

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.
....

Original Application No. 783 of 2002.

this the 15th day of November' 2002.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

P.K. Garg, S/o Sri Bhagwati Prasad, presently working as
Sub-Divisional Inspector (East), Aligarh.

Applicant.

By Advocate : Sri S.K. Om.

Versus.

1. Union of India through Secretary, posts, New Delhi.
2. postmaster General, Agra Region, Agra.
3. Asstt. Director, postal Services o/o P.M.G., Agra Region,
Agra.
4. Senior Supdt. of post Offices, Aligarh Division,
Aligarh.

Respondents.

By Advocate : Sri P. Srivastava for Sri S. Chaturvedi.

O R D E R (oral)

By this O.A., the applicant has challenged the order dated 2.7.2002 whereby he has been transferred from SDI (East), Aligarh Dn. to IPO (PG), Bulandshahr Dn. (page 12) and sought a direction to the respondents not to transfer the petitioner from the post of Sub-Divisional Inspector (East) Aligarh to Inspector of post Offices (PG), Bulandshahr.

2. The applicant has submitted that he was posted in Aligarh on 31.3.2000 and in May'2000 ^{when} routine transfers had taken place, ~~but~~ he was not transferred in the said routine transfer, but by the impugned order dated 2.7.2002 i.e. within two years, he has been transferred to Bulandshahr. It is submitted that the applicant's elder son is studying in High School, which is a crucial year and his younger son


is studying in Class VIII and it would not be in the interest of the children's education to transfer him at this juncture especially when the principal of the school had given in writing by issuing a certificate dated 16.7.2002 that Sri Rahul Garg, son of Sri Premod Kumar Garg had passed Class IX from this school and as per rule, his form for the Board examination (Class X) has to be filled-up from this very school and his form had already been filled-up and sent to the Board. Therefore, the child would be unable to get admission in Class X in some other school or appearing in the Board's examination, a copy of same has been annexed as Annexure -4 to the Rejoinder affidavit. It is submitted by the counsel that in case he is forced to shift from Aligarh to Bulandshahar at this juncture, his son will lose his precious ^{one} year in the education. He has, thus, submitted that this transfer order may be quashed and set-aside and he may be allowed to continue at Aligarh. He has, further, stated that it is a tenure posting and he could not have been transferred before expiry of four years from one station to another station. As far as the allegations made by the respondents in their Counter with regard to fraud and embezzlement is concerned, the applicant's counsel has moved an application for amendment whereby he wants to add some more facts. The amendment application shows that there is no such ^{proof} ~~allegation~~ of fraud and embezzlement ^{by nos respondents} ~~and that too~~ ^{I have held} ~~without~~ any enquiry. Therefore, he has submitted that since his transfer order was passed on the false allegation, the transfer order is liable to be quashed.

3. The respondents have opposed this O.A. and have stated that the applicant was working in Aligarh from 2.6.98 to 3.4.2000 as Inspector post Offices (public Grievances) Aligarh and thereafter from 4.4.2000 till date as S.D.I. (East), Aligarh. It is submitted by the respondents' counsel that in the present case several complaints of forged payment, fraudulent withdrawals of money and other complaints

^{He were received R}
of serious nature, which were given to the said Sri P.K. Garg during his normal duties, but he had not completed the ^{enquiry} ~~the~~ enquiry in time, therefore, he was transferred from Aligarh to Bulandshahar on administrative grounds as his performance was found to be very poor. More-over, he was facilitating embezzlement of the ~~fraud~~ by his delaying tactics for further enquiry. They have, further submitted that the Schools are available at Bulandshahar as well and since Aligarh and Bulandshahar are both in the State of U.P., there is no change of Board and admission can easily be sought at the transferred place as well. They have further submitted that the applicant has not alleged any malafide, nor has stated that his transfer is contrary to any instructions or guidelines. Therefore, as per the settled law of ~~the~~ Hon'ble Supreme Court, ~~that~~ the Courts may not interfere in the matter of transfer as it upsets the smooth running of the administration. Both the counsel have relied-upon a number of judgments in support of their arguments.

4. The applicant's counsel has relied upon 1989 (9) ATC 78 wherein the Tribunal had held that the transfer on the basis of unverified allegation is devoid of genuine administrative interest, hence bad in law. He also relied on 1996 (1) ESC 148, wherein the Hon'ble High Court had directed the respondents to re-consider the representation of the petitioner afresh in view of the instructions issued by the Govt. of India that husband and wife should be kept at the same station as far as possible. He has also relied-upon a decision given by this Tribunal in O.A. no. 591/02.

