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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 893 of 1994

G.P. Roy :::::::::: Applicant

Versus

Union of India : : : : : : : Respondents
and Others

Hon'ble Mr. Maharaj Din, Member 'J'
Hon'ble Mr. K. Muthukumar, Member 'A'

(By Hon'ble Mr. Maharaj Din, Member 'J')

The applicant has filed this application seeking the relief to quash the transfer order dated 11.5.1994 communicated to the applicant by respondent no.3.

2. The relevant facts giving rise to this application briefly stated are that the applicant was promoted from Scientist 'SD' and was posted on 16.3.94 as Scientist 'SE' at Botanical Survey of India, Central Circle, Allahabad (For Brevity sake it is mentioned hereinafter as B.S.I., C.C., Allahabad). It is stated that after expiry of one and half months from the date of promotion, the applicant has been transferred from Allahabad to Shillong in the same capacity (Annexure A-1). According to the applicant the transfer order is not passed in the public interest or on administrative ground but, the same has been illegally passed under the pressure and dictate

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of the leaders of the Employees Union. The applicant claims to have discharged his duties fearlessly and without pressure of the Union leaders, therefore, he is being victimised by the authorities who passed the transfer order under their pressure. This action of the department and the Union leaders is arbitrary. The applicant on receiving the transfer order submitted representation for cancellation of the same which is filed alongwith the rejoinder affidavit as Annexure R.A.-1. but, no heed was paid by the department, therefore, he has approached this Tribunal.

3. The respondents filed counter-affidavit and resisted the claim of the applicant inter-alia on the grounds that impugned order of transfer is neither any punishment nor ^{is passed} under the pressure of the Union leaders in arbitrary manner. It is also wrong to say that the order of transfer was passed to accomodate ^{on} Dr. R. D. Dixit, Joint Director, Botanical Survey of India, Central Circle at Allahabad.

4. We have heard the learned counsel for the parties and perused the record.

5. At the first instance, during the course of arguments the learned counsel for the applicant assailed the impugned order of transfer on the ground

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that the Director who is the competent authority to pass the order of transfer has not passed the impugned order of transfer and our attention ^{is} ~~was~~ drawn towards Annexure A-1 of the application by which respondent no.3 communicated the order of transfer and at the bottom it is written that the order of transfer ^{has been} ~~was~~ issued with the approval of the Director, Botanical Survey of India. The respondents have not been able to produce any order of transfer as such, but, in rebuttal they have produced extracts of the noting of the file on which the transfer of the applicant from Allahabad to Shillong has been approved. The noting produced before the Director suggested ^{that} ~~ed~~ that the applicant Sri G.P. Roy may be transferred to Eastern Circle and the same has been duly approved by the Director. So, the order of transfer ^{is} ~~is~~ passed by the approval of the Director who is the competent authority to pass the transfer order, we are, therefore, do not find much force ~~on~~ in the arguments put-forth by the learned counsel for the applicant in this regard.

6. Another aspect of the matter is ~~as to~~ whether the impugned order of transfer was passed in the routine manner in public interest or on administrative ground or not. It has been argued by the learned counsel for the applicant that the



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transfer order has been passed under the pressure of Employee Union leaders and to accommodate Dr.R.D.-Dixit, Joint Director, Botanical Survey of India, Central Circle at Allahabad. The extract of the noting of the file produced by the respondents is reproduced as under :

"Dr. D.M. Verma, AD, HQRS told me on 27.4.94 that DBSI had asked ^{me} to over phone from Delhi to keep ready the transfer order of Dr. G.P. Roy."

7. The above noting made in the file about transfer of the applicant clearly indicates that impugned order of transfer was passed in isolation and not in routine manner. The Director, Botanical Survey of India is stationed^{at} at Calcutta and what had occasioned and prevailed upon the Director, Botanical Survey of India to communicate on phone particularly about transfer of the applicant from Allahabad to Shillong, it reflects nothing but, that the impugned order of transfer was passed not on administrative ground. The applicant in the application as well as in the rejoinder-affidavit has repeatedly emphasised that the Employees Union leaders who were not happy by the fair and impartial working of the applicant, had prevailed upon to get him transferred from Allahabad to distant place such as Shillong. Though, the respondents in their counter-affidavit have denied this fact, yet, nothing pg.5/-



