

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.592 OF 1999

Allahabad, this the 15th day of September, 1999.

CORAM : Hon'ble Mr.S.Dayal, Member(A)

Smt.Sunanda Prasad, I.A.S.
Commissioner/Administrator,
Ram Ganga Command Area,
Kanpur. Applicant

(By Shri W.H.Khan, Sri P.P.Srivastava and
Shri D.V.Singh, Advocates)

Versus

1. Union of India through Establishment Officer, Ministry of Personnel, Government of India, New Delhi.
2. State of U.P. through Chief Secretary, Secretariate Annexe, Lucknow.
3. Secretary to Government of U.P. Appointment Department, Lucknow.
4. Sri Sudhir Kumar, Secretary Appointment, Government of U.P. Lucknow.
5. Sri Mandleshwar Singh, Minister, Bhumi Vikas Awam Jal Sansadhan, (Land Development & Water Resources), State of U.P. Lucknow.

..... Respondents

(By Shri Ashok Mehta & Shri K.P.Singh, Advocates)

O R D E R (Reserved)

(By Hon'ble Mr.S.Dayal, Member(A))

The applicant has filed this application against her order of transfer from Commissioner/Administrator

 contd.../2p

Ram Ganga Command Area Development Project, Kanpur to Commissioner, Basti Division, Basti, and has sought the cancellation of the order alongwith cost of the application.

2. The applicant has alleged that she has been transferred six times in one year. These transfers have been ordered in order to humiliate and harass her. She was in successive transfers posted to inferior rank which was temporarily raised. She has complained of gender injustice and mentioned that she is a lady with a child and dependent mother, who has been subjected to harassment. She has alleged that transfers are not honest, bonafide or in public interest, but have been made with extraneous consideration of humiliating and harassing her. She has been claimed that these transfers are guided by malafides and arbitrariness. She has mentioned as her six transfers the following :-

	<u>Order Dated</u>	<u>From</u>	<u>To</u>
1.	1-5-98	Labour Commissioner Kanpur	Chairperson U.P. Small Industries Corporation Ltd. Kanpur.
2.	1-9-98	Chairperson U.P. Small Industries Corp. Ltd. Kanpur	Commissioner/ Administrator Ram Ganga Command Area Development Project, Kanpur.
3.	1-9-98	Commissioner/ Administrator Ram Ganga Command Area Kanpur.	Additional Charge to Director Industries U.P. Kanpur.
4.	1-9-98	Chairperson U.P. Small Industries Corporation Kanpur.	Additional Charge of Chairperson to Director Industries of U.P.
5.	24-5-99	Commissioner Administrator/ Ram Ganga Command Area Dev. Project, Kanpur.	Commissioner, Basti.

3. She has mentioned that when she was transferred from the post of Chairperson, U.P. Small Industries Corporation, Kanpur to Commissioner/Administrator of Ram Ganga Command Area Development Project, Kanpur she had challenged the order. An interim order dated 8-9-98 was passed in O.A.No.954/98 which is still pending. Yet another transfer order has been passed. She has alleged that this transfer order has resulted from the malafides of Shri Sudhir Kumar, Secretary, Appointment, to Govt.of U.P. Lucknow, who was displeased by the challenge and quashing of an entry of censure awarded to her by this Tribunal in an order dated 13-11-98 in O.A.No.1040/97. She has also complained of malafides of Shri Mandleshwar Singh, Minister, Land Development & Water Resources, State of U.P. Lucknow, who was displeased with her for transferring out certain persons close to him from the Project of Ram Ganga Command Area and not releasing certain persons ordered to be transferred out, as also for not constructing kuchha drains with patiyas and in place constructing cement concrete ones. She has alleged that the Minister was not happy with her because he was not able to get his Election fund. She has also alleged that several officers were transferred out of the Project without consulting her on 20-5-99.

4. This case was listed before a Single Member Bench on 27-5-99 when notices were issued and time was granted to the respondents to file counter or short counter on the applicants' prayer for interim relief. Certain amendments were made to the O.A. on 3-6-99 and on 8-6-99 this case was listed as an urgent case during Vacation. Short C.A. was filed, on which arguements were heard

