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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 74 of 1994

P.N.Verma ..... .... Applicant.

Versus

Union of India & Ors. .... .... Respondents.

Hon'ble Mr. T.L.Verma, Member-J

The petitioner herein has filed this application for quashing Annexure-1 whereby he has been transferred from the Accounts Office of Ordnance Equipment Factory Kanpur to Controller of Accounts (Factories) AOA Factory Kirki and for issuing a direction to the respondents to retain him at Kanpur.

2. The petitioner was appointed and posted as Data Entry Operator on 16.4.1983 in the Accounts Office of Ordnance Equipment Factory Kanpur along with Miss Konika Roy. The applicant and Miss Konika Roy, it is stated, while working together developed intimacy and finally married on 19.2.1989. This marriage, between a Scheduled Caste boy and a Bangoli Brahmin girl, according to the applicant was not liked by some Bangoli employees of the Ordnance Factory in general and Shri M.L.Pandey, Brother-in-Law of Miss Konika Roy and other relations in particular. They, therefore, tried and succeeded in driving a wedge between them. As a result his wife has started living separately. It is stated that when the applicant failed to persuade his wife Konika Roy to return to her marital home, he, ~~xxxxxx~~, filed a suit before Family Court Kanpur for restitution of consugal rights, which is pending disposal. Not only that Miss Konika Roy, wife of the applicant, is stated to have filed a case under Section 406 I.P.C. against

the applicant before Matropolitan Magistrate Kanpur. Besides the above, two more criminal cases-(1) under Section 323,324, 506 and 498 I.P.C. and the other under Section 13 of the Prevention of Atrocities to a Scheduled Caste and Scheduled Tribe is pending before Additional District and Session Judge Kanpur (Special). The applicant is required to attend Court in all the aforesaid cases. Further, it is alleged that the employees of the factory and relations of the wife of the applicant who did not like their marriage, have managed Shri S.K.Chaudhary, Controller of the Defence Accounts (Factories) Calcutta when he visited Kanpur sometime before the impugned order was passed and got the applicant transferred out of malice and for oblique reasons against accepted norms and guidelines issued by the appropriate authority in that behalf. It is alleged that the impugned order is bad in law and as such is fit to be quashed.

3. The respondents have contested the claim of the applicant and have stated that the transfer has been made purely for administrative reasons in the interest of administration. They have denied the allegation of malafide.

4. The Supreme Court has, in Rajendra Foy Vs. Union of India, reported in 1993 Supreme Court Cases (L&S) <sup>other</sup> page 138 and series of cases thereafter, ~~not~~ clearly laid down that in a transferable post, an order of transfer is a normal consequence and as such the Courts should not interfere with orders of transfer unless the same is passed malafide or in violation of rules of service and guidelines for transfer without any proper justification. The relevant portion of the judgement of the Supreme Court is being

quoted here below for convenience of reference;

" The order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide 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.

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 reasonable inference or malafide action from 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."

The learned counsel for the applicant has not been able to show any rule which may have been violated by passing the impugned order of transfer and as such, there is no *prima facie* material to hold that the transfer is in violation of any rule. The learned counsel, however, argued that according to the para 374 of the Defence Accounts Department Office Manual Part I; where husband and wife are both serving in the department, efforts will be made to post them to, or to retain them at the same station, for the periods to the extent administratively feasible. It was stated that the applicant is entitled to the benefit of the above provision as he and his wife are posted in the same office at Kanpur. It is an admitted case that the applicant and his wife are living separately because of their estranged relations. That being so, the applicant cannot claim the benefit of the above provision. ~~in addition~~  
~~xxxxxx~~. That apart, there can be no doubt that ordinarily and as far as the practicable the husband and wife who are both employed, should be posted at the same station. This,

does not however, mean that their place of posting should necessarily be one of their choice. If ~~xx~~ for administrative reasons, it is not possible to post them at the same place, then the interest of administration ~~will~~ shall prevail and the guideline as relied upon by the learned counsel for the applicant cannot be determinative of the correctness or otherwise of the transfer order.

5. Coming to the argument of the learned counsel that the order of transfer is malafide, it may be stated that as held by Supreme Court in the case of Rajendra Roy; inference of malafide action can be drawn from 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.

I have perused the record and I find that except vague and general allegation that Brahmin employees of the factory in general and relations of his wife in particular were not happy about their marriage and have, for that reason, influenced Mr. S.K. Chaudhary and obtained his transfer order from Kanpur to Kirkee, there is no tangible material on the record to show that the employees of the factory or any of the relation of Miss Konika Roy have taken any part in getting the applicant transferred. Except insinuation and vague suggestion, there is no material as may lead to the inference that the transfer order was passed out of malice.

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6. The learned counsel for the applicant also submitted that Kirkee is a far off place and/takes about two days for coming to Kanpur from there. That being the position, the applicant/may not be able to effectively defend himself in the cases that have been filed against him and the cases filed by him.

7. It has been held in Gujarat Electricity Board Vs. A.R.Sungomal Kushani reported in AIR 1989 Supreme Court page 1433 that 'whenever a public servant is transferred, he must comply with the order, but, if, there be any 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.' The applicant does not appear to have made any representation to the appropriate authority stating the difficulty in complying with the transfer order. From the copy of the order/served upon the applicant (Annexure CA-2 & CA-3 to the Counter Affidavit), it appears that the applicant has already been relieved of his duties w.e.f. 7.1.1994 afternoon. This application was filed on 13.1.1994. We presume that the applicant by now must have joined his new place of posting. That being so and for the reasons stated above, I find no reason to interfere with the order of transfer. This application therefore deserves to be dismissed.

8. The Regard being had to the fact that ~~XXXXXX~~ four cases, in which the applicant is a party, are pending in different Courts at Kanpur. Kirkee being a far off place, it may not be possible for the applicant to be away from his head quarter to attend these cases every-now-and-then for reason of availability of leave or ~~XXX~~ financial constraints. The applicant, in my opinion, in the facts and

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circumstances of the case should have filed a representation before the competent authority for stay or change of place of posting at or near Kanpur. This, if advised, he may do, even now.

In the result this application fails and is dismissed. There will be no order as to costs. It is, however, made clear that the applicant will be free to make a representation to the competent authority about personal hardship being suffered by him in view of the impugned order. It is reasonably expected that if such representation is made, the same shall be considered by the competent authority as expeditiously as practicable.

*Thomas*  
Member-J

Allahabad Dated: 1.7.94

/jw/