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2CENTRAL ADMINISTRATIVE TRIBUNALALLAHABAD BENCHRegistration No. 793 of 1994This the day of 27 October 1994.Hon'ble Mr. S. Dayal, A.M.

R.M. Tripathi, S/o Late Shri Sukhdeo Prasad Tripathi
 R/o Ordnance House, O.E.F. Hazratpur Estate,
 Firozabad 283 103 (U.P.).
 Applicant.

By Advocate Sri K.C. Sinha.

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Chairman,
Ordnance Factory Board,
10-A, Auckland Road, Calcutta-1.
3. Shri C.N. Govindan,
Addl. DGOE/DEF Hqrs.,
G.T. Road, Kanpur-13.
..... Respondents.

By Advocate Sri N.B. Singh.

ORDERBy Hon'ble Mr. S. Dayal, A.M.

1. The applicant has approached this Tribunal Under Section 19 of the Administrative Tribunal Act, 1985, seeking the relief for quashing of orders dated 24.1.1994 and 4.5.1994 and issuance of the direction to the respondents to permit the petitioner to work as General Manager, O.E.F, Hazratpur or to adjust him in any one of the stations which have been indicated by him in the representation dated 15.2.1994, 23.3.1994 and 4.4.1994.

2. The grounds for seeking relief are said to be malice of respondent no. 3 because the applicant had pointed out ^a number of irregularities committed by the latter,

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Raising points of financial propriety in Material Management, asking for written instructions in place of telephonic instructions, the applicant's insistence for inquiry to affix responsibility in Material Management and Administrative cases which could have exposed favourites of respondent No. 3, acceptance of appeals of Shri Tejveer Singh and Shri Giriraj Singh by respondent no. 3, pointing out of irregularities in promotion/appointment of Shri Tejveer Singh, Chandraveer Singh, A.K. Kulshrestha, Pooran Singh etc. ^{which} ~~he~~ intended to implicate persons close to respondent no. 3, the presence of respondent no. 3 and DDG/G in applicant's meeting with respondent no. 2 in which the respondent no. 3 showed his bias, vindictiveness and unhelpfulness in not speaking a word, the respondent 2's offer to the applicant post him as no. 2 in Kanpur and Muradnagar showed that the respondent No. 3, a classmate of respondent no. 2, had already biased the mind of respondent No. 2 against the applicant, ~~that~~ the transfer was made without administrative exigencies, that non acceptance of the applicant's demand to post him at a station of his choice, etc. showed that the transfer order was malafide, arbitrary and not sustainable in the eyes of Law. The correspondence with the respondent no. 3 proves that he was vindictive and prejudiced against the applicant was instrumental in issuance of the transfer orders dated 24.1.1994 and 4.5.1994.


3. The counsel for the applicant Shri K.C. Sinha and counsel for the respondents Shri N.B. Singh have been heard. At the time of hearing the counsel for the applicant requested the undersigned to call for the proceedings of Staff Posting Committee. I was not convinced of its necessity but I was told that the orders had already been passed for keeping these records ready for scrutiny by

the Tribunal at the time of the hearing and the counsel for the respondents had already obtained these records. He was allowed to produce it and refer to it at the time of his presenting his arguments and it has been kept as a part or record of the case. The counsel for the applicant mentioned that the applicant was transferred by an order dated 24.1.1994 to the post of Deputy Director General Ordnance Board, Calcutta, ^{and that} he was asked by a letter dated 29.3.1994 to send his options regarding places to which he could be posted. He was asked to hand over by telex on 21.5.1994. The counsel for the applicant mentioned that the grounds of challenge are that the order was arbitrary, it was malafide and that it was discriminatory.

