charan was accommodated at Kanpur and, therefore, in that view of the matter, it can not be said that the adjustment of Shri Ram Charan at Kanpur and posting of the applicant at Allahabad by respondent No.2 was a colourable exercise of his power.

10. The Learned Counsel for the applicant has placed his reliance on the decision of this Tribunal, in the case of D.R. Sengal Vs. Chief Post Master General and others which was decided on 19.1.90 and submitted that the said decision was in all fours with the facts of this case and the principles laid down in that case should be extended to the facts of this case and the impugned transfer order should be quashed.

11. I have gone through decision of that case; on the facts of that case, it was held that the impugned transfer order was against the policy guidelines and, therefore, it was quashed.

12. In the instant case, the facts are otherwise inasmuch as the transfer of the applicant was in the interest and exigency of administration considering the seniority and experience of the applicant

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besides his good work and, therefore, it can not be said that there was any malafide or colourable exercise of jurisdiction in passing the transfer order by the respondents.

13. Considering, therefore, the facts and circumstances of the case, I do not find any merit in this application and the same is accordingly dismissed. There will be no order as to the costs.

Ashok Kumar Sinha
Member (J)

Allahabad
Dt: 31st March, 1993
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