

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. NO: 929/94
T.A. NO:

DATE OF DECISION: 20.12.94

----- Rajendra Chakbay PETITIONER

----- Sh. A. B. I. Srivastava ADVOCATE FOR THE
PETITIONER

VERSUS

----- U. O. & others RESPONDENTS

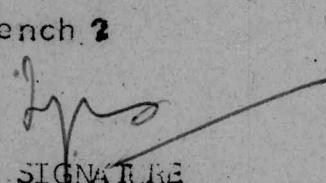
----- Sh. Sudhansu Srivastava
Sh. Arpit S. Thakkar ADVOCATE FOR THE
RESPONDENTS

COURT

The Hon'ble Mr. K. Muthukumar, A.M.

The Hon'ble Mr. J. S. Dhalwal, J. M.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?


SIGNATURE

MANISH

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Original Application no. 929 of 1994.

This the day of 20th Dec. 1994.

Rajendra Chaubey, S/o Shri Ram Sakal Chaubey,
aged about 39 years, R/o Quarter no. 3,
Postal Colony, RAMPUR, U.P.

..... Applicant.

By Advocate Sri A.B.Lall Srivastava.

Versus

1. Union of India through

The Regional Director of Postal Services,
Bareilly Region,
Bareilly.

2. The Senior Superintendent Post Offices,

Moradabad Division,
Moradabad-244 001.

..... Respondents.

By Advocate Km. Sadhana Srivastava.

CORAM: Hon'ble Mr. K. Muthukumar, MEMBER (A)

Hon'ble Mr. J.S. Dhalawal MEMBER (J)

(ORDER)

By Hon'ble Mr. K. Muthukumar, MEMBER (A)

1. The facts giving rise to this application
are briefly as follows:-

The applicant was working as a L.S.C Postal
Assistant at Rampur City. He has alleged that/another
Postal Assistant in the same department misbehaved and

him assaulted/ and despite his complaint against the Postal Assistant to the respondent no. 2, no cognisance of the applicant's complaint was taken by the said respondent. On the other hand the concerned Postal Assistant who is alleged to/assaulted the applicant, lodged a F.I.R against the applicant on 25.4.1994 and the applicant was granted bail by the Chief Judicial Magistrate on 31st May 1994. The applicant states that he was neither detained by the police nor was kept in police lock-up and he got the interim bail on the same day. The respondents, however, placed the applicant under the suspension and later on he initiating the Disciplinary Proceedings. was served with a chargesheet/ the suspension was later revoked by the order of the respondents dt. 17.6.1994 (Annexure-A-4). The applicant alleges that on the basis of the recommendation of the respondent no. 2 to respondent no. 1 to transfer the applicant to another postal division, the applicant was transferred to Darchula Sub Post Office in Pithoragarh Postal Division , the/ according to the said transfer, applicant was ordered with a malafide intention to cause obstruction to the applicant in defending himself in the criminal case pending in the court of C.J.M, Rampur. Besides, the applicant also alleges that he was transferred to the remote place like Pithoragarh within a short span that of ten months. The applicant's complaint is/under the provisions of Para 66 of the P&T Manual Volume III, the Government Servant against whom the disciplinary proceedings is contemplated should not be transferred out of the jurisdiction of the disciplinary authority and, therefore, the order of the transfer,which is the impugned order in this application, is irregular and has/ordered been with a malafide motive against the principles of natural justice.

justice. Aggrieved by the impugned transfer order, the applicant has approached this Tribunal with a prayer to quash the impugned order so as to enable the applicant ~~to~~ to defend himself in the criminal proceedings instituted against him at Rampur/ and also in the Disciplinary Proceedings. The applicant has also prayed for the direction of this Tribunal to the respondent no. 2 to stay the disciplinary proceedings as the imputation against him in the disciplinary proceedings is based on the same charge ^{are} on which the criminal proceedings ~~were~~ initiated against the applicant.