4. The first ground of which malafide is alleged is that the applicant was transferred inspite of having achieved record out put as reported by him to the DGOF and Chairman Ordnance Factory Board on 21.10.1993. The counsel for the applicant also stated that Shri S. Ramaswamy was transferred from the post of General Manager, Ordnance Clothing Factory, Shahjahanpur, to the post of General Manager Ordnance Equipment Factory, Kanpur, on making representation that Shri S. Sampat posted to Ordnance Equipment Factory was junior to him. However, the applicant states ^{that the same principle was not followed in his case though} ~~that he was~~ his junior Shri R.P. Mishra and J.S. Narang were posted as General Managers to OPF Kanpur and OCF Sahajahanpur. He says that his juniors are working as General Managers, Ordnance Factory, Bandra, Ordnance Factory Dehu Road. He said that ~~his~~ choice postings were given to S.A.G. Level Officer in as many as 5 or 6 cases cited by him but the applicant has not been accommodated. He has also mentioned as an example of malafide that the order placed for 5,25,000 meters of Cloth on Anglo French,

Pondicheri was rejected and another order was given to Firm at a ~~higher~~ higher rate which was subsequently not agreed to by the Associated Finance. The Addl. D.G.O.F. also did not like the applicant's reluctance to accept his telephonic order for taking the supply of material from India Cordage, Bombay, after the ^{delivery} ~~delivery~~ period. He had reported this case alongwith similar other cases of material management to the Chairman by a D.O. Letter dated 10.12.1993. The Additional D.G.O.F. was also ~~biased~~ against the applicant because the applicant's information in advance about the non availability of the material for which the Additional D.G.O.F. blamed the applicant slightly later and the applicant wanted an inquiry to ^{be made} ~~be made~~ so that the truth could ^{be ascertained.} ~~be ascertained.~~ The applicant had also reported about the irregularities in the promotions of employees particularly Sri A.K. Kulshrestha, Sri Tejveer Singh, Shri Pooran Singh and Shri Chandraweer Singh. All these irregularities were committed by the Ex-General Manager Sri S. Sampat who was ^{allegedly} ~~close~~ to the Additional D.G.O.F. The applicant had opined that the cases of illegal Gas connection in the D.E.F.H Estate could only be discovered by handing over an inquiry to Civil/Police authorities which would have exposed Shri Pooran Singh, Electrician, and Shri B.S. Chaudhary ~~E.X.D.G.M~~ of the factory, who were close to the Additional Director General, Ordnance Factory. As ~~proof~~ of discrimination the applicant had written a letter about indiscipline of some employees to respondent no. 3 but when no action was taken by him, he referred the matter to respondent no. 2. He has particularly mentioned the instance of Shri Tejveer Singh and Sri Giriraj Singh. In both these cases no action was taken by the respondent no. 3 against the persons reported on but passed favourable order in favour of such persons.

5. The counsel for the applicant further stated that there was no administrative exigencies requiring that the applicant be transferred. The transfer of the applicant was a ~~solitary~~ solitary transfer, it was made at the behest of respondent



on behalf of the respondents, ^{should be disregarded as} he is not ~~the~~ right person to give an affidavit specially as allegations of discriminations have been made against the respondent no. 3. Thus the para 21 of the counter affidavit has not been properly denied. The respondents have mentioned in para 23 of the counter affidavit that the applicant was given his posting in U.P. as per his rank in service but the applicant did not accept the posting. The posts of General Manager, Additional General Manager and Deputy Director General ~~are~~ all in the grade of S.A.G. It is mentioned by the respondents that ^a ~~the~~ number of such ^{officers who were} senior to the applicant were working as Deputy Director Generals in Head Quarters as well as Additional General Managers in factories. The instance of Sri M.M. Agarwal, Sri B. Vidyant, Sri C.K. Kotak, ^{who} were working as Additional General Managers, and Sri A.K. Rastogi and Sri D.K. Dey Sarkar, ^{who} had also worked as Additional General Managers, ^{were quoted.} The counsel for the applicant contented that if an Officer accepts such posting voluntarily he may be posted to the post of Additional General Manager or Deputy Director General. The counsel for the applicant has also said that the respondents no. 3 was a Member of the ^{Board} Factory, and the recommendation should not have been given ^{weightage.} He has mentioned that ^{an} ~~the~~ appeal has been preferred against the transfer order but the Secretary has yet to decide the appeal. The counsel for the applicant drew attention to para 5 of the rejoinder affidavit filed in response to the counter affidavit of respondent no. 3 that the respondent no. 3 was posted as Additional Director General of Ordnance Equipment Factory, Head Quarter, Kanpur and persuaded the respondent no. 2 to transfer the applicant

