

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: Allahabad, the 2nd day of March, 2001

Corum: Hon'ble Mr. V. Srikantan ... Admn. Member

ORIGINAL APPLICATION NO. 1345/ 1999

Shri Kamal Mahmood
Son of Sri Syed Mahmood Ahmad
R/o S-24, Officers Hostel
Drumond Road, Allahabad. ... Applicant

(By Advocate, Shri S.K. Mishra)

Vs.

1. Union of India
through the Secretary
Ministry of Water Resources
Govt. of India
Shram Shakti Bhawan
Rafi Ahmad Qidwai Road
New Delhi - 110 001.
2. Chairman
Central Ground Water Board
New C.G.O. Complex
N.H.-IV, Faridabad - 121 001.
3. Regional Director
Central Ground Water Board
Northern Region, Bhoojal Bhawan
Sector-B, Sitapur Road Yojna
Lucknow - 226 021.
4. Dr. D.K. Chaddha, Chairman
Central Ground Water Board
Jam Nagar House
Man Singh Road
New Delhi - 110 011.
5. Shri K.S. Pandey
Scientist-D
Central Ground Water Board
State Unit Office
276, Kaushambi Road
Chakia, Allahabad.
6. Shri Udai Bhan Singh
S/o Shamsheer Singh
Assistant Hydrologist, CGWB
SUOB/ 276, Chakiya ha
Kaushambi Road, Allahabad, ... Respondents

(By Advocate Shris.C. Mishra)

... 2/-

V. Srikantan

ORDER

Through this application, the applicant is seeking quashing the transfer order dated 20.8.99 transferring the applicant from Allahabad to Ahmedabad and direct the respondents not to interfere with the functioning of the applicant as Officer Incharge, State Unit Office, Central Ground Water Board, Allahabad.

2. The brief facts are that the applicant who was initially appointed on 1.3.75 after having served in Lucknow, Jamshedpur etc. was transferred to Allahabad and he joined duties on 18.12.97. Vide order dated 9.6.99 passed by respondent No.2, the respondent No.5 was posted at Allahabad from Bhubaneswar despite the fact that there was no sanctioned post of Scientist 'D' at Allahabad and a post of Scientist 'D' was transferred from Patna office to accommodate respondent No.5 at Allahabad and that respondent No.5 was transferred to Allahabad on his own request and ultimately respondent No.5 joined his duties at Allahabad on 2.7.99 and that soon after respondent No.5 joined at Allahabad on 2.7.99 a transfer order dated 9.8.99 was issued transferring the applicant from Allahabad. The contention of the applicant is that this transfer order has been bad with malafide intention for accommodating respondent No.5 and

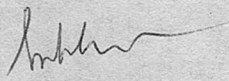
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is hence against the rule of law and all canons of fairness. The respondents in their reply has stated that the applicant was transferred from Allahabad to Ahmedabad because of his unsatisfactory work which has been contested by the applicant who has also stated that he has less than 3 years of service left and hence should not have been transferred out of Allahabad in terms of Government instructions.

3. Heard both the counsels and perused the documents in record.

4. While admitting the factual aspect, the respondents have taken the stand that the applicant was transferred out of Allahabad because of his unsatisfactory work. However, they have not produced any material evidence to substantiate this statement. On the other hand, the applicant has produced material evidence to show that in his confidential report it has been mentioned that he has attended to his assignments reasonably well. The respondents have also indicated that the transfer order was subsequently withdrawn and the applicant allowed to continue at Allahabad till December 2000 and they have also contended that the applicant was transferred keeping in view the transfer norms and merits of the case.

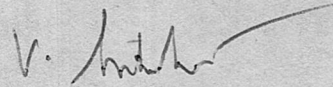
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5. On perusal of the record, it is seen that respondent No.5 had requested for a transfer to Allahabad and to accommodate him a post was transferred from Patna office to Allahabad and respondent No.5 posted against this post and he had assumed charge on 2.7.99. Soon thereafter the applicant has been transferred out of Allahabad on 9.8.99. It is, thus, patently clear that the transfer order of the applicant has been made with a view to accommodate respondent No.5 at Allahabad. Transfer of an employee to accommodate another employee has to be held as not a bonafide exercise of power. This view has the support of an order of the Lucknow Bench of this Tribunal passed in OA No. 410/ 1995 decided on January 24, 1996 which held the transfer of an employee to accommodate another employee is under colourable exercise of power.

6. Regarding unsatisfactory work, the Courts have held that transfer because of unsatisfactory work would be by way of punishment since no opportunity had been given to the applicant of being heard before imposing this punishment.

7. For the above reasons, the OA is allowed and the impugned transfer order dated 20.8.99 is quashed. No costs.



ADMINISTRATIVE MEMBER

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