and the learned counsel for respondents sought time to file a detailed C.A. Status-quo was ordered to be maintained till the next date. Detailed C.A. was filed on the next date on 16-7-99 and the time was granted to file R.A. The case next came up on 5-8-99 when Misc. Applications were ordered to be listed for consideration on 31-8-99. The learned counsel for the respondents filed an application for early hearing of the case because the post of Commissioner was lying vacant and responsible duties are to be performed by the Commissioner during the period of Elections and an interim order was sought that the applicant be directed to join the service on the post of Commissioner at Basti pending decision in the original application. This application was taken up on a mention made by the learned counsel for the respondents on 16-8-99 on the next date. It was mentioned on the next date i.e. on 17-8-99 that the counsel for the applicant was seriously ill and was at Mumbai for treatment and postponement of the case till 31-8-99 was sought. This was not allowed and case was adjourned till 19-8-99 in order to give time to the applicant to be represented by another senior counsel. The order of status-quo was not extended. On 19-8-99 the postponement of this case till 31-8-99 was again sought and it was mentioned that Sri P.P.Srivastava had been admitted in Tata Memorial Cancer Institute, Mumbai and he was not in a position to come to Allahabad before 24-8-99. It was also mentioned that the brother of the applicant had died on 17-8-99 and the applicant was in Delhi in his funeral and she could not engage another counsel. The learned counsel for respondent brought to our notice the order of Apex Court dated 13-7-99 by which the order of the High Court was faxed and the Tribunal was requested to dispose of the matter on the day on which the matter was fixed for hearing. In view of the peculiar circumstances of this case the hearing of this case was postponed to 25-8-99. The order of status-quo was specifically vacated on 19-8-99. On 25-8-99 again a request was made on behalf of the learned counsel for the applicant that Sri P.P.Srivastava was on complete bed-rest and



sought adjournment of another two weeks. This application was disallowed and the case was heard. Sri D.V.Singh a junior counsel in this case along-with Sri P.P.Srivastava did not offer any arguements in the absence of Sri P.P.Srivastava. The arguements of Shri Ashok Mehta assisted by Sri K.P.Singh for respondent No.2 to 5 were heard. Before the order could be pronounced Misc.Application No.4117/99 was filed by the learned counsel for the applicant to afford an opportunity of hearing and not to deliver the judgement before 13-9-99. Copy of order of the High Court passed in Civil Misc. Writ Petition No.37046 of 99 was also annexed to this M.A. in which the High Court had mentioned that the counsels of both the parties had agreed that 13-9-99 should be fixed as the date for final hearing before the Tribunal. The Tribunal was directed not to deliver the judgement until it had heard both the parties on 13-9-99. The case therefore was taken up on 13-9-99 when learned counsel for the applicant did not remain present and learned counsel for the respondents prayed that written arguements be taken on record. This was allowed. Orders were reserved.

5. The ground on which the transfer order has been challenged is that it is malafide and arbitrary. In order to show that it was malafide and arbitrary the applicant has alleged that six transfers had been made in an year. It appears that the applicant returned from her deputation to Govt.of India and she was appointed as Commissioner of Labour on 1-5-98. On 1-9-98 she was transferred from Commissioner of Labour to the post of Chairperson,U.P.Small Industries Corporation Ltd., Kanpur, and on the same day she was transferred as Commissioner/Administrator, Ram Ganga Command Area Development Project, Kanpur. On same day again she was asked to hand over the charge of her post of Commissioner/Administrator, Ram Ganga Command Area Development Project, Kanpur to Sri Jagan Mathew, Commissioner and Director of Industries, Kanpur, on the same day the order was modified to say that Shri

contd.../6p

Jagan Mathew¹, Commissioner and Director of Industries, Kanpur would hold the additional charge of U.P. Small Industries Corporation Ltd. Kanpur, and therefore the applicant was asked to hand over the charge of her post of Chairperson, U.P. Small Industries Corporation Ltd. to Shri Jagan Mathew¹.

6. The respondents have clarified that order dated 1-9-98 was only typed which required Mr. Jagan Mathew¹ to takeover the charge of Commissioner/Administrator Ram Ganga Command Area Development Project, Kanpur. The respondents have clarified that Shri Jagan Mathew¹ was always intended to take the charge of Chairperson U.P. Small Industries Corporation, Kanpur. Besides the applicant had challenged her transfer from the post of Commissioner/Administrator, Ram Ganga Command Area Development Project, Kanpur by filing O.A. No. 954/98 in which it was mentioned that the applicant was taken over the charge of the post of Commissioner/Administrator Ram Ganga Command Area Development Project, Kanpur. In the same order the applicant was asked to hand over the charge of U.P. Small Industries Corporation, Kanpur. The respondents have mentioned that the applicant has continued holding the charge of Chairperson, U.P. Small Industries Corporation and has mentioned it in Writ Petition No. 23661/99 filed by her before the High Court of Judicature at Allahabad seeking relief against her transfer to Commissioner, Basti Division. The respondents have also mentioned that her so called six transfers were not in effect. Six transfers^{but} were basically three transfers, one of which was as Divisional Commissioner, Basti still remains unimplemented. These were

from Labour Commissioner to Chairperson, U.P. Small Industries Corporation, from U.P. Small Industries Corporation to Commissioner & Administrator, Ram Ganga Command Area Development Project, and from Commissioner/ Administrator, Command Area Development Project to Divisional Commissioner, Basti. Out of these three transfers the first 2 were local transfers in Kanpur itself. During arguments learned counsel for respondent No. 2 has mentioned that the applicant had earlier challenged the transfer from U.P. Small Industries Corp. to the Commissioner/Administrator, Ram Ganga Command Area Development Project on the ground that she had been given an ex-cadre post. Now the Government has transferred her to a cadre post in super time scale of pay, which is according to her status, but the applicant has challenged this transfer also. The learned counsel for the respondents also drew attention to the fact that the allegation of the applicant made in her O.A. that the post of Divisional Commissioner, Basti, is likely to be abolished has been specifically denied in the detailed C.A. by stating that there is no proposal under consideration for abolition of the post, on the other hand the post was vacant and required to be immediately filled.

