

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1100 OF 2002
ALLAHABAD, THIS THE 23rd DAY OF January 2004, 2004

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

Pratima Jacob aged about 57 years, son of Late Shri P. Elisha, resident of C-410, Rajendra Nagar, Bareilly (Working as Lower Division Clerk in Regional Passport Office, Government of India, Ministry of External Affairs, Bareilly.

.....Applicant

(By Advocate : Shri R.C. Singh)

V E R S U S

1. Union of India through the Secretary, Ministry of External Affairs, New Delhi-110 001.
2. Chief Passport Officer-cum-Joint Secretary, Govt. of India, Ministry of External Affairs, (C.P.V. Division), Patiala House Annexie, Tilak Marg, New Delhi.
3. Passport Officer, Government of India, Ministry of External Affairs, Bareilly.
4. Shri R.N. Naik, Public Relations Officer (Vigilance), Government of India, Ministry of External Affairs (C.P.V. Division), Patiala House, Annexie, Tilak Marg, New Delhi.
5. Shri U.S. Lingwal, the then Passport Officer, Govt. of India, Ministry of External Affairs, Bareilly (Now Posted as Public Relations Officer, Regional Passport Office, Trikoot-III, Bhikaji Cama Place, R.K. Puram, New Delhi).
6. Shri P.K. Kapoor, Superintendent, Passport Office, Bareilly.

.....Respondents

(By Advocate : Shri V.V. Mishra)

O R D E R

By this Original Application, applicant has sought the

following reliefs:-

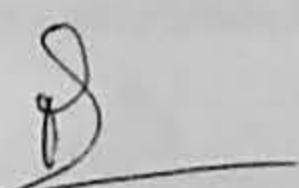
"(a) issue/passing of an order or direction setting aside the transfer of the applicant from the Regional Passport Office, Ahmedabad, allegedly ordered by the respondent No.2 as mentioned in the Telegram No.V.IV/584/3/99 dated 08.11.2000(as contained in Annexure No.A-17), the relieving of the applicant from the Regional Passport Office, Bareilly by post with effect from 13.11.2000 (Forenoon), vide office order No.5(7)87/PO/BLY dated 10.11.2000, issued by the respondent No.5 (as contained in Annexure A-4), Memorandum No. V/Vig.II/842/45/2000 dated 10.04.2001, vide which the applicant was informed that his representation against the transfer have been rejected by the competent authority (as contained in Annexure No. A-12 and also against the Confidential letter No.V/Vig-II/842/45/2000 dated 19.11.2001 issued by the respondent No.3 (as contained in Annexure No.A-16), vide which the appeal/representation of the applicant against the transfer is said to have been rejected, after summoning the original records.

(b) issuing/passing of an order or direction to the respondents to allow the applicant to join the duties at Regional Passport Office, Bareilly and pay him salary regularly every month, including the arrears from 13.11.2000 onwards.

(c) issuing/passing of any other order or direction to the respondents as this Hon'ble Tribunal considers appropriate in the circumstances of the case.

(d) allowing this Original Application with costs."

2. It is submitted by the applicant that he was working in Army as J.C.O. where he had to seek voluntary retirement after putting 25 years in service due to illness of his wife. Thereafter, he got re-employment as L.D.C. in the Regional Passport Office, Bareilly with effect from 17.03.1987 under the quota fixed for ex-service man as per the Rule 16(1) of the Central Passport and Emigration Organisation(hereinafter referred as CPEO) Rules, 1968, the Controlling Authority, the Ministry of External Affairs. But the powers may be exercised by the Chief Passport Officer under



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sub Rule(2) of Rule 16 who shall have the ex-officio rank of Director or Deputy Secretary in the Ministry of External Affairs.