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he had extra influence with respondent no. 2 because he was a Classmate ^{and} an associate out of office. The counsel for the applicant has also pointed out that in supplementary affidavit dated 1.8.1994, he has given the names of six juniors who were working as General Managers, Ordnance Factories. He has also mentioned that the Ordnance Factory Cell or Export Promotion Cell, Delhi, had Sri K.C. Sikka as Incharge Officer who is ranked below 100 in the list of SAG Officers. He has also pointed out that in action of respondent no. 2 ^{he} on report of the applicant against the respondent no. 3 regarding the case of Mssrs. Anglo French Pondichery ^{showed his bias.} The counsel for the applicant has cited 1986 Volume 4 SLR Page 700, 1989 Volume 6 SLR Page 245 and 1986 Volume 2 SLR Page 69 in favour of the contentions presented by him.

7. The counsel for the respondents has contended that the transfer is not made by choice of the Officers transferred although he may have been given an option. He has said that all the instances of malafide cited ^{avg period} after May 1993 when talex regarding transfer of the applicant was issued. He mentioned that the posting Committee met on 18.5.1993 and a copy of the proceedings shows that the respondent no. 3 was remember. The Posting Committee was only a recommendatory body and the respondent no. 2 was not duty bound to accept its recommendation. There is no allegations of malafide against the authority competent to transfer. The actions alleged to have been motivated by malice were actually administrative actions which were within the powers of the respondent no. 3 in his capacity as competent authority. The counsel for the respondents also mentioned that post of Deputy Director General was equivalent ^{to that} of ~~Director~~ General

Manager and it was for administration to decide as to on which post should the applicant be posted to. He mentioned that citation did not apply to this case and cited A.I.R. 1993 SC 244, AIR 1993 SC 2486 and AIR 1993 SC 605. He mentioned that the representation made to D.G.O.F. and Secretary were disposed of.

8. The issue cut of the above facts which are required to be addressed to are whether there was any bias or malice exhibited by Respondent no. 3 towards the applicant, whether that bias or malice was material in the recommendation of the staff posting Committee and in the transfer of applicant from Ordinance Factory, Hazariput.

9. As regards the first issue, the instance given by the applicant and the response of respondent no. 3 are relevant. The personnel matters cited by the applicant including the matter of Shri Tejveer Singh (Annexure 2) do not show any bias. In the case of Shri Tejveer Singh, respondent no. 3 passed an order as an appellate authority and unless the Government decided to challenge this order, and the order was proved to be without any basis, it cannot form the basis of charge of malice. However, the fact that the applicant called for a probe into fortuitous benefit given to Shri Tejveer Singh and termed the action of Respondent no. 3 as lack of support to a General Manager for which a protest was called for and lodged, ^{could have affected the relations.} As far as the other cases cited by the applicant including those of Shri Giriraj Singh, Shri A.K. Kulshrestha, Shri Chandra Veer Singh, Shri Pooran Singh and B.S. Chaudhary, it is clear that these employees received benefits from the predecessor of the applicant rather than from respondent no. 3 and the applicant's presumption that his reporting against these employees antagonised respondent no. 3 does not establish

establish any thing more than an impression in the mind of the applicant. Thus in personnel matters only the protest of the applicant ⁱⁿ Tejveer Singh's case could have led to any antagonism of the respondent no. 3 towards the applicant.

