

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 214 OF 2003

ALLAHABAD, THIS THE 21st DAY OF MAY, 2003

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

Viheshwer Mathur,
s/o Late Shri I.P. Mathur
serving as L.D.C.
office of S.I. S.I. Naini, Allahabad
resident of 141/B Rajrooppur,
Allahabad.

.....Applicant

(By Advocate : Shri D.C. Saxena)

V E R S U S

1. Union of India,
through the Secretary,
Ministry of Industries,
New Delhi.
2. Director Small Industries Services,
Institute 107, Industrial Estate,
Kalpi Road, Kanpur.
3. Director,
Small Industries, Services Institute,
Naini, Allahabad.
4. Shri T.H. Farooqi,
Assistant Director
(L/F) Administration,
Small Industries Service Institute,
Naini, Allahabad.

... Respondents

(By Advocate : Shri N. C. Nishad & Km. S. Srivastava)

O R D E R

This O.A. has been filed by applicant to challenge
the order dated 13.02.2003 whereby he has been transferred
from Allahabad to Branch Varanasi by Director SISI, Allahabad
(Pg. 14).



....2/-

2. The main contentions of applicant's counsel are that (1) Director SISI. All is not competent to transfer the applicant (2) Transfer is a result of malafides on the part of Assistant Director, respondent No.4 (3) It is colourable exercise of power & ~~penitive~~ in nature ~~and~~ even though persons with Allahabad ^{as} longer stay at ~~as~~ were available, applicant has been transferred out while ~~as~~ such persons are continuing at Allahabad he has therefore submitted that the impugned order ^{is} ~~is~~ is thus bad in law and liable to be quashed.

3. I have heard all the parties and perused the ~~pleasings~~ as well. All the contentions are being dealt with one by one.

4. To substantiate his 1st argument applicant's counsel relied on Pg.19 and 20 of the O.A. which shows that vide order dated 06.11.2002 Director SISI Kanpur had transferred Shri N.A. Khan Stenographer Grade-III from Br. SISI Varanasi to SISI Haldwani in public interest. Similarly Pg. 20 shows when SISI had transferred Shri Rohit Mishra LDC from Br. SISI Varanasi to SISI Allahabad, the Director SISI Kanpur held the said order to be not valid by observing that power to distribute the posts and personnel among SISI/Br.SISI lies with the cadre controlling authority ^{for} Gr. C&D i.e. Director SISI Kanpur. He has further relied on order dated 20.02.2003 whereby Director SISI Kanpur informed Director Allahabad that he is not competent authority to transfer any Gr. C & D official as power has been delegated to Director SISI Kanpur



who is cadre controlling authority vide letters dated 01.05.1996
~~submitted~~
and 10.04.1997. He ~~also observed~~ that order dated 13.02.2003
is therefore, not valid.

5. It was submitted by the applicant's counsel that once the cadre controlling authority had cancelled the order dated 13.02.2003 it could not be given effect to as in letters dated 01.05.1996 and 10.04.1997 it is clarified in para 2(ii)to (iv), (ix) and (xii) which for ready reference reads as under:-

2(ii) The Cadre Controlling Authority will be sole responsible for maintaining the rosters, identifying the status of vacancies etc., for effecting Recruitment to these categories of posts.

(iii) In certain State Cadres, where there are more than one Director or Institutes, the Director who is the Cadre Controlling Authority would identify the vacancies and intimate the same to the concerned Directors of the other Institute in that State Cadre for making direct recruitment. The list of the Appointing authorities have been given in Annexure-I to this letter. It will be the responsibility of the Appointing Authority to follow the procedure and existing rules governing that post before appointing a candidate.

(iv) Any dispute or clarification should be settled by the Cadre Controlling Authority, who will be responsible for examining each and every aspect before taking a decision.