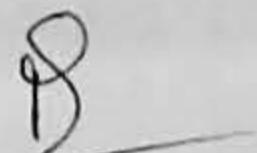
3. In the year 1997, one complaint was given by Shri Nathi Ram by making allegation against the applicant that applicant accepts bribe from people. However, since no substance was found by the C.B.I. who looked into the matter, ^{the} said complaint, was dropped. On 11.10.2000 when applicant reached the office, he went to Shri P.K. Kapoor, Office Superintendent for putting his signature in the attendance register but the same was not available as he was informed that register has been sent to the Passport Office by marking 'X' (i.e. absent) against the name of the applicant. This was protested by the applicant and was ^{in P} pointed by the applicant that even Mr. Kapoor ^{was P} coming late and ^{from P} going out ^{from P} office early without any proper information or justification. Listening to the quarrel between applicant and Mr. Kapoor, entire staff ^{gathered P} cadre and even respondent No.5 came out of his room. He thrashed the applicant and shouted at the applicant ^{in a P} with very ugly and unparliamentary language. It is submitted by the applicant that Shri U.S. Lingwal i.e. respondent No.5 threatened him with dire consequences. The very next day applicant submitted an application to respondent No.2 for holding an enquiry in the matter and taking ^{action} ^{against the} guilty officers (Annexure A-I). Applicant thereafter gave another application-cum-appeal on 02.11.2000 and also requested the authorities to make investigation with regard to movable and

8

immovable properties of all including the applicant, Shri U.S. Lingwal the then Passport Officer, Bareilly and Shri M.K.Kapoor, Superintendent in Passport Office before the respondent No.2 (Annexure A-2).

4. From 06th November, 2000 to 10th November, 2000 applicant was on sanctioned leave with permission to prefix 04 and 05.11.2000 and suffix 11 and 12.11.2000 (Annexure A-3). ⁹ When his absence applicant was relieved by the respondent No.5 vide his order dated 08.11.2000 w.e.f. 13.11.2000 with a direction to report for duty at Passport Office, Ahmedabad after availing usual joining time, even though, the impugned order dated 08.11.2000 was not given to the applicant, he was rather surprised because there was no such justification to relieve him even when he was on leave and without looking into the complaints already submitted by the applicant. He therefore, submitted a representation dated 13.11.2000 to the respondent No.2 seeking justice and for cancellation of his transfer (Annexure A-5). The applicant also submitted another application dated 13.11.2000 to respondents ³ and requested for being supplied the transfer order dated 08.11.2000 but the said application was not accepted by the respondent Nos. 5 & 6, therefore, this had to be sent by post on 13.11.2000 (Annexure A-6). He once again requested on 16.11.2000 by application for providing him transfer order dated 08.11.2000 as was referred to in the relieving order and grant him TADA. Even this application was not accepted by the respondent No.5 & 6, therefore this had to be sent by post on 16.11.2000 (Annexure A-7).

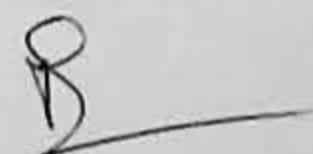
5. The whole controversy according to the applicant is based on the incident which had taken place as referred to above on 11.10.2000 and he is being thrown out just because he happens to be the president of the association in order to teach him a lesson. Thereafter, his representation was rejected and he was directed to report to Ahmedabad and has even been served a charge sheet dated 09.05.2001 with allegation that he had disobeyed the order and has not reported at Ahmedabad inspite of repeated directions. He has further submitted that ^{it was only P2} ~~on 20.02.2002 only~~ ^{Heh} ¹ applicant has been provided with a copy of the transfer order dated 08.11.2000 for the first time. Perusal of which shows that this transfer is on the basis of complaint forwarded by respondent No.5. It is thus submitted that this transfer order is punitive in nature and since no action was taken on the basis of complaint, which is ~~alleged~~ to have been given, it cannot be made basis for transferring the applicant from Bareilly to Ahmedabad. He has further pointed out that respondent No.5 ^{full} is responsible for getting him transferred due to his personal bias, which is evident from the fact that it was the same complaint which was made by Shri Nathi Ram earlier in the year 1997, which was procured by respondent No.5 again from the said shri Nathi Ram on 27.10.2000 and sent to the Hon'ble Minister of External Affairs by registered post dated 25.10.2000. After receiving the transfer order, he again gave a representation dated 22.03.2002 to respondent No.2 requesting therein for cancellation of the transfer order as neither this transfer ~~order~~ was made in public interest nor administrative exigency but was based on a fabricated complaint(Annexure A-20) . But till date no decisions has been taken in the said appeal. In support of his contention he has relied on the judgment given in case of STATE OF U.P. VERSUS JAGDEO SINGH reported in 1984 Supp. SCC



413. He has also referred to 1991 (2) UPLBEC 1303 wherein it is clearly held that transfer of government servant on the basis of a complaint is not sustainable. Similarly in the case of PRADEEP COEL VERSUS REGIONAL MANAGER, REGION II STATE BANK OF INDIA reported in 1992 (10) LCD 84 it has been held that if any employee is guilty of misconduct, it is open to the employer to take action against him but it is not open to them to transfer the applicant on this ground. He has thus, submitted that the transfer being illegal, arbitrary and unjustified may be quashed and set aside.