5. The respondents' counsel has, on the other hand, relied on 2001 SCC (8) 574 wherein the Hon'ble Supreme Court has held that the transfer of an employee ^{is} not only an incidence, but a condition of service. He has also relied on 1994 (2) SLR D.B. Jodhpur 806, the Hon'ble High Court had held that the administrative guidelines do not confer any legal or vested right in a Govt. employee to challenge the



order of transfer. He has also relied upon a number of judgments given by Hon'ble High Court, Allahabad to show that even during the mid academic session, ^{if} a person is ~~to be~~ transferred to another place ^{at the} ~~and he~~ has to be complied with, ~~the same~~ since ~~the~~ transfer is an incidence of service and it cannot be interfered unless it is result ~~of~~ ^{of} malafide. He next relied on 1998 (1) ESC 162, Allahabad wherein it was held that the transfer order on the basis of complaints made against an employee, whether permissible or not. It was held 'yes'. The same view was taken by ^{High Court} Allahabad/(Division Bench) in 2000(1) ESC 54 wherein it was held that if an employee is transferred on the basis of certain complaints, it cannot be said to be a punitive action. Similarly in 1995(2) SC 532 the Hon'ble Supreme Court had held that in absence of strong and compelling grounds rendering the transfer order improper or unjustified, such an order is not a subject to judicial review particularly when at the other place to which the transferee wanted to be posted there are complaints of irregularities against him.

6. I have heard both the counsel and perused the judgments carefully. Before going into the merit of the case, it would be necessary to pass an order on the amendment application filed by the applicant. It is seen in the Counter the respondents have stated that the applicant had to be transferred from Aligarh to Bulandshahar since there are serious irregularities against him and he was involved in a serious embezzlement of amount and other serious matters. It is after the Counter has been filed that the applicant wants to amend the O.A. to challenge those averments in the O.A. itself. I do not think that there is any such requirement to amend the O.A. In these circumstances because if the respondents have made certain averments in the Counter, the same can always be rebutted by filing Rejoinder. I was informed by the applicant's counsel that Rejoinder affidavit has already been filed in the present case. Since the applicant had already filed


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his Rejoinder affidavit and the same is available on record, M.A. for amendment is not maintainable especially when the matter is being decided finally today itself after hearing both the counsel.

7. On merits, the law is well settled by the Hon'ble Supreme Court that in the matter of transfer Courts/Tribunals should not ordinarily interfere in a routine transfer, unless it is hit by ~~the~~ malafides or violative of statutory rules or instructions. It has been reiterated from time to time that transfer is an incidence of service and since the person has transferable liability, they cannot challenge the transfer order. In the present case, it is seen that the applicant has not alleged any malafide against the officer, nor has annexed any statutory rules or instructions which can be said to have been violated. In absence of the same, in normal course the Court would not interfere in the matter of transfer as I am fully aware of the judgments given by the Hon'ble Supreme Court and in view of the judgments relied-upon by the respondents' counsel, I am satisfied that the order passed by the department, in normal course, ^{does} ~~has~~ not called ~~ed~~ for any interference. However, there is only one aspect of the matter which requires little consideration i.e. certificate alleged to have been given by the principal of Dharam Samaj Inter College, Aligarh on 16.7.2002, which has been annexed as Annexure -4 to the Rejoinder, wherein it is stated that since Board's ~~Form~~ ^{formation} of ~~the~~ students i.e. the applicant's son had already been sent, he will not get admission in any other school or would not be ^{allowed to} ~~appear~~ ^{to} in the Board's examination. At this juncture, it would be relevant to refer ^{to} ~~the~~ other judgments of Hon'ble Supreme Court wherein the apex court has held that as far as possible the authorities should ensure that the transfer ^{are} ~~should~~ not ~~be~~ done during the mid academic session. Even-though I was told that the distance between Aligarh and Bulandshahar is only 70 Kms., but yet the certificate as given by the principal of the School

I am of the view that is causing some concern to me. ~~as~~ the study of the children should not be disturbed. I had ~~put~~ put a specific question to the applicant's counsel whether the applicant has made any representation before the authorities bringing out all these facts, to which I was informed that no such representation was made to the respondents. It is seen that the applicant has been continued at Aligarh on the strength of stay granted by the Tribunal and we are ~~also~~ ^{already} in the mid of November meaning thereby that only the period of four months is left for completion of this session. I am sure that incase the applicant gives a proper representation to the authorities bringing out all these facts, they would pass appropriate orders thereon keeping in view the judgments given by the Hon'ble Supreme Court on the question of mid academic transfer. Therefore, ~~even~~ ^{not} though I am ~~inclined~~ to interfere in the matter of transfer especially when the respondents have stated that there are several complaints received against the applicant, but I would like to remit back the matter to the authorities by giving a direction to the applicant to file a representation bringing-out all these facts, as narrated by him, within a period of one week from the date of communication of this order and the respondents are directed to pass an appropriate orders in accordance with law within a period of one month from the date of receipt of such representation. Till such representation is disposed off, the respondents are directed to maintain status quo with regard to the applicant.

8. The O.A. stands disposed off as above without any order as to costs.


MEMBER (J)

GIRISH/-