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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 12.1.95

Original Application No: 1114 of 1994

Dr. K.S.Bhattacharya
144 A, Canal Road, Cantt. Kanpur-208 004
Employed as Controller, CQA
Petroleum Products, Ministry of Defence
(DGQA) Kanpur

.... Applicant.

By Advocate Shri A.K.Bhattacharya
Shri N.K.Nair

V E R S U S

The Union of India & Ors.

.... Respondents.

By Advocate Shri C.S.Singh

C O R A M

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

O R D E R

Dr. K.S.Bhattacharya, Controller
Quality Assurance (Petroleum Products) Ministry of
Defence, (Directorate General of Quality Assurance),
Kanpur, has filed this application challenging the
validity of the order transferring him from Kanpur
to Delhi as Joint Director Vice Col. J.S.Sandhu
in the Directorate of Standardization.

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2. The applicant was initially appointed as Project Officer in the Ministry of Petroleum through Union Public Service Commission (U.P.S.C.). In 1979-80, he was selected in the Defence Research & Development Organisation. He was promoted as D.C.S.O. on 31.1.1985 and posted as Controller CQA (PP) Kanpur on 13.9.1985. Thereafter, he was promoted in the Junior Administrative Selection (non-functional Selection Grade) in pay scale of Rs. 4500-5700/- with retrospective effect w.e.f. 1.1.1986 vide Annexure A-7. As a result of the second cadre review on 20.9.1992 with a view to giving benefit of rank and status to senior most non-functional selection grade Officers, three posts of Store Disciplines of Director General of Quality Assurance Organisation, Controller CQA (PP), Controller CQA (M) and Additional Controller CQA (GS) were upgraded to a rank and status of Brigadier or equivalent to Civilian Counter part vide order (Annexure-6).

3. The further case of the applicant is that of late, he had incurred the wrath of the respondents and as a result calculated attempt was made to ease him out of the service. In furtherance of a well thought out plan, the respondents, it is stated, served, on the applicant notice, (Annexure-4) of his premature retirement on his attaining the age of 50 years. The said notice of premature retirement, however, was subsequently, withdrawn on representation being made by the applicant to the Represen-

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tation Committee of Secretaries. The respondents, while withdrawing the premature retirement, served transfer order (Annexure-1) transferring him from Kanpur to Delhi from the Quality Control Assurance Collectorate to Directorate of Standardisation.

The applicant has assailed the impugned transfer order on the ground that the same is malafide and bad in law as it was not only motivated, but was passed in contravention of rules inasmuch as he has been transferred to a lower and ex-cadre post without his consent.

4. The claim of the applicant has been resisted by the respondents. In the written reply filed on behalf of the respondents, it has been stated that the applicant has been transferred from Kanpur to Delhi in the interest of administration and that the transfer has neither resulted in the reduction of his rank nor the same has affected in his non-functional grade, he was drawing.

5. I have heard the learned counsel for the parties and perused the record. It is well settled that transfer of public servant in a transferable post is an exigency of service and may be ordered for administrative reasons. The Courts/Tribunals

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should not interfere with such transfer orders unless it has been made in violation of mandatory Rules or on the ground of malafide. Three basic questions, therefore, arise;

- i) Whether the transfer of the applicant was in the interest of administration (whether the transfer is bad for malafides and whether the same has been made in violation of mandatory rules.

the question
Taking up, whether the transfer of the applicant was in public interest, it may be stated that there is no dispute that the applicant is involved in a criminal case arising out of the alleged supply of sub-standard Grease by M/s Krishna Grease Company made during the period, the applicant was holding the post of Controller, Quality Assurance, Ministry of Defence, Kanpur. This case has been investigated by the C.B.I. and is still pending. The applicant, however, claims that he has been falsely implicated in this case. Be that as it may, no observation as to the correctness or otherwise of the claim of the applicant can be made in these proceedings. It is however, pertinent to note that the post of Controller, Quality Assurance, the applicant was holding, is very sensitive. In the circumstances, shifting of the applicant from the post of Controller to some other less sensitive post, appears to be in the interest of administration.

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6. In view of the foregoing conclusion, the second question that needs consideration, is whether the transfer of the applicant is vitiated for malafide. No specific allegation has been made against any of the respondents. No Officer of the Government of India has been impleaded by name alleging that he had moved in the matter for feeding his fad. The learned counsel for the applicant, however, has submitted that the applicant possess~~s~~ Doctorate degree in Polymer Chemistry and had been granted Fellowship by UNESCO for Doctoral Project Work at the French Institute of Petroleum, Paris and at Munis University (Germany). The learned counsel for the applicant urged that inspite of his high academic achievement and excellent performance in the department, the applicant was served with a notice for voluntary retirement. The notice for voluntary retirement, however, was withdrawn on a representation being made by him to the Representation Committee by order 5th July, 1994. While withdrawing the notice for compulsory retirement, it is stated, order for transfer of the applicant from Collectorate of Quality Assurance to Directorate of Standardisation was passed and these circumstances, according to the learned counsel for the applicant are clear evidence of malafide on the part of the respondents. The question is whether malafide can be inferred from the above facts. The competent authority, under Rules, is authorised on proper recommendation

being made by the Screening Committee to compulsorily retire a Government servant after 3 months notice or 3 months pay in lieu of the notice. The counsel for the respondent ~~H~~ argued that the notice for compulsory retirement had to be withdrawn for some technical reasons and as such, the above exercise cannot lead to any conclusion that the notice for compulsory retirement was a result of malice on the part of the respondents. Issuance of notice for compulsory retirement and also withdrawal of the same was within the competence of the Competent authority and also in accordance with the Rules. Therefore, neither inference of malice in fact or malice in law can be made there from.