2. The respondents have strongly resisted the contentions ^{and} averments of the applicant. The respondents have denied the allegations that his transfer was ordered prejudicially against the applicant. They have also denied the submission of any complaint ^{by him} about the incident of 25.4.1994. On the other hand, the respondents have ^{was} stated ~~to~~ that the applicant/ fully responsible for the alleged incident as he had abused ~~to~~ another Postal Assistant Sri Harish Chandra Ram inside the Post Office and with the help of his son and wife, had beaten him with Shoes / Chappal in the presence of the Staff and paralysed ^a the Post Office work. The respondents have averred that there were serious complaints against the applicant for his irregular working and misconduct with the public. As far as the lodging of the F.I.R against the applicant by Sri Harish Chandra Ram was concerned, the respondents have averred that this was a private complaint and the applicant could not claim retention at Rampur on the ground that ^a criminal case had been filed against him. The respondents have further averred that on the basis of the fact that the applicant had misbehaved within the office premises during the office hours ~~in the~~

presence of Sub Post Master, there was a *prima facie* case of misconduct and chargesheet was served on him under rule 14 of the CCS (CCA) Rules, 1965. It was considered that there was no need to keep the applicant under suspension and, therefore, the suspension was revoked subsequently. The respondents have also submitted that the transfer of the applicant under rule 37 of P&T Manual Volume II was made by the P.M.G Bareilly after giving due consideration of the incident and the gravity of the misconduct committed by the applicant and the transfer did not relate to the criminal case pending against the applicant as alleged by him. In the light of the above averments, the respondents have contended that the order of transfer is quite regular and, therefore, the application is devoid of merit and is premature and liable to be dismissed.

3. The counsel for the applicant argued on the pleadings made in the application and advanced the following points in support of the contention that the impugned order of the transfer was made in the *malafide* manner and the impugned order initiating the disciplinary proceedings against the applicant on the same charge on which the criminal proceedings were initiated against the applicant, was also irregular and was liable to be quashed.

i) The respondent no. 2 was prejudiced because the applicant had brought a contempt action against the respondent no. 2 for not complying with the interim order of this Tribunal staying the transfer of the applicant. Therefore, he had encouraged his

subordinate to file a criminal complaint against the applicant.

ii) The respondent no. 2 also did not dispose of the applicant's complaint dated 27th April 1994 against Sri Harish Chandra Ram for his misbehaviour with the applicant on 25.4.1994. The respondent no. 2 has ordered the transfer of the applicant in a malafide manner when the transfer was not in the public interest and was made mainly to prevent the applicant from defending himself in the criminal case by a transfer to a remote place. The order of transfer was motivated by an extraneous consideration and is based on ~~b4is~~ and prejudice against the applicant and the authority ^{who had ordered} ~~Director of Postal Services~~, was also not competent to transfer and order such transfer out side the division.

iii) The transfer has already been made against the general policy guidelines of the Department as the applicant/transferred when he had hardly completed ten months of service in the station.

4. The counsel for the applicant relied on several decisions in support of his contention. We shall deal with these decisions in due course. The counsel for the respondents argued on the pleadings and also invited our attention to the decisions contained in two cases to which we shall revert shortly.

5. We have heard the counsel for the parties and perused the record and also referred

to the various decisions cited by the counsel for the parties on their rival contentions.

6. We find it expedient to first dispose of the contentions of the applicant regarding (i) Incompetency of the authority which ordered the transfer out side the division. (ii) The Disciplinary Proceedings having been vitiated on the ground that the charges and imputation of misconduct were already under investigation in the criminal proceedings registered against the applicant. (iii) The transfer order has been made against the transfer policy of the department.

7. The counsel for the applicant argued strenuously that the Director of Postal Services who had passed the order of transfer of the applicant out side the Postal Division was not competent and the Post Master General was the only Competent Authority to order such transfer. At our instance during the hearing, the counsel for the respondents was directed to produce the relevant order in this regard, which was produced before us later. This order dated 4.3.1994 of C.P.M.G, reveals that consequent to the transfer of the Post Master General, the Director of Postal Service was ordered by the C.P.M.G to hold the charge of P.M.G during the relevant period and, therefore, the contention of the counsel for the applicant is not tenable. As the order was passed by the Competent Authority the counsel's reliance on Dr. Ramesh Chandra Tyagi Versus Union of India 1994 SCC (L&S) 562 is of no avail.

8. Regarding the other point that the disciplinary proceedings were vitiated as the same charges were the subject matter of the criminal case, we do not find much substance in this. The criminal complaint is stated to have been lodged by another employee who was involved in the incident of 25th April 1994 in his private capacity and the exact nature of the complaint is also not on record and the departmental authority did not take any cognisance of the private complaint. It is also not clear whether the criminal complaint is also based on identical set of facts. Further the departmental proceedings have been initiated by the Competent Authority for the alleged misconduct of the applicant, in the office during the office hours causing obstruction in the official work in the Post Office and he was charged to have acted in a manner unbecoming of Government Servant under the Conduct Rules. Therefore, there is no force in this contention also.

