

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 825 OF 2002

ALLAHABAD, THIS THE 21st DAY OF May 2004

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

S.S.P. Tripathi aged about 56 years
s/o Shri Kalika Prasad Tripathi
r/o Village & Post Office Bhelaunji
District-Siddhartha Nagar,
Presently Posted as Superintendent of Post Offices
Basti Division, Basti.

....Applicant

(By Advocate : Shri K.C. Sinha)

V E R S U S

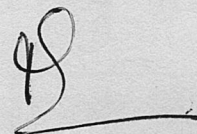
1. Union of India through Chief Post Master General, U.P. Circle, Lucknow.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Shri C.B. Tripathi
r/o Santkabir Nagar,
Posted as Superintendent of Post Offices
Basti.

.....Respondents

(By Advocate : Shri R.C. Joshi, Shri M.K. Upadhyay
and Shri Rajiv Trivedi)

O R D E R

By this O.A. applicant has challenged the order dated 18.07.2002 whereby Shri C.B. Tripathi P.S. Gr. 'B' ^{has been transferred} on his ^B re-allotment to Gorakhpur Region at his own request and cost at ^{Basti} vice Shri S.S.P. Tripathi, the applicant before us. In the same order it was mentioned that posting orders of Shri S.S.P. Tripathi:



will be issued separately. It is submitted by the applicant that this transfer order has not been made either in public interest or in administrative exigency but has been issued on the directions given by MOC ^{2IT B} which is evident from respondents own annexure-6 wherein a letter was issued from the office of Chief P.M.G., U.P. Circle on 17.07.2002 to the P.M.G. Gorakhpur Region, Gorakhpur informing him that in partial modification of order dated 03.05.2002 Shri C.B. Tripathi, a P.S. Gr.'B' officer has been posted to SPBs Basti at his own request and cost. In the said letter it was specifically mentioned that this is in compliance with the directions of date received from P.S. to Hon'ble MOC & IT. Copy of this letter was also sent to Shri Ajai Mehta P.S. to Hon'ble MOC & IT, Sanchar Bhawan, New Delhi. for information with reference to telephonic talk with the Chief P.M.G., U.P. Circle at Bulandsahar. Not only this, counsel for the applicant also submitted that Shri C.B. Tripathi has been managing his transfer from one place to the other simply because of his proximity with the MOC & IT. He, therefore, submitted that there was no administrative exigency to post Shri C.B. Tripathi at Basti nor this order can be said to be issued in public interest. Therefore, this order is liable to be quashed on this ground itself.

2. He next invited my attention to the transfer guidelines dated 7-~~4~~-1982 to show that normal station tenure is 4 years which may be extended to 6 years in individual cases, in public interest. He, in particular, relied on para 4.1 and 4.3 of the said transfer policy, which is annexed as Annexure SA-I with the supplementary affidavit. It is submitted by the counsel for the applicant that applicant had been posted at Basti only on 02.03.2001 at his own request and he had not completed his normal tenure of 4 years. Therefore, there was no justification to displace the applicant in order to accommodate respondents

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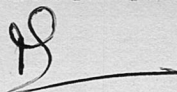
No.3. He thus, submitted that this transfer order is in violation of transfer guidelines. He next relied on the policy regarding categories of supervisory cadres in department of posts, which was issued on 11.10.2003 (Annexure SA-3) wherein it was mentioned that members of the supervisory cadres should not be posted to their home division or parent division during the first 4 years of service in supervisory cadre. He also relied on para-B and D of the said policy decision, wherein it was stated that they should not be transferred (except in administrative interests) from a post unless they complete ~~atleast~~ two years in that post if they are working within their circle and they could be considered, only if there was a vacancy whereas in the instant case neither there was vacancy available at Basti because applicant was already posted there ~~nor~~ ^{C.B.S.} nor Shri ~~S.S.P.~~ ^{S.S.P.} Tripathi had completed two years at Bahraich. ^{In fact Sh. C.B. Tripathi B} ~~whereas applicant~~ had not even worked 6 months physically at the earlier station from where he was posted to Basti. He, thus, submitted that this transfer order is absolutely wrong illegal arbitrary and is liable to be quashed and set aside.