7. This leads next to the consideration of the question whether the transfer of the applicant from the post of Controller Quality Assurance (PP) Kanpur to Directorate of Standardisation as Joint Director, amounts to reduction in rank. The applicant was, admittedly, holding the post of Controller, Quality Assurance which has been upgraded by order dated 18.12.1991 (Annexure-6). In the foot note of the order, with asterisk mark, it has been mentioned that rankwise controllers, will ~~H~~ be at par with the heads of other Controllerates at the level of Brigadier or their Civilian equivalents. From the record, it appears that avenue of promotion at the higher level in the Quality Assurance Service are very bleak and that with

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a view to giving incentive to the officers holding higher ranks, they were given non-functional selection grades and thereafter, three of such posts were upgraded and given the status of Brigadier and their equivalent Civilian Counter parts. It is apparent from the impugned order of transfer that the applicant has been transferred from the post of Controller to the Directorate of Standardisation, New Delhi as Joint Director in place of Colonel J.S.Sandhu. The rank of Col. obviously is a step below the rank of Brigadier. The transfer of the applicant from the post, having the status of Brigadier to the post equivalent to Col. by implication amounts to transfer to a lower post and down grading of the Officer. This, ^{has been} possibly, could ~~be~~ done only by way of punishment in a properly constituted Departmental Inquiry. The applicant, it is true, is involved in a criminal case, but the criminal case has not yet been adjudicated upon holding him guilty of the charge levelled against him. No departmental proceeding also appears to have been initiated against him. That being so, the impugned transfer cannot be said to be as a measure of punishment. Hence, the order of transfer to a lower post, cannot be sustained notwithstanding the fact that there has been no corresponding reduction in the pay, the applicant was drawing in the post Controller of Quality Assurance. It would thus appear that the transfer order has been made in colourable exercise of power and as such is vitiated by abuse of power. ^{and} ~~and~~
The man to challenge before Court ~~within~~ ^{within} ~~and~~ and void.

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8. . . The Collectorate of Quality Assurance and Directorate of Standardisation are two different organisations under the Defence Production Department. The applicant, who is a member of Quality Assurance service, it was argued, could not be transferred to the Directorate of Standardisation on an ex-cadre post of Joint Director without his consent. I have examined this question with reference to relevant provisions contained in FR 110 which reads as follows;

F.R. 110 (a)

No Government servant may be transferred to foreign service against his will:

Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

(b)

Transfer to foreign service outside India may be sanctioned by the Central Government subject to any restrictions, which it may deem fit to impose by general or special order.

From the proviso to FR 110 extracted above, it is clear that sub-rule (a) of FR 110 shall not apply to the Transfer of a Government servant to the service of a body, incorporated or not, which is wholly substantially owned or controlled by the Government. It is thus, clear that the applicant could, very well, have been transferred to the Directorate of Standardisation without his consent. The impugned order has been passed by officiating Director General Quality Assurance, but, according

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to Sl. No. 29 in Appendix-3 of the FR, the authority, competent for passing the transfer order is the head of the department. That being so, the Secretary, Defence Production who is the head of the department, only, was competent to pass the impugned order of transfer. The order has been passed by the officiating Director General Quality Assurance, who is not the head of the department. The impugned transfer order, therefore, is non est. This appears to be quite logical because the Quality Control Assurance Service and Directorate of Standardisation being two separate organisations head of the office of one organisation cannot thrust his officer on the other by transferring him to the other department. Such a transfer can be made only by the officer who controls both the departments. Secretary Defence Production, being the officer who controls both the organisation, alone, therefore, was competent to pass such a transfer order. For this reason also, the impugned transfer order cannot be sustained. I am fortified in my view by the decision of the Supreme Court in Dr. Ramesh Chandra Tyagi Vs. Union of India & Ors. reported in (1994) 27 ATC page 112. In this case, the competent authority to pass order of transfer, was Secretary, but the transfer order was issued by Director General. Supreme Court held that transfer order issued being contrary to law, was non est.

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9. For the reasons stated above, this application is allowed and the impugned order dated 5.7.1994 whereby the applicant has been transferred from Kanpur to New-Delhi as Joint Director Vice ~~Colonel~~ General J.S.Sandhu is hereby quashed. It will, however, be open to the competent authority to transfer the applicant to any post equivalent to Brigadier. There will be no order as to costs.

J. Ahluwalia
Member-J

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