9. In regard to the third contention of the applicant that the transfer was made against the general transfer policy of the Government and also in regard to the contention of the malafide nature of the transfer, the counsel for the applicant has relied on the decision of the Ahmedabad Bench of this Tribunal in T.R. Singhal Versus Chief P.M.G and others 1991 (15) ATC 36. In this case the transfer of the

applicant before completion of his tenure at a station was held bad and the scope of judicial review of such transfer was discussed. In this case, the respondents had relied on Gujarat Electricity Board Versus Atma Ram Sungamol Poshani 1989 SCC L&S 193 and certain other cases for establishing that transfer on administrative ground of the petitioner while not transferring others though the latter had stayed for longer period was illegal, and ~~and~~ that the transfer being incidence of service, the employee had no right to be posted at any particular place and that in the absence of the specific instance of malafide orders, the order of transfer was not subject to judicial review. The Ahmedabad Bench, however, observed as follows:-

"On a perusal of the judgments it cannot be said that any particular judgment lays down any rule or principle in any absolute sense for either sanctioning an absolute right on the part of the government to transfer its employees or prohibiting such transfers altogether. Each judgment derives its conclusion from specific facts and on the basis in some cases, of rules or instructions specifically detailing the circumstances in which the restraint placed or discretion exercised is to be guided. The alignment of the judgments to the facts and circumstances of the present case is of greater importance than going by any particular judgment as clearly various judgments emphasise different aspect of the merits of their case."

We agree with the above observations of the Ahmedabad Bench. The averments of the applicant in the present case that he was transferred against the general policy of transfer and that too beyond the divisional jurisdiction of the respondent no. 2, was not specifically contested by the respondents and, therefore, the ratio of the decision of the above case in so far as its relates to transfer, is relevant in the present case also. We do not, however, wish to hold the contention of the applicant tenable, merely on the ground that such a transfer is not in accordance with policy guidelines.

10. The main ground on which the applicant's case is based, is that the impugned transfer order was issued in a malafide and arbitrary manner and was based on extraneous consideration. It becomes necessary to see whether there is a material on record to suggest that there was an element of malafide or arbitrariness in the transfer order. In the decision *Rajendra Roy Versus U.O.I 1993 SCC (Labour & Services) Page 138*, the Apex Court held:-

" It may always not be possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and ~~an~~ antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference can not be drawn on the basis of insinuation and vague suggestions."

11. We find from the record placed before us that the applicant was placed under suspension by the order dated 9.5.1994 of the respondent no. 2 informing the applicant that the disciplinary proceeding against him was contemplated. The chargesheet dated 16th June 1994 was served on him under Rule 14 of the CCS (CCA) Rules, 1965. The charges related to the alleged misconduct on the part of the applicant relating to the incident that occurred on 25.4.1994. The applicant was charged with the behaviour unbecoming of a Government Servant as on the aforesaid date, the applicant had acted in an indisciplined manner by abusing Sri Harish Chandra Ram and beating him with Shoes/Chappals inside the Post Office during the working hours in the presence of staff. The applicant was transferred, immediately on the next day of the initiation of Disciplinary Proceedings,

by the order dated 17.6.1994 of the respondent no. 2 with reference to the memo of the Director of Postal Services dated 20.5.1994, by which date the applicant was already under suspension. By the same order dated 17.6.1994, his suspension was also revoked by the respondent no. 2 with a direction to the applicant to join as P.A Daruchala S. O. Pithoragarh.

12. In the counter affidavit, the respondents have stated in para 21 that the transfer of the applicant was made by the P.M.G Bareilly after considering the gravity of misconduct committed by him and there were serious complaints against the applicant for his irregular working and misbehaviour and harassment to the public. From this, it is obvious that the transfer was admittedly ordered, in view of the misconduct of the applicant, primarily on the incident of 25th April 1994 as admitted by the respondents in para 16 of the counter reply. They have further stated that the transfer under rule 37 of P&T Manual Volume II was made by the P.M.G Bareilly after due consideration of the incident and gravity of the misconduct committed by the applicant, in the interest of the public service. It is needless to say here that the alleged misconduct itself was a subject matter on the basis of the imputations and in the Disciplinary Proceedings initiated against the applicant by the respondents vide their order dated 17th June 1994. The respondents have not averred or shown the actual administrative exigencies or public interest served by the transfer of the applicant at the relevant time. On the other hand the respondents placed him under suspension and initiated the disciplinary proceedings also for the alleged misconduct. They have also admitted that taking into

consideration the alleged misconduct the order of transfer was issued, by revoking the suspension order and directing the applicant to join his new place of posting by the same order dated 17th June, 1994. It is, therefore, evident from this that the transfer was not ordered on overriding administrative exigencies but on the main consideration of the alleged misconduct which is subject matter of the disciplinary proceedings. The respondents can not obviously resort to the transferring of the official motivated by certain reason which itself is the subject matter of the imputation and disciplinary proceedings therefor.