(ix) Transfer of Non Gazetted employees within the State Cadre will be effected by the Cadre Controlling Authority only. The Cadre Controlling Authorities are however, advised to effect such transfers in consultation with Directors of other Institutes as far as possible while exercising the powers in this regard, the Cadre Controlling Authorities are requested to adhere to the existing transfer policies and guidelines and also observe the economy instructions issued by the Government on the subject from time to time.

(xii) Transfer of posts of any Non Gazetted category will continue to be vested with this HQ only."

Similarly letter dated 10.04.1997 reads as under:-

"



.....4/-

"To,
All SISIs etc.

Sub: Delegation of powers to transfer Group 'C' & 'D' posts/positions within jurisdiction of SISIs.

Sir,

I am directed to say that powers were earlier delegated to the Directors (Acting as Cadre Controlling authorities for Group 'C' and 'D' posts in SISIs) to transfer the post of Skilled Workers Gr.I and II within the jurisdiction of their SISIs, vide this office letter of even No. dated 11.03.1997. Now suggestions have been received to the effect that these powers may be amplified to include those Group 'C' and all 'D' posts in respect of which Directors of SISIs are the appointing/controlling authorities so that necessary, administrative flexibility in management of these posts/employees is available to the Directors. After considering the matter, and, with a view to provide necessary administrative flexibility to the Directors acting as appointing/Cadre controlling authorities in respect of Group 'C' and 'D' posts, the competent authority is pleased to delegate powers to such Directors to transfer Group 'C' (except those posts were DC(SSI) is the appointing authority, e.g., investigator) and 'D' posts whenever administrative exigencies warrants so, within the jurisdiction of their cadres. In other wards, the Directors of the SISIs, as cadre controlling authority, will have powers to distribute/transfer the posts and the personnel among the SISI/Br.SISI within their jurisdiction in keeping with the functional and administrative requirements. Of course, this delegation will not apply to those posts of Group 'C' for which the Development Commissioner (Small Scale Industries) is the appointing authority except in the case of Office Supdt. As detailed in the next para.

2. The competent authority is also pleased to delegate to the Directors of SISI acting as cadre controlling authority for Group 'C' and 'D' posts to transfer the post of office Supdt. within the jurisdiction of their SISIs/Br. SISIs.

Yours faithfully
sd/-
(D.K. Gautam)
Deputy Director (Admn)"

6. According to the applicant's counsel since the power was delegated to the Director SISI Kanpur to transfer Gr. C&D employees specifically being their cadre controlling authority, the same order passed by him are final and cannot be superseded by any other Officer. Moreover once the matter was subjudiced in the court, Head Quarter had no business to issue any clarificatory letter.



...5/-

7. Respondents on the other hand have submitted that in Aug 1997 when this applicant had applied for transfer to Allahabad on request, it was Director SISI All who had transferred him from SISI Varanasi to Allahabad (Annexure CA-I) which was accepted by him and he complied with the transfer order and joined at Allahabad. He never challenged the authority of Director ^{R at that time} SISI Allahabad as it suited him at that time therefore, he is estopped from challenging the authority of Director SISI All Now.

8. Moreover, by letter dated 10.04.1997 it was clarified that though Inter Institute transfers were to be carried by Director SISI Kanpur but with a view to provide necessary administrative flexibility to the Directors acting as appointing/cadre controlling authorities in respect of Gr. C & D posts, they were delegated powers to transfer Gr. C & D posts whenever administrative exigencies warrants so, within the jurisdiction of their cadres (Annexure RA-II). It was further clarified by the Ministry of Industries Head Quarter vide their letter dated 11.03.2003 that Director Allahabad being appointing authority can transfer C & D within his jurisdiction from Allahabad to Varanasi vice versa. ^{and R}