3. Counsel for the applicant relied on 1993 SCC (L&S) 918 at 922 in the case of Ram Adhar Pandey Vs. State of U.P. & Ors. to show that unless transfer is shown to have been issued in public interest, it cannot be said that transfer is bonafide as transfer could be effected only on certain conditions which are available in law to the respondents in the said case. Since Hon'ble Supreme Court found that there was no public interest, the transfer order was cancelled. He next relied on 1996(34)ATC 255 the Judgment given in the case of Vinod Sahi Vs. U.O.I. & Ors. wherein it was held that transfer of an employee to accommodate another employee cannot be said to be a bonafide exercise of power. Apart from this, he relied on number of other judgments as well, but since these two are directly on the point, I have referred to these two judgments.



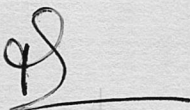
4. Even otherwise counsel for the applicant submitted that Shri ^{C.B.}~~S.S.P.~~ Tripathi had given his request for Gorakhpur Division and he has already been accommodated at Gorakhpur vide order dated 31.01.2003. Copy of the order taken on record. Thereafter a corrigendum was issued on 04.02.2003 wherein it was clarified that ^{in the B} transfer order of Shri C.B. Tripathi may be read as "OFFICE OF THE POSTMASTER GENERAL, GORAKHPUR REGION-273008 instead of OFFICE OF THE SR. SUPDT. OF POST OFFICES, GORAKHPUR DIVISION, GORAKHPUR. He has, thus, submitted that since Shri C.B. Tripathi has already been accommodated in Gorakhpur itself, from where his house is ^{barely}~~nearly~~ 35kms. or 40kms. and the same position is from Basti. Therefore, there is no need to dis-locate the applicant, as such, the transfer order may be quashed and O.A. may be allowed.

5. Respondents on the other hand have opposed this O.A. by stating that transfer is not a punishment and since applicant is under transferable post, he is liable to go, ^{ever R} where he is transferred as transfer is an incidence of service. He was working as P.S. Gr. 'B' officer in the office of Post Master General, Agra Region when he was allotted to Gorakhpur Region vide memo dated 10.01.2001 (Annexure CA-I) on his own request and cost. Therefore, applicant was posted as Superintendent of post offices Basti vide Post Master General, Gorakhpur Region Gorakhpur memo dated 02.03.2001 on his own request and cost, (Annexure CA-2) whereas Shri C.B. Tripathi an Inspector line official who was working as Assistant Superintendent of Post Offices in Basti Division previously was on his turn, promoted to P.S. Gr. 'B' cadre and was allotted to Himanchal Pradesh vide order dated 12.07.2001. He was posted as Superintendent of Post Offices Una Division (H.P.) vide memo dated 19.12.2001. He was again transferred to Shimla vide memo dated 11.01.2002 and was relieved from Basti Division on afternoon of 28.02.2002.



In the meanwhile, the said Shri C.B. Tripathi was re-allotted the U.P. Circle and allotted Agra Region from where he was re-allotted to Gorakhpur Region with direction to post him as Superintendent of Post Offices Basti Division at his own request and cost vide memo dated 17.07.2002 (Annexure CA-6). They have submitted that Shri C.B. Tripathi was posted at Basti because he had only two years left before his superannuation and that is permissible under the transfer guidelines under para-10. They have, thus, submitted that there is no irregularity in the orders passed by the respondents.

6. Counsel for the private respondents also filed ^{his R} ~~their~~ counter affidavit and submitted that applicant had no cause of action to file the present O.A. in as much as the impugned transfer order did not displace him and his order of posting ^{was} yet to be issued. He further submitted that even S.S.P. Tripathi was earlier posted at Bahraich Division but without performing any duty there, he was adjusted at Basti Division, which is evident from order dated 02.03.2001 itself (Pg. 19 of the O.A.). He, thus, submitted that applicant ^{has also been R} ~~was~~ getting the choice postings ^{of app's choice R} where ^{ever R} he wanted. Therefore, it is wrong on his part ^{to} make allegations of proximity against the private respondents. Counsel for the private respondents submitted that ^{see p w 3 R} ~~applicant~~ was due to superannuate on 31.07.2004. Therefore, he represented to the competent authority for his posting in U.P. Circle near his home town with Khalilabad District Sant Kabir Nagar, so that he may make his arrangement for final settlement on retirement. It was considering his valid request, that Director Post Offices vide his order dated 26.04.2002 allotted U.P. Circle to the applicant (Annexure CA-I). Therefore, his transfer to Basti was very much in accordance with para-10 of transfer guidelines and it cannot be said to be illegal or arbitrary. In support of his



contention, counsel for the private respondent relied on 2004 (1) UPLBEC 1002 wherein Hon'ble High Court had held that even where the decision to transfer is political one, it cannot be challenged on the ground of legal malafides.