13. The counsel for the respondents has on the other hand cited the judgement of the Tribunal in Sri Kamlesh Trivedi Versus I.C.A.R Full Bench Judgements of CAT 1986-89 page 80, to establish the point that the transfer order after holding an employee guilty of misconduct was held not as a penalty and, therefore, there was no question of any double jeopardy. We would, however, refer to the observations of the Apex Court in B. Vardha Rao Versus State of Karnataka and others (1986) 4 SCC 131 where the court held:-

" That a Government Servant is liable to be transferred to a similar post in the same cadre is normal feature and incident of Government Service and no Government Servant can claim to remain in a particular place or in a particular post, unless, ofcourse, his appointment itself is to a specified non transferable post."

The learned Judges further observed:-

"It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But it is one thing to say that the order of transfer which is not made ~~xx~~ ~~xxx~~ in public interest but for collateral purposes and with an oblique motives, is vitiated by abuse of powers, and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied, to the disadvantage of the concerned Government Servant. "

The Judges further go on to observe:-

"It was no doubt true that the Government has power to transfer its employees employed in a transferable post but this power has to be exercised bona fide to meet the exigencies of the administration. If the power is exercised malafide, then obviously the order of transfer is liable to be struck down."

We agree with the observations of the Full Bench in the case of Kamlesh Trivedi Supra i.e., whether a particular order of transfer is penal in nature or is a result of colourable or malafide exercise of powers or is wholly arbitrary must depend on the facts and the circumstances of the each case. When an order of transfer is challenged on any of these grounds and a *prima facie* case is made out, the Tribunal would have to examine how far it stands the judicial review. The Tribunal further cited the observations in the judgement in K.K. Jindal Versus General Manager, Northern Railway, AIR 1986 (1) CAT 304, is as follows:-

"The respondents in their counter have themselves come up with the specific allegation that he was indulging in "undesirable activities" and that he was not enjoying a good reputation. It is thus clear that but for these conclusions reached by the respondents in regard to the petitioner's conduct, they would not have transferred him. It is, thus in controversial that the petitioner's transfer was not a routine administrative transfer to meet the exigencies of service, when the respondents themselves state that the petitioner was

was transferred because he was indulging in undesirable activities, that amounts to arriving at a positive conclusion as regards his conduct. Transfer ordered upon reaching such a conclusion cannot be said to be one made merely because of bad reputation but his based on a finding as to the conduct of the petitioner which conclusion is not based on any enquiry Though transfer per-se does not constitute a punishment, in certain circumstances it may be punitive."

14. Although in the above case, the Tribunal held that the transfer made in violation of transfer policy by itself, would not be a ground for quashing the order of transfer, as observed by the Apex Court in B. Vardha Rao's case. The Tribunal, however, observed:-

"However, as any transfer has to be made in public interest and in the exigencies of the administration, if a complaint is made, that it is not ordered bonafide or is actuated by malafide, or is made arbitrarily or in colourable exercise of powers, such a complaint is open to scrutiny."

15. The counsel for the applicant has also relied on the case of Uma Shanker Versus U.O.I. 1990 (13) ATC 532, on the point that the transfer was made when no administrative exigency justifying the transfer was shown. This decision is also relevant in the present case.

16. It is necessary at this stage to deal with the preliminary contention of the respondents. The counsel for the respondents has contended the application suffers from the infirmity that it seeks to claim relief against the disciplinary proceedings in the same application and cited the decision of the Principle Bench in Sri Lachhaman Das Garg Versus U.O.I. 1990 (2) ATJ Page 313. We find that in this case

it was held that the reliefs were not inter connected . It was also held that the relief sought against the transfer of the applicant to Jaipur can not be adjudicated upon in the present proceedings, wherein the pleadings in regard to the transfer are not adequate for a proper adjudication. The facts in the above case are not ~~paramaterial~~ with the present case. In the present case, the applicant is based on a single cause of action as discussed in the subsequent paragraphs and the reliefs prayed for are also based on the same cause of action and are inter connected and we are satisfied that the Rule 10 of the C.A.T Procedure Rules, 1985, is satisfied and, therefore, this contention of the respondents is not tenable. It is, however, a different matter whether that the relief has prayed for is to be allowed or not.