7. The allegations made by the applicant against Sri Sudhir Kumar, Secretary, Appointment, Govt. of U.P. has been specifically denied by the letter in his detailed counter reply. The impugned order in this case has been passed by the Special Secretary and not by Sri Sudhir Kumar, who was Secretary. It is seen from the original application that the amendment was later on sought in order to implead Shri Mandleshwar Singh, Minister, Land Development and Water Resources, and making allegations against him

him of malice due to which the applicant had been transferred. Shri Mandleshwar Singh has also filed his counter reply in which he has denied the allegation of malice and has stated that he was not concerned with the transfer of the applicant and has denied that he was close to Shri V.K.Pandey and against Shri G.P.Agrawal. He has mentioned that the correspondence shown by the applicant is between her and higher officials. He has also stated that design of a work in progress has been changed at the end of a final year of 1998-99 without taking approval of State Government or sanction from the Central Government which has resulted in loss of crores of rupees and for this her clarification has been sought by the Secretaries of Department of Land Development & Water Resources.

8. The learned counsel for the respondent No.2 to 5 has pointed out in his arguments that the transfers of senior officers of the rank of applicant are made by the Chief Secretary in consultation with the Chief Minister. The applicant has tried to attribute malice to Secretary, Appointments, first and later on to Minister, Land Development & Water Resources Department, which resulted in her transfer by bringing about an amendment to her original application. Since neither of these are the authorities who are concerned with the transfer of the applicant the charge of malice against these respondents is not material in considering a challenge to her transfer. The learned counsel for the respondents had drawn attention that in detailed C.A. of Shri Sudhir Kumar it stated that the applicant has made false averments in para- 4.4

alleging six transfers in an year and that the matter should be referred to a Competent Court for initiating criminal proceedings against the applicant.

9. I find that the applicant has not even alleged malice against the authorities which are competent to transfer her. The malice alleged against Secretary, Appointments, and Minister, Land Development & Water Resources are also not established. We find that Shri P.K.Jha has already taken over the charge of the post of Commissioner/ Administrator of Ram Ganga Command Area Development Project, Kanpur. I also find that the applicant has been transferred to a post which is appropriate to her status and in exigencies of Administration. No humiliation can be construed from the fact of transfer to such a post.

10. The respondents in their written arguements have cited the judgement of the Apex Court in Union of India & Others Vs. H.N.Kirtania 1989 SCC (L&S) 481 in which it has been laid down that Courts should not interfere in transfers unless they are malafide, illegal or in violation of statutory rules. The respondents have also cited the case decided by apex court of Gujarat Electricity Board & another Vs. Atmaram Sungomal Poshani 1989 SCC (L&S) 393, in which it has been held that transfer is a condition of service and cannot be evaded on ground of pendency of representation or difficulties. It also reiterates the ratio of the previous case. The respondents have

...../10p

also sought to rely on Union of India & Others Vs. S.L.Abbas AIR 1993 SC 2444, which again states that Courts cannot interfere in transfer orders unless it is vitiated by malafides or made in violation of any statutory provisions. Yet another case cited is that of State of Punjab and others Vs. Joginder Singh AIR 1993 SC 2486, in which it has been laid down that it is entirely for the employee to decide when, where and at what point of time if public servant is transferred from his present posting, and ordinarily Courts have no jurisdiction to interfere with the order of transfer. The respondents have also cited N.K.Singh Vs. Union of India & others decided by apex court and reported in 1994 SCC (L&S) 1304, it has been laid down that challenge in Courts of a transfer when the career prospectus remain unaffected and there is no detriment to the government servant must be eschewed and interference by Courts should be rate. Another case referred to of apex court is Chief General Manager of Telecom Vs. Rajendra Ch. Bhattacharya & others AIR 1995 SC 813, it has been mentioned in the judgement that the Government employee or any servant of public undertaking has no legal right to insist for being posted at any particular place. It can not be disputed that the respondents holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting. In yet another case between State of M.P. and S.S.Kourav AIR 1995 SC 1056, in which it has been laid down that the decisions of transfers taken by Government



unless they are vitiated by malafides or by any factual background foundation. It has also been laid down that Court can not go into the question of relative hardship. It will be between the employee and his employer.

11. I do not consider it appropriate to refer the matter of the averments made in para 4.4 of the O.A. to competent Court for action under Section 193 I.P.C. The applicant has merely shown that she was served with as many as six orders. The respondents have now shown that one of the orders was due to some error. Therefore, no action against the applicant is warranted on this account.

12. I, therefore, find that the applicant is not entitled to the relief asked for by her in the original application and the original application is therefore dismissed.

13. There shall be no order as to costs.



MEMBER (A)

/satya/