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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 24.3.95

Original Application No: 1067 of 1994

S.K.Awasthi aged about 51 years
S/O Late Vasudeo Awasthi,
R/O 1164 LIG Hemant Vihar
Kanpur.

.... Applicant.

By Advocate Shri K.C.Sinha

Versus

The Union of India & Ors.

.... Respondents.

By Advocate Shri N.B.Singh

C O R A M

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

O R D E R

The subject matter of challenge in this
D.A. is order dated 14.06.1994 whereby order No.
A-19012/38/91-Estt. I dated 20.1.94 transfering
the applicant to S.R.O. Imphal has been modified and
the applicant has now been transferred and posted
to S.R.O. Jamnagar.

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2. The facts giving rise to this application briefly stated are that the applicant was initially appointed as Assistant Superintendent and was posted at Moradabad. From there, he was transferred to Kanpur where he joined on 11.5.1981 in the same capacity. He was promoted to the post of Superintendent and posted in the office of S.R.O. Fatehpur where he joined on 11.4.1988. The applicant submitted representation for his transfer to Kanpur in the office of S.R.O. on 27.7.92. It is stated that the respondent No. 3 agree to consider his case for transfer to Kanpur as and when occasion arises. It is stated that the staff at Fatehpur office started creating problem for the applicant. In 1991, the staff under the leadership of Shri D.S.Tripathi, Assistant Superintendent S.R.O. Fatehpur, is alleged to have misbehaved with the applicant. In 1992 he was gheraoed and certain anonymous letters were sent to higher authorities. The respondent No. 4 is stated to have visited Fatehpur on 23rd & 24th of December, 1993 for making inquiry into allegations made against the applicant into the anonymous letters sent to the Head office. The respondent No. 4 is stated to have submitted report recommending transfer

of the applicant. The applicant, pursuant to the report submitted by respondent No. 3, transferred the applicant by order dated 20.1.1994 from Fatehpur to Imphal and he was directed to hand over charge to senior most Superintendent. The applicant was relieved pursuant to the order w.e.f. 31.1.1994 by order of the Regional Assistant Director, Lucknow (Annexure-3).

The applicant submitted a representation dated 16.2.1994 requesting that the transfer order may be cancelled and the applicant may be posted in the Office of S.R.O. Kanpur. The said representation was rejected and information thereof was sent to the applicant by letter dated 21.2.1994. (Annexure 5)

On receipt of the above order, the applicant filed representation/appeal to respondent No. 2 (Annexure A-6) against his transfer from Fatehpur to Imphal followed by representations dated 16.3.94, 23.4.94, 29.4.94 and 11.5.94 (Annexures A-7 to A11). On 7.7.94, the applicant received order dated 14.6.1994 by which, order dated 20.1.94, has been modified and the transfer order of the applicant for S.R.O. Imphal has been changed and he has been posted to S.R.O. Jamnagar against an existing vacancy, vide Annexure A-12.

The applicant, it is stated, is a chronic patient of Hypertension and is receiving treatment from experts at Kanpur. It is also stated that he has grown up children who are getting their education at Kanpur. ^{In addition} ~~it is stated,~~ he has to attend to his old and ailing mother who is living at Kanpur. The applicant, had, for the aforesaid reasons, made a representation dated 12.7.92 for his transfer from Fatehpur to Kanpur. The respondent No. 3, it is stated, had agreed to consider his case but instead of acceding to the request, the applicant has been transferred to far off place first to Imphal then to Jamnagar. It is stated that the above order~~s~~ of transfer is malafide, punitive in nature, against principle of natural justice, in colourable exercise of power and against rules and guidelines issued by Government of India from time to time. Hence, this application for quashing order dated 14.6.94 (Annexure A-12) and for issuing a direction to the respondents to accord all the benefits and privileges of continuity of service treating the intervening period from 20.1.94 to 14.6.94 as period on duty with all consequential benefits.

3. The respondents have resisted the claim of the applicant. In the Written Statement filed

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on behalf of the respondents No. 1,2 and 3, it has been stated that the transfer of the applicant from Fatehpur to Imphal has been made on administrative ground and in public interest.