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has been put forth to explain as to why the impugned order of transfer was passed in isolation as is apparent from noting produced by the respondents themselves. So, the order of transfer in our opinion is arbitrary and vitiated by malice in law, ^{as was passed} in view of the colourable exercise of the power. Admittedly, the applicant was found suitable to ^{be} promoted to the higher rank about one and half month before and he on being promoted was locally posted as is evident from Annexure A-3 which shows that there was nothing adverse against the working of the applicant on his present posting. In the impugned order of transfer though, it is mentioned that his transfer from Allahabad to Shillong has been made in the public interest but, when there was no complaint ^{place} against the working of the applicant at the present ^{place} of his posting, how it can be termed that the impugned order of transfer was passed in the public interest. Merely to say that the order of transfer was passed in public interest or on administrative ground is not enough but, there should be some reason behind such as the employee who had completed his term of posting at the particular place or there were complaints ^a of inefficiency or otherwise against him. The learned counsel for the applicant in this connection has referred the case of 'Y. Kurikesu Vs. Sr. Supdt. of Telegraph Traffic, Trivandrum Div. & Ors. 1994(1) A.T.J^a7/(Q.A. 484/93 Ernakulam Bench) in which it has

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been held that;

"the expression 'Public Interest' is not a magic word which can do service for anything in any situation. -Nor is it a carpet under which anything could be swept. -Expression 'public interest' has a definite purport, and in a particular case such interest must be disclosed or discernible."

"Transfer order was not supported on any principle, rule or other known norm-Incumbent raised grievance needs consideration."

8. We have already discussed above that the order of transfer was passed in isolation from Delhi and was communicated through phone to the office of the Director, Botanical Survey of India, Calcutta. The impugned order of transfer was also not passed in a routine manner as no other officer of the same rank has been transferred to replace the applicant, rather Br.R.D. Dixit, Joint Director holding the post of higher rank has been deputed and posted at Allahabad in a capacity of Joint Director for a period of 90 days and was asked to take the charge of the post of Scientist 'SE'.

9. It is not disputed that the applicant will retire after two years and few months on attaining the age of superannuation and this ^{way} his last leg



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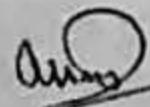
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posting on promotion so, as a policy decision of the Government, he should not be disturbed except in public interest or exigency of administration. No administrative exigency is set out by the respondents in their counter-affidavit. The respondents have referred the cases ;

1. E.P. Royappa V. State of Tamil Nadu and Others (S.C) 1974(1) SLR 497²
2. Union of India and another Vs. N.P. Thomas AIR 1993 S.C. 1605
3. Union of India and Others Vs. S.L. Abbas AIR 1993 S.C. 2444
4. Mrs. Shilpi Bose and Others Vs. State of Bihar and Others AIR 1991 SC 532.

9. The law of transfer has been reviewed in considerable detail in the decisions referred to above but, the same cannot be made applicable on the facts of the present case. So far as the present case is concerned the basic ^{question} case to be determined is whether the impugned order of transfer is arbitrary and is a result of colourable exercise of power. We have discussed above that in the counter-affidavit no reason is indicated which has occasioned to transfer the applicant from his last leg of posting to a distant place. The impugned order of transfer must be held arbitrary as it has been passed in colourable exercise of power by the Director sitting at Delhi asking on



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phone to keep ready the transfer order of G.P. Ray (applicant) alone.

10. ~~As per~~, The applicant is still not relieved and no incumbent of the same status holding the post of Scientist 'SE' has been posted to replace him, therefore, there should be no difficulty to the department to continue the applicant on his present place of posting in the same capacity.

11. A careful consideration of all the matters and circumstance of the cases^a, we hold that the impugned order of transfer of the applicant contained in Annexure A-1 is illegal and must be set aside.

12. The application of the applicant is accordingly allowed and the impugned order of transfer communicated by respondent no.3 vide letter dated 11.5.1994(Annexure A-1) is hereby quashed. The respondents are directed to permit the applicant to continue on the post which he held at Allahabad before passing of the impugned order.


Member {A}


Member {J}

Allahabad, Dated 29th July, 1994

/M.M./