6. Subsequently, applicant had filed M.A. No.1687/2002 seeking amendment in the O.A for challenging the order dated 08.04.2003 by which the applicant was punished on conclusion of the disciplinary proceedings but the said amendment application was rejected on 06.05.2003 being a separate cause of action. Therefore, applicant has filed separate original application challenging the said order.

7. Respondents on the other hand have opposed this O.A. by submitting that transfer is an incident of Government Service and government servant can always be transferred by the competent authority in exigency of service. They have relied on the judgment given by the Hon'ble Supreme Court in the case of S.L. ABBAS and have submitted that since there is no case of malafide involved in the present case, therefore, Tribunal may not interfere in the transfer matter. They have further submitted that applicant was transferred on administrative exigencies considering the fact that Regional Passport Office Ahemedabad had huge pendencies which continue even today. They have further submitted that petitioner was functioning as L.D.C. in Passport Office Bareilly since 17.07.1987. In 2000 the



Passport Office Bareilly had reported that the petitioner as well as Shri A.K. Sharma L.D.C. were not amenable to discipline and were also found wanting in efficient discharge of their duties. Even his conduct and work was found unsatisfactory during the period of his temporary duty for 15 days in regional office Kolkata.

8. It is also submitted by the respondents counsel that thereafter an in-house fact finding inquiry was made on 19.11.2000 and it was inter-alia observed that the petitioner was lacking in adequate public dealing skills and there was also some merit in the allegations of certain acts of indiscipline on his part. After the aforesaid inquiry the competent authority took a view that while the allegations did not warrant initiation of any formal disciplinary action against the aforesaid two officials, their continuance in that office was not conducive to the smooth functioning of the office and ^{was} ~~was~~ against the wider public interest. Respondents further submitted that at the relevant time, the Regional Passport Office, Ahmedabad had huge backlog of work which even to this day continuous to be substantial and there was shortage of Group 'C' officials there, it was considered to be in the public interest as well as administrative exigencies to transfer the petitioner and Shri A.K. Sharma to the Regional Passport Office, Ahmedabad. Accordingly, orders were issued with the approval of the Minister of State for External Affairs on 08.11.2000 and the petitioner was relieved from passport office, Bareilly in the forenoon of 13.11.2000 vide order dated 10.11.2000. Aggrieved by the said order, the applicant filed an appeal dated 13.11.2000 through the Minister of State for Petroleum and Natural Gas and Parliamentary affairs addressed to the Minister of State of External Affairs requesting for cancellation of the Transfer Orders. The appeal



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of the petitioner was considered and the Minister of State for External Affairs confirmed the transfer order and rejected the appeal vide order dated 13.11.2000 and informed to the Minister of State for Petroleum and Natural Gas and Parliamentary Affairs that the transfer of Shri Jacob from Bareilly to Ahmedabad was done on administrative ground and in public interest.

9. They have further submitted that petitioner failed to comply with the transfer order while the other official Shri A.K. Sharma who was also transferred with the petitioner, complied with the order and joined at Regional Passport Office Ahmedabad on 26.02.2001. Respondents have further explained that since the petitioner did not comply with the order hence a final opportunity was given to him vide Ministry's Memo dated 10.04.2001 to join Regional Office Ahmedabad by the 15th of April 2001 failing which he was cautioned that disciplinary action would be initiated. It was also made clear in the said memo that his representations for cancellation of the transfer orders have been rejected by the competent authority. Since the petitioner still failed to comply with the orders of transfer, disciplinary proceedings under Rule 14 of C.C.S. (CCA) Rules 1965 were initiated against him vide memo dated 09th May 2001. He was found to be guilty in the enquiry. Accordingly, he has been given a penalty of stoppage of next two increments due to him and to treat the period from 13.11.2000 onwards ~~as~~ ^{as} ~~unauthorised~~ ^{duty} absence from vide order 08.04.2003.

