

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the *sixth* day of *May* 1996.

Original Application no. 1158 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member.

O.C. Gupta, S/o Shri Sarju Prasad, A.O. (T.R), T.D.M.,  
Allahabad.

... Applicant.

C/A Shri D.P. Singh, Shri Javid Habib.

Versus

- i. Union of India through Secretary Ministry of Communication New Delhi.
- ii. Chief General Manager, Telecom, Eastern U.P. Circle, Lucknow.
- iii. The General Manager (Finance) Telecom, Eastern U.P. Circles, Lucknow.

... Respondents.

C/R Shri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunal's Act, 1985.

2. The applicant seeks following reliefs through this application:-

- i. Setting aside the order contained in letter no. Staff/M-6-2/94/Ch-II/11 dated 21.09.95, which is the order of transferring the applicant from Allahabad to Jhansi in the same capacity.

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ii. Issuance of a direction to the respondent not to transfer the applicant till 28.01.1999.

3. The facts of the case are that the applicant after working in T.D.M. Srinagar, Garhwal, which was a tenure station, was transferred to Allahabad and joined on 28.01.93. The applicant has been transferred to Jhansi by letter of Chief General Manager Telecom, Lucknow, dated 21.09.95. The applicant made representation against his transfer on the ground that the transfer was undue and in mid academic session and also because the rule of transfer of the department from one place to another stipulated that it was to be done after six years. The applicant has mentioned in amended portion of the OA that the allegation in para 21 of the CA was that he was transferred on the desire of the then Telecom, District Manager, Allahabad, was work and performance of the applicant was not satisfactory. This, the applicant claims, was by way of punishment and his transfer cast stigma without affording any opportunity to show cause. It is claimed that the transfer was ordered by the then Telecom, District Manager, Allahabad, Mr. A.N. Ray out of personal enmity with the applicant. The enmity was because M/s System Engineers, Ghaziabad, who were awarded work of payment and reconciliation and accounting at Rs. 2.25P i.e. Rs. .75 p for each item of work, was paid 80% of the total amount after doing only one part of the work i.e. telephone billing. The applicant had resisted such payment and had made it on verbal instruction of Shri A.N. Ray. Payment of M/s System Engineers, Ghaziabad, was stopped after Shri Ray saw the notings of the applicant on the bill of the firm. It is also stated that three sons and a daughter of the applicant were studying in different institutions at Allahabad and the

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transfer in mid session will cause irreparable loss.

4. The grounds for assailing the order of transfer that it was penal and, therefore, an opportunity should have been given to the applicant to show cause, is not tenable because transfer is an incident of service. The respondents have mentioned in their CA that the applicant was transferred because his performance in Allahabad was not satisfactory and that does not make it penal or confer any right on the applicant to be proceeded against under principles of natural justice before he is transferred. Transfer is not a penalty and in case of unsatisfactory services of an employee, the employer can relocate him elsewhere.

5. The second ground that the applicant was not given any reason for his transfer from Allahabad to Jhansi is also not tenable. Transfer is an administrative action, for which a speaking order is not required. It will be deemed to be in public interest unless it is proved to be otherwise. It does <sup>not</sup> become otherwise merely because it causes inconveniences to the official transferred.

6. The applicant has also claimed that transfer should be made only after 6 years but there is no basis mentioned by the applicant for making an assertion that any rule of transfer from one place to another stipulates that transfer should be made after 6 years. As a matter of fact the applicant had written 4 years, and, after scoring it out, made it as 6 years. In any case the period to be spent at one place is indicated according to administrative instructions against violation of which no judicial review lies. Similar contention of the applicant, that he had been put to inconvenience

because he was transferred in mid academic session is also not tenable because avoidance of transfer to be done during mid academic session is by virtue of administrative instructions. If the performance of an employee is not found satisfactory, the transferring authority is empowered to take action of transfer which can neither be considered to be penal nor violative of any rule or other statutory provisions.

7. The applicant by making his application has tried to allege malafide on the part of the then T.D.M Shri A.N. Ray. However, the transfer order has been made by office of Chief General Manager, Eastern U.P., Lucknow, and merely because the then T.D.M made some recommendations, no malafides can be attributed to the authority ordering transfer. The fact that there was no malafide mentioned in the OA and was brought only by way of an amendment also shows that the ground of malafide is an after thought.

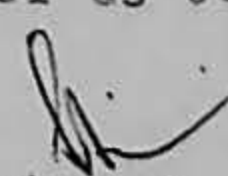
8. The applicant has relied upon the ratio of Director of School Education, Madras and Others Vs. O. Karuppa Thevan and others, 1994 SCC (L & S) 1180, to support his case. In that case the exigencies of service in effecting transfer were not found to be urgent. In the present case, the applicant was transferred because of unsatisfactory services and the public interest in such a case would overrule any personal inconveniences. Another case relied upon by the applicant is Alexander Kurian Vs. Director Marine Fisheries Research Institute, Cochin, and another (1988) 6 ATC 421. The ratio of this case decided by Madras Bench that interest of public service can not be established if a transfer is contrary to policy or norms, of transfer has been overruled by the apex court in Union of India Vs. S.L. Abbas 1993 AIR SC 444.

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Besides the other reasons given for quashing the order of transfer in that case of continuity of a particular project, pursuance of a thesis by the applicant in the University and accommodating another scientist are not applicable to the present case. The ratio of Mohammad Hanif Vs. Union of India and others (1989) 9 ATC 78 that unsubstantiated and unverified allegations should not give cause to a transfer is inapplicable there because <sup>in</sup> the case cited there were definite allegations made by a rival trade Union which in the present case the superior authority has found the service of the applicant to be unsatisfactory. Yet another case cited by the applicant is Baidyanath Singh Vs. Union of India and others, (1989) 11 ATC 439 in which transfer order was quashed as the transfer was not found to have been made in public interest in the background of frequent transfers on the intervention of a politician. The ratio of that case is inapplicable to this case.

9. The respondents on the other hand have relied on Union of India Vs. S.L. Abbas (Supra) which is the current law **enunciated** by the apex court in matters of transfer. It has been laid down that the Tribunals should not interfere in orders of transfer unless transfer is tainted by malafides and is in violation of statutory rules.

10. There is no merit in the application. The application is, therefore, dismissed. There shall be no order as to costs.

  
Member-A

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