10. The difference of opinion in case of purchases and use of materials are more important in a manufacturing environment. The difference of opinion on drill disruptive appears to have started on 16.6.93, on India Cordage supplies with effect from April 1993, on Dosuti O.G. and Blue with effect from 27.8.93, and on material management in Hazratpur on 23.11.93 (Annexure A-3). The applicant was posted to Hazratpur on 19.6.91 and the performance of the factory was very good during 91-92 and 92-93. The relationship the applicant and the respondent no. 3 appear to have soured around middle of 1993. The respondent no. 3 in his counter reply to the allegations of the applicant has shown that serious difference of opinion had come to exist between him and the applicant on the matter of material management and purchase and the action of the respondent no. 3 had come under adverse notice of the controller of Accounts as mentioned in supplementary affidavit filed by the applicant on 7.8.94. Therefore, a bias can be ^{said} ~~admitted~~ ^{have existed in the mind of} to the respondent no. 3 from June 1993. Another instance of the malice of respondent no. 3 is the offer of the respondent no. 2 during the meeting in March, 94, between the applicant and respondent no. 2 in the presence of respondent no. 3. It is alleged by the applicant that he was offered no. 2 position of Addl. G.M. in Knapur or Muradnagar due to the influence of respondent no. 3 over respondent no. 2 as both were classfellows and colleague. This allegation is based on the premise that status of posts in S.A.G. scale was G.M. on top D.D.G. and Addl. G.M., thereafter, and the postings could



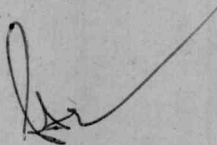
only be given on these posts based on seniority. This premise is totally faulty. The applicant could be posted to any post in the S.A.G. Scale depending on the transferring authority's assessment of his suitability for a post. Therefore, his contention that offer of Addl. G.M.'s post amounted to reversion or humiliation and showed the existence of bias is not acceptable.

11. In order that the bias of respondent no. 3 could bring about the transfer of the applicant, it was necessary to establish that bias existed before it was made and that transfer was the direct result of this bias. It is clear from the preceding paragraphs that no bias in functioning was alleged by the applicant before 1992-93 and the performance of the factory for both the years was highly satisfactory. The allegations were made by the applicant in the latter part of 1993 while the recommendation for transfer was given by the staff Posting Committee in the month of May, 1993 itself. Hence the existence of bias at the time of meeting of the Staff Posting Committee is not established. The applicant has alleged bias against respondent no. 3 who was not the transferring authority and at best was merely a member of the Staff Posting Committee. A Copy of the proceedings of the staff posting committee shows that there were as many as seven members who deliberated on and recommended the applicant's transfer. The proceedings were drawn by Member, Personnel, and shows no disagreement amongst the members. Respondent no. 3 was one of the seven members and none of the other members was lower than the rank of Member Ordinance Factory Board or Additional Director General. Therefore, the likelihood of respondent no. 3 prevailing upon six other members of equivalent rank to force a transfer of the

applicant is not very high. Besides the Staff Posting Committee appears to have had only a recommendatory role because its recommendations remained with the Director General for quite some time and other alternatives were also deliberated before the transfer order was asked to be implemented by the Director General Ordinance Factories after one year of the recommendation of the Staff Posting Committee. The applicant has not been able to establish that the transferring authority was biased. An insinuation has been made in the application and rejoinder affidavits that the transferring authority was a classmate and colleague of respondent no. 3, but he has not been able to show that the transferring authority has not exercised independent judgement in this case. As a matter of fact, he did give an opportunity for meeting to the applicant and suggested some options. Therefore, the bias of respondent no. 3 could not have had a determining influence on the transfer of the applicant.

12. The above findings do not preclude consideration of any fresh representation of the applicant ~~by the~~ by the respondents on ~~the~~ humanitarian grounds of the impending retirement of the applicant and the heart ailment of his wife for which he requires support of his relatives at the fagend of his career after a life of commitment and devotion to his job. But the forum for this action will have to be bilateral one of the management and the employees.

13. As far as the application is concerned, it fails, and none of the reliefs asked for by the applicant can




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be granted to him by the Tribunal as neither malice nor any statutory ban to the transfer has been established by the applicant.

14. There shall be no order as to costs.


(S. Dayal)
Member 'A'

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