10. Respondents have stated specifically that they are not prejudiced against the petitioner ~~that~~ ^{for} taking part in legitimate



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union activities and he has made allegations of prejudice only to give colour to the case. They have submitted that complaint made by Shri Nathi Ram is not at all relevant for the purposes of the present petition as his transfer is not based on the said complaint. They have further explained that applicant had already given a copy of his appeal to the National Commission for Minorities also but after respondents furnished the detailed reply, the national commission for minorities have also not reverted back to the Ministry, which itself shows that there was nothing objectionable in the action taken by the Ministry. They have thus submitted that there is no merit in the O.A. the same may therefore, be dismissed.

11. I have heard both the counsel and perused the pleadings as well.

12. Perusal of the impugned order dated 08.11.2000 which is a fax message issued by the Administrative Officer shows that the applicant's transfer was done on the basis of complaint forwarded by the passport officer, Bareilly. As per the applicant's counsel this was the same complaint which was given by one Shri Nathi Ram in the year 1997 against the applicant alleging therein that applicant was taking bribe in issuing the passport etc. To substantiate his submission, applicant has annexed the letter dated 02.11.2000 written by Passport Officer Bareilly to the Joint Secretary(CPV) & Chief Passport Officer, at New Delhi. In normal course, we do not interfere in transfer matters as transfer is an incidence of service and Hon'ble Supreme Court has repeatedly held that Courts should not interfere in routine transfer matter unless it is vitiated by malafide or is contrary to the statutory rules. As I have stated above, the reason which has come forth in the Fax



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due message is that applicant was to be transferred out/to the complaint sent by the Passport Officer but in the counter affidavit, respondents have tried to justify their actions by stating that there were deficiencies of LDCs at Ahmedabad while work load was too much. The law is well settled by Hon'ble Supreme Court in the case of MOHINDER SINGH GILL that the correctness of the order has to be seen on the basis of reasoning given therein and the same cannot be improved by the respondents by filing a counter affidavit. Though respondents have tried to explain that the applicant was not amenable to discipline and it was keeping in mind his over all work and conduct that he was transferred from Bareilly to Ahmedabad, that is contrary to the language used in the fax message which is challenged in the court of law. It is also found to be little strange that applicant was relieved while he was on sanctioned leave. Page-26 of the D.A. clearly shows that applicant was granted Earned Leave for 5 days from 06.11.2000 to 10.11.2000 with permission to prefix 4th and 5th November and suffix to 11th and 12th November 2000 being a holiday. The admitted position is that applicant was relieved in absentia vide order dated 10.11.2000 itself w.e.f. 13.11.2000 F.N. strangely enough apart from the fax message which was issued by the Administrative Officer addressed to the Passport Officer Bareilly, there is no other order on record transferring him from Bareilly to Ahmedabad by endorsing the same to the applicant. In fact, is only the office order dated 10.11.2000, which has been endorsed to the applicant. In normal course whenever an individual is required to be transferred from one place to the other, the least that is expected from the respondents is that they should issue a proper transfer order by endorsing the same to the person concerned.

13. I had asked the respondents counsel specifically whether

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the transfer order issued by the authorities was endorsed to the applicant but he was not able to satisfy the court by giving a proper reply. On the contrary, he submitted that the Fax message itself is a transfer order. As I have just stated above, the fax message was not marked to the applicant at all, on the contrary it was fax message addressed to the Passport Officer. Therefore, the way applicant has been transferred out does not inspire much confidence and smacks of arbitrariness. In these circumstances, I am inclined to quash the transfer of applicant from Bareilly to Ahmedabad. This however, would not mean that applicant can stay at Bareilly for all times to come. If authorities feel that services of an individual are required at a particular station, they can always transfer the said employee to the place where his services are so required. The transfer orders should in such a situation be passed properly in a normal way. I would like to further clarify that quashing of this transfer would not ipso facto vitiate the subsequent order of punishment given to the applicant for disobeying the orders passed by the respondents as once the orders are passed, they are meant to be complied with. Applicant cannot be the judge for deciding the correctness of order or otherwise. He could always have joined and then pursued his matter. However, that is a separate cause of action for which I am informed, applicant has already filed another O.A. therefore, that aspect would be seen when that O.A. comes up. I would only like to say here that since the procedure adopted by the respondents in transferring the applicant from Bareilly to Ahmedabad is not found to be in accordance with law. Therefore, the transfer order is being quashed on a technical ground. Respondents would be at liberty to pass a fresh proper order transferring the applicant from Bareilly to another place where his services are so required.

14. With the above observations, this O.A. is partly allowed. No order as to costs.


Member (J)