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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 9th DAY OF MAY, 1995

Original Application No.654 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

Sri Nath Kushwaha son of Sri Lathi Chandra
Kushwaha aged about 46 years as posted
Asstt. Supdt. Post Offices(A.S.P.O)
Central Sub-Division, Gorakhpur.

.... Applicant

BY ADVOCATE SHRI R.P. SINGH

Versus

1. Union of India through the Secretary
Ministry of Communication post and
telegraphs New Delhi.
2. Chief Post Master General Lucknow
3. Post Master General Gorakhpur
4. Assistant Director Ist Officer of
Post Master General Gorakhpur.

.... Respondents

BY ADVOCATE SHRI VIKRAM GUIATI

O R D E R(Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicant challenges an order
dated 19.4.94 transferring him from the post of Assistant
Superintendent Post Offices Central Sub-Division Gorakhpur
to the post of A.S.P.O South Bahraich. The ground chal-
lenging the said transfer order is that the applicant has
not completed 4 years stay at Gorakhpur and the transfer
order has been passed with malafide intention and prejudice.
Reliance in support of the plea is based on para 59 of
the P & T Manual. The other ground raised are that the
applicant's son is studying in Bsc - II year in Mahatma
Gandhi Degree College Gorakhpur and the examination is

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going to be held on 10.5.95 to 1.6.95.

2. The applicant has also alleged that he had pointed out irregularity in the engagement of one outsider Bechan Lal as Group 'D' employee but his Superior officer wanted said the Bechan Lal to be directly appointed in the alleged violation of E.D.D.A Rules.

3. The respondents have filed a detailed counter affidavit and have indicated that the order of transfer has been passed by the Competent Authority. The applicant has completed more than 3 years at the present place of posting. It has further been stated that after considering every aspect purely on administrative ground the order of transfer was passed by the Competent Authority. The applicant is holding a transferable post. In the counter affidavit the respondents have further indicated that Shiv Sahai Tripathi who was ordered to be transferred in place of the applicant had already been relieved from his post at Bahraich and the post at Bahraich is also lying vacant as the official of Bahraich had been relieved. This is creating hurdle in public work.

4. The applicant had filed a rejoinder in which he has taken the plea that the order of transfer having not been passed with the approval of the Chief Post Master General is illegal. The applicant has reiterated the averments made in the O.A. When the case was called out none appeared on behalf of the applicant. Shri Vikram Gulati, proxy counsel for Shri N.S. Singh has appeared and requested for vacation of the interim order. Since the pleadings were complete it was provided that it would be appropriate to decide the O.A finally.

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5. As far as the plea based on para 59 of the P & T Manual is concerned the same has not been shown to be Statutory but contains executive instructions. The provision of Para 59 is not mandatory. It is in the nature of a guideline. The applicant holds a transferable post and therefore he cannot insist that he should be allowed to complete 4 years of stay at Gorakhpur.

6. It is settled law on the basis of various Supreme Court decisions that the courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory Statutory Rule or on the ground of malafides. In the case of Mrs. Shilpi Bose and Ors. Vs. State of Bihar and Ors. A.I.R 1991 S.C 532 it was observed:-

" A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other, is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of its legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead effected party should approach the Higher Authorities in the Department. "

7. Similar proposition of law has been laid down in several other decisions by the Hon'ble Supreme Court (See A.I.R 1989 S.C 1433 Gujrat Electricity Board and

another Vs. Atma Ram Sangomal Poshani, Union of India Vs. S.L. Abbas 1993(3) Judgment Today page 673.) It has already been held hereinabove, that the provision of Para 59 of the P & T Manual is not Statutory and also is not Mandatory.

8. It is further relevant to indicate that the applicant had joined at Gorakhpur on 18.2.91 and even he has completed 4 years of stay at Gorakhpur on 18.2.95. After that date there remains no justification for continuation of the interim order. By seeking adjournments the applicant has achieved his purpose of defeating the implementation of the order for his transfer.

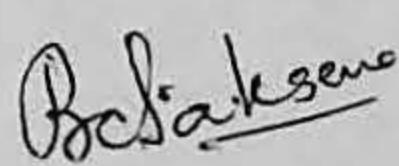
9. The allegations of malafadies are also wholly without substance. They are directed against the Post Master General Gorakhpur. He has not been impleaded by name. The allegations are therefore to be ignored. The plea that the transfer order will cause disruption in the applicant's son's studies is also wholly irrelevant.

These are the aspects which can only be considered by the Executive Authorities. The question whether an order of transfer is punitive or not depends upon the circumstances of each case. It should, however, be realised that punishment must be something more than mere inconvenience inasmuch as a transfer in all cases involve some amount of inconvenience. An Employer has an inherent right to transferring his employees and transfer is in fact an incidence of service. Obviously therefore the inconvenience caused on account of a transfer is always a consequence of transfer and needs to be suffered.

10. In the Rejoinder affidavit for the first time a plea has been taken that the order of transfer should have been passed with the approval of the Chief Post Master General and in support of this plea copy of a circular dated 1.10.93 issued by the Director General Posts, New Delhi has been annexed as Annexure RA-1. This circular provides the guidelines for transfers ⁱⁿ 1993-94. It would be in the nature of guideline only and a policy decision. It also would not govern the impugned order of transfer which was passed in a subsequent year. As has laid down by the Hon^{ble} Supreme Court in B. Vardharao Vs. State of Karnataka and Ors:-

" The norms enunciated by the Govt. for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer on the Govt. servant. "

11. In view of the discussion hereinabove, there is no merit in the O.A, it is accordingly dismissed. The interim order passed earlier is vacated.


Vice Chairman

Dated: May 9th 1995

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