

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 11th day of October 1996.

Original application No. 314 of 1994.

Hon'ble Mr. D.S. Baweja, AM

V.K. Upadhyaya, S/o late Sri R.B. Upadhyaya,
R/o 157 Shaahjadi Mandi, Agra.

..... Applicant.

C/A Sri G.C. Bhattacharya

Versus

1. Union of India through the Director General of Ordnance Service, Army Headquarters, New Delhi.
2. The Director General of Ordnance Service, Army Headquarters, New Delhi.
3. P.V. Ramarao, Brigadier Officer Incharge, A.O.C. Records, P.B. No.3, Secunderabad.
4. The Commandant, COD, Agra.
5. The Commandant, COD Choki, Allahabad.
6. Officer incharge A.D.C. Records, P.B. No. 3, Secunderabad.

..... Respondents.

C/A Sri Ashok Mohiley

ORDER

Hon'ble Mr. D.S. Baweja, AM

Through this application, ^{the applicant} has prayed for (a) quashing of the transfer order dated 12.2.1994 transferring the applicant from Agra to Allahabad. (b) To direct the respondents to pay to the applicant back salary, allowances and other dues from 14.5.1971. (c) To direct the respondents to allow the applicant all the service benefits including promotion, increments, selection grade, bonus and leave encashment etc. (d)

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2. The reliefs prayed for by the applicant as detailed above are plural in nature as they are unrelated to each other. During the hearing, the learned counsel for the applicant at bar made a statement that the applicant does not press for the reliefs at (b) and (c). Accordingly the relief at (a) concerning transfer has been considered in the present application.

3. The applicant while working under Commandant, COD, Agra was issued a chargesheet in 1971 and ^{the} penalty of removal vide order dated 31.3.72 was imposed. The appellate authority set aside the punishment and ordered fresh inquiry. Based on the fresh inquiry, the punishment of removal was imposed which was modified to compulsory retirement. The applicant filed a writ petition in 1982 in the High Court which stood transferred to the Tribunal in 1987. The case was decided vide judgement dated 19.8.92 quashing the punishment with a direction to conduct fresh inquiry. The applicant was reinstated treating him under suspension. After conducting the fresh inquiry, the disciplinary authority decided to drop the charges vide order dated 9.2.1994. Thereafter the applicant has been transferred vide order dated 12.2.94 under the authority of AOC, records Secundra- bad to COD Chowki, Allahabad. The applicant was directed to report at Allahabad on 14.2.94 and this order was only served on him on 14.2.1994. Being aggrieved by this order, the applicant has filed the present application on 23.2.94.

4. The applicant has challenged the impugned transfer order on the grounds (a) In terms of Army Head Quarter letter dated 11.6.1991 (A-10) ^{11/10} AOC Records Secundra- bad is not competent to order transfer and prior permission of Army Head Quarter had not been obtained. (b) After being
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illegally out of service since 1972, the transfer immediately after dropping the charges is not on administrative ground but is totally vindictive, malafide and has been done to harass the applicant further. (c) No Group 'C' Civilian employee posted at Agra has been transferred at any time as far as known and therefore the transfer of the applicant is grossly discriminatory, arbitrary, unreasonable, unjust and violative of Article 14 and 16 of the Constitution of India.

5. The respondents have contested the application by filing counter affidavit. The respondents have submitted that AOC Records Sec^ondrabad is the competent authority to pass the impugned transfer order as per delegation of power and also as per Army Headquarter's letter dated 11.6.91, those reinstated after award of major penalty of compulsory retirement/dismissal will not be posted back to the same unit. The applicant's case is covered by this stipulation. The respondents have reiterated that the transfer is neither vindictive nor malafide but ^{is} in the bona-fide exercise of power in the interest of the administration. The applicant's contention that the group 'C' is not transferred out is also refuted as the civilian employees are being transferred to other units. It is also averred that transfer of the Government servant appointed to a transferable cadre is generally condition of service and the employee has no choice in the matter. The applicant has not made any departmental representation against the transfer and instead ^{has} rushed to file the present application. The application is therefore misconceived and deserves to be rejected.

6. Vide order dated 25.2.94, it was directed that

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the applicant shall not be compelled to go on transfer. The interim stay order was extended from time to time and continued till the pronouncement of the judgement.

7. Heard the learned counsel for the parties. The applicant has filed rejoinder to the counter affidavit reiterating the averments made in the application. We have carefully gone through the material placed on the record.