4. I have heard the learned counsel for the parties and perused the record. Learned counsel for the applicant has stated that the applicant has been transferred on the recommendation of respondent No. 4 who had held an inquiry and thereafter, made recommendation for his transfer. It was stated that the applicant was not given an opportunity to explain his position while the respondent No. 4 was holding the inquiry. The conclusions arrived at by the respondent No. 4 and recommendations made by him on the basis of the conclusions drawn, thus, is vitiated for violation of the principle of natural justice. It was also stated that the manner in which the inquiry was conducted and transfer was made on the basis of the findings of the inquiry, itself is a clear evidence of malafide in issuing the impugned order of transfer. The respondent No. 4 Shri Mukut Singh who had held the inquiry, has filed separate Counter Affidavit wherein he has refuted the allegations made by the applicant. In para 24 of the Counter Affidavit filed on behalf of the respondents No. 1,2 and 3, it has been admitted that on receipt of complaints against the applicant, the Joint Director (respondent No. 4)

visited the place of posting of the applicant and enquired into the matter and submitted his report with his recommendation. It has not been denied that the transfer of the transfer of the applicant from Fatehpur is a sequel to the recommendation made by respondent No. 4. In view of the above admitted position, what has to be seen is whether the recommendation of respondent No. 4 can be said to be biased or malafide. The respondent No. 4 joined on transfer at Lucknow in the month of November, 1993 and he held the inspection of Sub-Regional office, Fatehpur where the applicant was posted at the relevant time on 23/24.12.1993. The respondent No. 4, thus, was only about a month old at Lucknow on the date he held the inspection and submitted inspection report. In view of the above and in absence of any tangible material showing bias on the part of the respondent No. 4, I find that there is absolutely no scope for accepting that the respondent No. 4 was biased against the applicant and as such his report cannot be said to be malafide.

5. In view of the above, the next question that arises for consideration is whether the impugned transfer order is punitive in nature. Admittedly, no disciplinary proceeding has been initiated against the applicant on the basis of the inspection report submitted by respondent No. 4.

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All that has been done as a follow up to the recommendation made in the inspection report of respondent No. 4 is that the applicant has been shifted from Fatehpur first to Imphal and then to Jamnagar. The learned counsel for the respondents has placed before me the inquiry report submitted by respondent No. 4 for my perusal. I have perused the inspection report and I find that the shifting of the applicant from Fatehpur to a place outside State of U.P. was in the interest of administration.

6. Shri K.C.Sinha, learned counsel for the applicant strenuously argued that the respondent No. 4 did not call the petitioner in the inquiry which he conducted on 23/24.12.1993, hence, the recommendation made by him was in violation of the principle of natural justice. The respondent No. 4 has, in para 9 of his Counter Affidavit stated that since he was on the inspection, he made inspection note for which he talked to various persons including the applicant. In para 10 it has, specifically, been stated that he discussed the matter with the applicant in detail. In this view of the matter, the question of violation of the principle of natural justice does not arise. That apart, a Government servant in a transferable post, can be transferred to any place. That being so, such a transfer cannot

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be said to be punitive so-as-to necessitate giving opportunity to the incumbent before he is transferred from his place of posting.

7. It was next argued that according to Rule 78 of the General Financial Rules report of transfer of a Gazetted Government servant duly made in form TR or GFR 33 and signed both by the relieved and relieving Government servants, shall be sent on the same day to the Audit Officer and/or the Accounts Officer, as the case may be. In the instant case it is stated that respondent No. 3 relieved the applicant on 31.1.1994 without observing the formality as required under Rule. Hence, it was submitted, that relieving of the applicant was not according to the procedure which vitiates the transfer ab initio. I am not persuaded by this argument of the learned counsel. The applicant handed over charge in the Afternoon (A.F.) of 31.1.1994. Shri D.S.Tripathi Assistant Superintendent took over charge from the applicant as would appear from letter dated 31.1.1994 (Annexure-1 to the C.A.). The charge list is annexed ^{but} ~~to~~ letter (Annexure-1) would show that the chargelist of S.R.O. Fatehpur was prepared on 31-1-1994 and the same has been signed by the applicant in proof of his handing over charge ~~and~~ of