9. I have seen both these letters dated 01.05.1996 and 10.04.1997 and I am satisfied that by letter dated 10.04.1997 power was given to both Director as well as cadre controlling authority to transfer Gr. C & D employee in order to provide necessary administrative flexibility whenever situation so desires, within the jurisdiction of their cadre. The contention of applicant's counsel that Head Quarter could not have clarified the position is not sustainable in law and is rejected because



once there was a dispute between two directors and the matter was referred to Head Quarter, the Head Quarter (Admin) Branch rightly clarified the position as otherwise it would have discipline spoiled the ~~descriptive~~ in office, apart from creating confusion and uncertainty in the minds of officers. Contention of applicant's counsel that Dy. Director could not have issued is the clarification therefore, ~~is~~ rejected. If the Director SISI all felt applicant's services were required at SISI Branch Varanasi since he knew computers, it cannot be interferred with because Hon'ble Supreme Court has repeatedly held that who is to be posted where, should be left to the authorities concerned and courts should not interfere in ~~slightly~~ transfer matters ~~highly~~. Specially in a case like this, where applicant had earlier accepted transfer made by same authority as it suited him at that time. No body can be allowed to blow ~~breath~~ hot and cold in same ~~breath~~. Having accepted his authority earlier he could not be allowed to challenge the authority of Dir. SISI ~~All~~ now.

10. Applicant's counsel next contended that this order was issued out of malice which respondent No.4 was having against applicant as he was demanding allowances which was ultimately rejected by ~~by~~ him also and this transfer was based ^{on} ~~due to~~ the warning and was not transfer simplicitor. He also submitted that the persons with longer stay were retained at All while applicant was posted out itself shows that the transfer was punitive in nature because he had demanded extra allowances. The substantiate his argument applicant's counsel relied on 1993(23) ATC 836, 1995(29) ATC 45, 1991



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1991 (15) ATC , 1996(34)ATC 172 and 1994(1)ATJ 71 and
1988(6)ATC 429.

11. Respondents counsel on the other hand relied on
1987 ATC(3) 121 to state that it is ^{wh} necessary to transfer the
persons as per their seniority always. She also relied on
2002 SCC(L&S)21. I have read all the judgments and hold that
this transfer cannot be said to be either due to malafides or
due to colourable exercise of power nor can be said to be
punitive in nature because each case has to be decided on
given facts of the case. In the instant case, applicant has
made allegations of malice against respondent No.4 who was
only Assistant Director whereas order of transfer has been
issued by the Director, a higher authority. Assistant Director
merely conveyed the order. Moreover, this Director had earlier
posted the applicant to Allahabad on his own request which
itself shows that Director was not ^{Enrusing B} missing any grudge against
the applicant. Simply because applicant was given a warning
or his claim for allowances was rejected cannot be a ground
to suggest that order of transfer is based on that. Respondents
have explained that applicant knew computer and since Shri
N.A. Khan stenographer at SISI Branch Varanasi had been
transferred out, it became necessary to post the applicant at
Varanasi. Applicant's apprehension was that since he was being
posted against the post of Stenographer at Varanasi, it would
unnecessarily spoil applicant's CR as later on respondents
would say his work is not correct because he is only ~~an~~ LDC.
This point did have some substance so I had specifically



....8/-

asked the counsel for the respondents how applicant is being transferred against the post of stenographer, it was stated specifically by respondent No.4, who was present in court that applicant would be given drafts for being typed out and same work would be taken from him which he was doing at Allahabad as LDC. After all sitting here in court, I cannot decide the posting of officers and it is for the department to decide how best work can be taken out from its officers, therefore, it is entirely upto the department to decide which employee is to be posted where. I can interfere only if the transfer order is either malafide or is violative of any statutory rules. In the instant case since I do not find the order to be either malafide or violative of any statutory rules, no interference is called for. Transfer is after all a condition of service and nobody can claim to be retained at a particular place for all times to come. After all he was adjusted in Allahabad at his own request when circumstances so allowed. If his services are now required at Varanasi, he cannot challenge the same on the grounds taken by him.

12. In view of the above discussion no interference is called for. O.A. is accordingly dismissed with no order as to costs.


Member (J)

shukla/-