8. The first ground on which the transfer order is assailed is that same is not passed by the competent authority in terms of Ministry of Defence's letter dated 11.6.91 at annexure-I. ^{11.6.91} We have carefully gone through this letter. The respondents have maintained that order is valid on account of the fact that on reinstatement on quashing of the punishment ^{order} of removal/dismissal ^{/Compulsary retirement} from service, the staff is to be posted out and in such cases prior approval is not necessary. Respondents also contend that the removal order ^{has} quashed by the Tribunal with a direction to conduct fresh inquiry and on conducting the fresh inquiry the charges were dropped and this will amount to reinstatement after the quashing of the ^{punishment} removal order. On the other hand the counsel of the applicant, during the hearing was at pains to counter this contention stating that after quashing of the order by the Tribunal, ^{the} applicant was reinstated at Agra and subsequently inquiry and dropping of the charges becomes separate issue. Therefore his case does not fall under the category warranting transfer to outstation after reinstatement as per the provisions in the letter dated 11.6.91. ^{I am} We are however not inclined to accept the defence of the applicant. The applicant has challenged

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that the transfer order is not passed by the competent authority seeking the support of the letter dated 11.6.91. This implies that the applicant accepts the legality of the instructions laid down in this letter. As per the letter on reinstatement, the transfer of the employee is to be done to another station. In view ^{of this} the applicant on quashing of the punishment order as per the direction of the Tribunal should have been posted out. But as per the order, it was directed to conduct fresh inquiry, and therefore the disciplinary proceedings stood remanded to the stage of conducting inquiry. After conducting the inquiry, the final action was to emerge. Based on the consideration of the report of the fresh inquiry, the disciplinary authority decided to drop the charges and thereby the final decision was taken. Till the fresh inquiry was conducted and final decision taken the applicant was deemed to be under suspension and therefore was continued at Agra after quashing of the original punishment order by the Tribunal. The question of the posting arose only after the final decision was taken on the disciplinary proceedings and the charges were dropped and the applicant ^{was} to be finally reinstated in service. The earlier reinstatement after quashing of the original punishment order by the Tribunal was therefore an interim phase ^{of deemed suspension}. The reinstatement ^{was} to be finally done after the action on the fresh inquiry report is taken. Keeping in view the directions contained in the policy letter dated 11.6.91 (Annexure-11), according to which on reinstatement of the employees imposed with the penalty of compulsory retirement removal/dismissal from service such an employee is to be posted out ^{and} the applicant has accordingly been posted out. In view of these facts, the argument advanced by the applicant is lacking in merit.. The next question now arises,

whether for such transfer the prior approval of the Army Head Quarter was required in terms of the letter dated 11.6.91? The respondents have pleaded that in such cases, prior approval is not necessary as the directions for transfer already exist. The applicant on the other hand has strongly reiterated that prior approval was necessary. On careful reading of the contents of this letter, ^{9 am} ~~we~~ ^{are} inclined to go with the stand of the respondents. In case of these employee who is reinstated on quashing of the punishment order of major penalty of removal/dismissal/compulsory retirement, this letter has laid down clear direction for posting out. This implies that the prior approval in such cases is not necessary as the direction for transfer out is already laid down. ^{9 am} ~~we~~ ^{are} therefore of the view that no irregularity has been committed in ordering the transfer without the approval of the Army Head Quarter.

9. The applicant has also made a plea of discrimination as no Group C employee has been transferred out as far as known to him. In our opinion this is a vague statement. Respondents have refuted this averment stating that the transfers are being done as required. The applicant has not ^{averred} ~~linked~~ whether there are any policy instructions banning on this transfers. Further the applicant's case is different as brought out above and is covered by the policy instructions in the letter dated 11.6.91. In this view of the matter, applicant's contention does not hold good.

10. The applicant has also raised ^a strong plea that the transfer is not in the interest of Administration and has been done with vindictive and malefic intentions. As deliberated earlier, the transfer ^{has been} ~~is~~ done following the policy guide ^{line m} ~~with~~ the letter dated 11.6.91, which have not

been challenged by the applicant. Further the charge of vindictive and malafide action is general in nature without elaborating the specific authority and impleading the same by name. Further the transfer has been ordered by the A.O.C. Records Secundrabad and not by the direct controlling authority at Agra. With such vague allegations without any documentary evidence to establish the malafides and vindictive action, the applicant has not made out any case which merits consideration.

11. In view of what is discussed above, ⁹ ~~we~~ find no ground for interference with impugned transfer order. The application is accordingly dismissed. The stay granted vide order dated 25.2.94 is also vacated.

No order as to costs.

Shiraj
Member - A

Arvind.