7. I have heard all the counsel and perused the pleadings as well.

8. The objection taken by private respondent that there was no cause of action in favour of applicant as he had not yet been transferred has to be rejected because admittedly there is only one post of S.P.Os at Basti. Once Shri C.B. Tripathi had been posted vice S.S.P. Tripathi naturally Shri S.S.P. Tripathi would have been posted. In fact in the impugned order itself it was mentioned that posting order of Shri S.S.P. Tripathi will be issued separately. Therefore, applicant had a right to challenge the impugned order in order to protect his own right.

9. As far as transfer guidelines are concerned, both the parties have relied on different paras. Transfer guidelines are only directory in nature and are not mandatory, of-course followed by the departments as far as possible. At this juncture, it would be relevant to quote the relevant portions which have been relied upon by different parties. The transfer guidelines dated 7-3-1982 relate to rotational transfer wherein para 4 (1) 4(3) and para for ready reference read as Under:-

"4(i): Gazetted officers and non-gazetted supervisory staff (Such as ASFOs, ASRMs, IOPs, IRMs, JE, Junior Accounts, Officers, etc) will be normally subject to a station tenure of 4 years, which may be extended up to 6 years in individual cases in the public interest. The powers in respect of the gazetted officers will be exercised by the P & T Directorate and in the case of non-gazetted supervisory staff, by the concerned Heads of Circles.

4(3) As regards non-gazetted operating staff, they will also be liable to transfer from one station to another (within their respective recruiting units) on the basis of completion of station tenure of 4 years. such transfers should also



taken into consideration the need for balancing of popular and non-popular stations so that popular stations are not monopolised by certain favoured employees. The stations tenure of 4 years may, however, be extended to 6 years in individual cases in the public interest. The powers for extending the station tenure beyond the prescribed limit for in respect of the operative staff up to the level of L & G officials will be exercised by the concerned Director of Postal Services/Director Telegraphs/Area Manager/Deputy General Manager and in the case of higher selection grade officials, by the Head of the Circles."

4(10) The staff who have two years or less to go on 30th September of each year before superannuation may be exempted from rotational transfer, as far as possible, and also given posting of their choice to the extent administratively feasible."

10. As is seen from above, it is only normally that station tenure is stated to be 4 years and could be extended further meaning thereby that in normal course, the tenure would be 4 years but it could be extended by 2 more years in public interest but it does not mean that a person cannot be transferred before 4 years at all. The period of 4 years could be reduced also but in only due to administrative exigencies or in larger public interest. Now we have to see whether the transfer order issued by the respondents in present case, can be said to have been issued either in larger public interest or in administrative exigency or not. Perusal of Annexure CA-6 shows clearly that Shri C.B. Tripathi has been posted to Basti on the directions given by P.S. to the MOC & IT as per his telephonic talk with Chief P.M.G. U.P. Circle at Bulandsahar, It is thus, clear that the said transfer order was neither issued in public interest nor can be said to have issued due to any administrative exigency. On the contrary it was definitely issued to accommodate respondent No.3 on the dictate of political high ups.

11. As far as para 10 is concerned, in case there had been

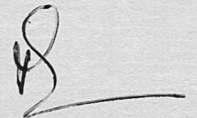


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a vacancy at Basti and the said Shri C.B. Tripathi had been posted to Basti because there were two years left for Shri C.B. Tripathi's superannuation probably the order would have been alright in terms of para 10 of guidelines. But in the instant case, it is seen that while posting Shri C.B. Tripathi to Basti, the applicant herein was to be displaced from Basti to some other place even though, he had also come to Basti on his own request and cost only in March 2001 and in July 2002. i.e. within one and a half years, he was being displaced to accommodate respondent No.3. In my considered opinion, such an order cannot be sustained in law, therefore, the transfer order, posting Shri C.B. Tripathi at Basti by displacing the applicant cannot be sustained. The same is accordingly quashed and set aside.

12. However, before parting with the case, it is left open to the respondents to post the respondent No.3 for two months to Basti on temporary duty if their rules so permit so that respondent No.3 may also make final arrangements for his final settlement at Khalilabad. It is made clear this is not a direction and is a mere suggestion to find out the solution in the given circumstances.

13. In view of the above discussion, the transfer order is quashed and set aside. The O.A. is allowed with no order as to costs.



Member (J)

shukla/-