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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1011 of 1993

Nand Kishore Sharma

... Petitioner

Versus

Union of India and Ors

... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, VC

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

R.V. —
By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought quashing of the order dated 1.6.93 of the Senior Supdt. of Post offices Muzaffar Nagar (Respondent No.3) in pursuance to the order dated 10.12.92 passed by the Post Master General, Dehradun and the order dated 12.5.93 passed by the Supdt. of Post offices Tehri (Annexure 15 to the petition). By order dated 1.6.93 passed by the respondent no.3 the petitioner has been transferred from Babri to Tehri in pursuance of the order dated 10.12.92 passed by the P.M.G, Dehradun and the order dated 12.5.93 passed by the Supdt. of Post Offices Tehri, respondent No.4.

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

The petitioner has been working as Sub-Post Master/Postal Asstt. Shamli Mandi, Shamli, Muzaffar Nagar and was elected as Branch Secretary of the National Union of Postal Department at Shamli (MZN). He made a representation

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on behalf of the union against the respondent no.5, Post Master Shamli, Muzaffar Nagar and also against the Accountant for certain alleged irregularities committed by them. As no action was taken by the higher authorities, the petitioner raised a voice against the respondent no.3, Senior Supdt. of Post offices Muzaffar Nagar. A settlement dated 1.6.92 was arrived at between the authorities and the employees vide (Annexure 1&2 to the petition) 3.

It is the allegation of the petitioner that the authorities got annoyed with the petitioner and suspended him vide order dated 4.11.92 (Annexure A-7 to the petition) On the charges of misbehaviour on the complaint of respondent no.5. The respondents also recommended that the petitioner may be transferred from Muzaffar Nagar to some other division to prevent him from the union activities and also with a view to harassing him. It has been submitted in the petition that within two years the petitioner has been transferred seven times from Muzaffar Nagar to other places. However, the petitioner has given details about his 6 transfers including the impugned transfer. The first transfer is made in June 1991 from Budna to Shamli. The second transfer is stated to be of September 1991 from Shamli to Khatauli and the third transfer is from Khatauli to Shamli Mandi in June 1992. It is stated in the petition that after the petitioner was suspended on 4.11.92, he was by order dated 10.12.92 of the respondent no.2 transferred from Muzaffar Nagar to Tehri. Thereafter, by order dated 15.12.92 he was posted at Kirti Nagar, Tehri. Thereafter the order placing the petitioner under suspension was vacated and he was posted at Babri(MZN) vide (Annexure 14 to the petition) dated 2.4.93.

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4. Finally, by the impugned order dated 1.6.93 the petitioner has been transferred from Babri to Tehri in pursuance of the order dated 10.12.92 passed by the P.M.G, respondent no.2, Dehradun and the order dated 12.5.93 passed by the Supdt. of post offices Tehri, respondent no.4.

5. The learned counsel for the petitioner has submitted that apart from the motive of harassing the petitioner the broad fact remains on record that within a short period of two years the petitioner has been transferred half a dozen times from one place to another and this fact by itself supports the petitioner's contention that he is being transferred from place to place within short intervals for collateral or extraneous purpose and not on account of administrative exigency as is the averment in the counter affidavit of the respondents who have not explained the alleged administrative exigency so as to justify the extra ordinary number of transfers within a short period of time.

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6. As regards the impugned order of transfer (Annexure 15 to the petition), the in addition to the above submission the learned counsel for the petitioner has also submitted that the impugned order dated 1.6.93 refers to an earlier order of 10.12.92 issued by the P.M.G, Dehradun, respondent no.2 and another order dated 12.5.93 issued by the Sr. Supdt. of Post Offices, as the basis for issuing the impugned order. The petitioner was already ordered to be transferred by order dated 2.4.93 (Annexure 14 to the petition) from Shamli Mandi to Babri. It is the contention of the learned

counsel for the petitioner that the order dated 10.12.92 of the P.M.G, respondent no.2 had ~~now~~ become stale and infructuous in view of the fact that the petitioner had been transferred subsequent to 10.12.92 by the aforesaid order dated 2.4.93(Annexure 14 to the petition) and as such, there is no justification to implement the stale order by the impugned order of transfer (Annexure 15 to the petition).

7. In defence of the petition, the learned counsel for the respondents has submitted that the impugned order of transfer is made on account of administrative exigency and that there are no malafides on the part of the respondents in making the said order.

8. The learned counsel for the respondents has placed reliance on the decision of Supreme Court in the case of 'Rajiv Roy Vs. Union of India and another, (A.I.R. 1993 (SC) 1236) in support of his submission that unless the order of transfer is passed malefide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer.

9. It is however, also laid down in the above case that it may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw a reasonable inference of malafide action on the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.

R.K.V.

10. The other case of the Supreme Court which the learned counsel for the Respondents has cited is (A.I.R 1993 (SC) 763) which also lays down that when the transfer is challenged in fact must be based on factual matrix.

11. In the instant case the facts firmly establish the fact of half a dozen transfers of the petitioner in a short span of 2 years. The additional circumstance pertaining to the impugned order of transfer dated 1.6.93 is that it seeks to give effect to an old order dated 28x 10.12.92 of the P.M.G, after the actual transfer of the petitioner to Babri in pursuance of subsequent order dated 2.4.93 (Annexure 14 to the petition). These facts and circumstances are unusual and have not been explained at all by the respondents and as such, they give rise to an inference in the circumstances that the impugned order of transfer is not an innocuous order free from extraneous considerations. I am therefore of the opinion that the impugned order is passed in colourable exercise of power and lacks bonafides and deserves to be quashed.

12. Accordingly, the impugned order of transfer dated 1.6.93 (Annexure 15 to the petition) is hereby quashed.

13. There shall, however, be no order as to costs.

Dated: August 30th, 1993

(Uv)

R.K. Sharma
Vice Chairman