

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 17th day of January 2001.

Original Application no. 1019 of 1999.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Sri Narendra Nath Tripathi,
S/o late G.P. Tripathi,
Account Assistant, F.A. & C.A.O.,
N.E. Rly., Gorakhpur.

... Applicant

C/A Shri R.B. Yadav
Shri N.P. Singh

Versus

1. Union of India through its General Manager
(Vigilance) N.E. Rly., Gorakhpur.
2. F.A. & C.A.O. N.R. Rly., Gorakhpur.
3. Deputy Chief Vigilance Officer (Accounts)
N.E. Rly., Gorakhpur.
4. Mr. J.N. Pandey, Dy. Chief Vigilance Officer
(Accounts), N.E. Rly., Gorakhpur.
5. Sri C.K. Sharma, Chief Vigilance Inspector
N.E. Rly., Gorakhpur.

... Respondents

C/Rs. Shri A. Sthalekar

O R D E R (Oral)

Hon'ble Mr. S.K.I. Naqvi, Member-J.

Shri N.N. Tripathi, Account Assistant,
F.A. & C.A.O., N.E. Rly., Gorakhpur has come up

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impugning transfer order dated 3.9.99, through which he has been transferred for Gorakhpur to Izzatnagar against vacant post.

2. As the facts come up from the pleadings and submission from either side, the applicant was appointed in the year 1984 and is continuing at Gorakhpur since then. The applicant alleges that it was on 16.12.98 when he appeared before vigilance cell in connection with some inquiry, a controversy arose to the displeasure of vigilance authority when the applicant requested for copy of his deposition. The applicant further submits that in consequence thereon and the threats flashed by the vigilance authority he was suspended vide order dated 01.02.99 ^{for} against which he preferred representation to the authorities against that suspension order, ^{and} who revoked the same vide order dated 23.3.99. The respondents did not stop there and vide annexure 8, transferred the applicant from one section to another at the same station against which the applicant came up before the Tribunal vide OA 944 of 1999, in which notices were issued on 1.9.99 ^{and} the applicant feels that the impugned order dated 3.9.99 is the out come of malafide and illwill nursed by the authorities in the department, and at the instance of vigilance officer he has been transferred as per impugned order.

3. The respondents have contested the case and filed counter affidavit with clear assertion that

the applicant has been transferred on administrative ground for which the transferring authority is quite competent under law and rules in this regard.

4. Heard learned counsel for the rival contesting parties and perused the record.

5. Shri N.P. Singh, learned counsel for the applicant took me through the case law as handed down in (1989) 0 ATC 122, H.S. Ajamani Versus State of M.P. & Others, in which the frequent transfer, contrary to government instructions prescribing three years as normal tenure at a station, has ~~not been accepted.~~ ^{deplored.} The second case is (1997) 7 SCC 699, Mansukhlal Vithaldas Chauhan versus State of Gujarat on the point of due application of mind by the authorities while passing order. The third case is (1995) 31 ATC 246, Joitabhai Prabhudas Patel Versus Union of India & Others, on the point of colourable exercise of power while transferring during mid-academic session and before end of normal tenure. The fourth case is (1993) 4 SCC 357, Union of India & Others Vs. S.L. Abbas, where-in their lordship ~~of~~ ^{held} Supreme Court ~~hold~~ that unless order is malafide or is made in violation of statutory provisions Court/Tribunal cannot interfere. The learned counsel for the applicant emphasises that this law provides a room for the Tribunal to interfere in the matters which are out come of malafide or in violation of statutory provisions.

6. Learned counsel for the respondents relied

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on Shri Kamlesh Trivedi versus Indian Counsel of Agriculture Research and others in which the Principal Bench^{of the Tribunal} in a Full Bench matter observed in OA 770 of 1997 decided on 27.4.88 that merely because the transfer is ordered on complaint or after inquiry into guilt of an employee it cannot be said to be by way of punishment.

4. Keeping in view the facts and circumstances of the matter and the law referred from either side it is found that main contention from the side of the applicant is that the impugned transfer order is motivated, malafide and at the instance of officers in the vigilance cell and, therefore, cannot be sustained. Even if all the submissions and the facts narrated from the side of the applicant are taken to be correct, still I ~~am~~^{feel} afraid that the applicant cannot be benefited of it because of the fact that he is at that very station right from the date when he entered into the department in the year 1984. The simple ground that some vigilance officer were after him to get him transferred ^{as} because of some controversy arose at the time of his deposition before the vigilance cell in connection with some inquiry, and that cannot be said to be something personal in between the vigilance officers and the applicant. The right of the authorities in the respondents establishment to transfer the applicant in public interest, may be on the ground of some complaint against him, need not be interfered because the administration is to be run by the authorities there, and they are the best judge to ^{decide} ~~ascertain~~ as to ^{to} who shall work ~~there~~^{where}.

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5. For the above I do not find any good reason to interfere in the impugned transfer order. The OA is dismissed accordingly. No cost.

6. Learned counsel for the applicant mentioned that the applicant is continuing till date at Gorakhpur under the cover of interim relief granted in this OA on 08.09.99. The period at Gorakhpur be regularised deeming him to have remained posted there *during pendency of MIA*.

S. C. Singh
Member-J

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