17. The other contention of the counsel for the respondents is that the applicant has not impleaded any person for his allegation of malafide transfer. The applicant has, however, not alleged any malafide against any particular Officer, which would have necessitated the impleadment of that Officer in this petition. All that he has alleged is that the whole process of transfer has been done in a malafide manner. In view of this matter, the contention of the learned counsel for the respondents and his reliance on the Jodhpur Bench of the Tribunal's decision in Mahendra Kishore Sharma Versus U.O.I (1992) 20 ATC 66 are not relevant in this case.

18. The respondents have admitted that the transfer order was issued keeping in view the misconduct of the applicant associated with the incident on 25.4.1994 for which the department had contemplated the disciplinary proceedings and had also placed the applicant under suspension on that ground. The disciplinary proceedings were initiated thereafter Under Rule 14 of the CCS (CCA) Rules

1965 which is for the imposition one of the major penalties. Soon after, the respondents revoked the order of suspension and in the same order directed the applicant to proceed to the new place of posting, as the order of transfer was in the meanwhile issued, when he was under suspension.

18. From the catena of these developments and the circumstances of the transfer and the averments made by the respondents, it is evident that the preponderant reason for the transfer was motivated by considerations which did not intend to ~~sub~~serve any public interest *prima facie*, but was influenced by extreaneous considerations, which were prejudicially taken into account and, therefore, can not be considered to be wholly free from any bias. The grounds and motivation for such a transfer order in this case, clearly betrays an unseemly anxiety on the part of the respondents somehow to take the applicant off his environs, and send him to a far-off place, even if it involves seeking higher authority's approval for inter-divisional transfer. This leads to irresistible conclusion that transferring the applicant, although stated to have been made in the order, on administrative and public interest, has been employed as a convenient device to ~~subserve~~ consideration which demonstrably is not administrative in nature or in the interest of public service. We would consider that appropriate course in such circumstances for the respondents should have been to the proceed with / disciplinary action expeditiously and after necessary enquiry as per prescribed procedure, to impose an appropriate punishment if the charges are held to be proved.

19. The respondents have not demonstrated in the pleadings how the public interest was overriding or how there is administration exigency or urgency, in such a transfer when the applicant was actually under suspension which was to be followed by disciplinary proceedings for alleged official misconduct.

20. From the facts and circumstances of the case as discussed above, we are satisfied that there has been an element of bias and arbitrariness in the transfer of the applicant and there has been a colourable exercise of power and, therefore, this order deserves to be quashed.

21. In regard to the prayer for quashing the disciplinary proceedings, we, however, find that this prayer is misconceived. The Competent Authority has every right, jurisdiction and power to initiate the disciplinary proceedings, with reference to the incident of 25th April, 1994, involving the applicant where he has been charged with having acted in a manner unbecoming of Government Servant. There are no grounds to interfere with the disciplinary proceedings. In this context, it is relevant to refer to the observations of the Supreme Court, in, Union of India and others Versus A.N. Saxena 1992(3) SCC 124, wherein the learned judges observed as follows:-

"In a case, like this the Tribunal, we feel should have been very carefully before granting stay any disciplinary proceedings utter interlocutory stage. The imputation made against the respondents were extremely serious and the facts alleged, if true would establish misconduct and misbehaviour. It is surprising that without apparently considering whether the memorandum of charges deserved to be

enquired into or not, granted the stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as a Tribunal appears to have done, it would be extremely difficult to bring ~~in~~ a wrong-doer to book. We have, therefore, no hesitation in setting aside the impugned order of the Tribunal and we direct that the disciplinary proceedings against the respondents in terms of the charge-sheet dated 13th March, 1989, shall be proceeded with according to law. In-fact, we would suggest that the disciplinary proceedings should be proceeded with as an early as possible and with utmost zeal."

22. In view of the above, it will not be appropriate to allow the prayer of the applicant for quashing the disciplinary proceedings and this prayer is accordingly rejected. We suggest that the disciplinary proceedings should be continued and concluded as expeditiously as possible.

23. In the conspectus of the above discussions, the application is partly allowed and the impugned order of transfer dated 17.6.1994 is quashed. No order as to costs.

MEMBER (J)

MEMBER (A)

ALLAHABAD: DATED:-

am/