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the articles mentioned therein. The charge of the post of Superintendent Fatehpur was made over by Shri D.S.Tripathi to Shri Koleshwar Singh who was transferred to Fatehpur vice Shri Awasthi on 14.7.1994. Information of his making over charge was sent to Regional Assistant Director vide letter dated 14.7.1994 (Annexure-2) including chargelist. So far as transfer of the applicant from Fatehpur to Imphal is concerned, it was given effect to w.e.f. 31.1.1994 notwithstanding the fact that formal making over and taking over of charge was not done in terms of Rule 78 of the General Financial Rules referred to above. That being so, the prayer of the applicant so far as it relates to quashing of order transferring him from Fatehpur to Imphal is concerned, has become infructuous.

8. It was next argued that while issuing order dated 14.6.1994, the respondent No. 3 has made a note that the applicant was on leave after being relieved as S.R.O. Fatehpur. This, it was stated, is against the facts because the applicant has neither applied for leave nor any leave has been sanctioned to him. Rather, he has been treated as unauthorisedly absent from duty. This self-contradictory stand of the respondents, it was submitted by learned counsel for the applicant, is *prima facie* evidence of the malafide. It was also submitted that persons ^{who} ~~to~~ have stayed for ~~tl~~ a longer period than the applicant at their places

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of posting should have been transferred and ~~that the~~ as the same has not been done, malafide can be ~~infixed~~ inferred from the said omission on the part of the respondents. The applicant was posted at Fatehpur on 11.4.1988. The applicant had completed more than 5 years at Fatehpur on the date he was transferred. The normal period of posting of a Government servant on one place is generally three years. That being so, the applicant had become due for transfer from Fatehpur. Since the applicant has been transferred not because he has completed his tenure of posting but because his transfer has become necessary. Hence, the plea of discrimination on the ground that others who had longer period of stay have not been transferred, is not tenable. So far as the question that the applicant had not applied for any leave, so the note made by the respondent No. 3 in transfer order (Annexure A-12) is an evidence of malafide, ^{is concerned the same} cannot be accepted in the facts and circumstances of this case. The applicant submitted representation on 16.3.1994 addressed to the Chief Executive Officer, N.S.S.O. Department of Statistics, Sardar Patel Bhawan, Sansad Marg, New Delhi. In that representation inter alia, he had prayed that the entire period w.e.f. 1.2.1994 till the date of justified posting may be treated as leave awaiting posting order. In addition to the above, the applicant appears

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to have applied for leave to the Regional Director, Kohima under whom jurisdiction he was transferred as is evident from letter of Divisional Assistant Director Kohima dated 6.9.1994 (Annexure SCA-1). In view of the above, there is no substance in this argument of the learned counsel for the applicant. The note given in the transfer order (Annexure A-12) that the applicant was on leave, therefore, cannot be faulted with.

9. Coming to the argument of the learned counsel for the applicant that the children of the applicants are studying in different institutions at Kanpur, ~~said~~ that he himself is undergoing treatment for Hypertension at Kanpur and that his old and ailing mother who has become crippled, cannot be shifted from Kanpur, his transfer to a far off place like Jamnagar will result in great hardship and harassment to him, ^{it} may be stated that transfers do cause hardship to the employee. But that by itself, cannot be a ground to interfere with ~~the~~ transfer made in the interest of administration.

10. While ~~parting~~ ^{parting} with the case, it may not be out of place to mention that the Supreme Court has settled the law relating to the power of Courts to interfere with the transfer in a number of decisions. In Shilpi Bose and Others

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Vs. State of Bihar reported in 1992 SCC (L&S) page 127, the Supreme Court has gone to the extent of saying that 'ordinarily, the Courts should not interfere with a transfer order which is made in public interest for administrative reasons even if the same is passed in violation of executive instructions or orders. The affected persons ~~should~~ ^{should} rather approach the higher authorities in ~~the~~ department for the redressal of his grievance if the transfer results in hardship.

11. On a careful consideration of the facts and circumstances discussed above, I am satisfied that the applicant has failed to make out a case that the impugned transfer is either punitive in nature or that the same is vitiated because of malafide and, against mandatory ^{being} provisions. I, therefore, find no merit in this application and the same is dismissed. No order as to costs.

Member-J

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