

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH:ALLAHABAD

ORIGINAL APPLICATION NUMBER 456 OF 2003

ALLAHABAD, THIS THE 7th DAY OF August, 2003

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

8274 Pankaj Agarwal, son of Shri
Harish Chandra Agarwal,
resident of M.I.G. 60, Indira Puram,
Shamshabad Road, Agra

.....Applicant

(By Advocate : Shri A.K. Bajpayee)

V E R S U S

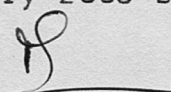
1. Union of India through the secretary,
Ministry of Defence, New Delhi.
2. General Manager, Canteen Stores,
Department Adelphi, 119 M.K. Road,
Mumbai 400 020.
3. Area Manager, Canteen Stores,
Department Agra.
4. Miss Shanta K. Nair,
Area Manager, Canteen Stores,
Department Agra.

.....Respondents

(By Advocate : Shri V.K. Pandey)

O R D E R

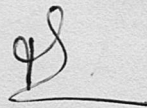
By this O.A. applicant has challenged the order dated 06.02.2003 whereby he has been transferred from Agra to Masinpur(Assam). He has submitted this transfer has been done at the instance of Miss Shanta K. Nair with whom he already had one tussel while he was posted under her at Bikaner where she (respondent No.4) was the Assistant Manager, therefore, as soon as she joined at Agra on 25.06.2002 she got applicant transferred from Agra in February 2003 because she was



prejudiced against the applicant. Applicant's counsel submitted that the malafides on the part of respondent No.4 is proved from the following facts:-

- (i) In the order dated 06.02.2003(at Pg.15) against serial No.3 copy was endorsed to AGM legal with the remark "this has reference to your letter No.3/A-8/Vig 1411/AGD/Conf./193 dated 05.02.2003 while in the order dated 17.02.2003(Pg.17)which was served on applicant remark against Sl.No.3 was scored out which according to applicant itself shows that his transfer was done as a result of some letter and was not a normal transfer in administrative exigencies.
- (ii) He was posted at Agra in 1999. There was nothing against him but as soon as Miss Shanta K. Nair joined at Agra as Depot Manager in June, 2003, she got the applicant transferred out in Feb.2003.
- (iii) After his transfer he represented to the Headquarter who were pleased to defer the same by 2 months upto end of April(Pg.25) but Miss Shanta K. Nair issued the movement order for 01.05.2003 in advance on 13.03.2003 itself(pg.30) which shows she was bent upon sending the applicant out of Agra.

2. Counsel for the applicant thus submitted that this transfer was not a routine transfer ^{done by} but was ^{due to} malafide on the part of respondent No.4. He submitted that there were several other persons working at Agra for 8/9 years but they were not touched while applicant alone was transferred which is violative



of Article 14 and 16 of the constitution. He further submitted that there was shortage of LDCs at Agra which is evident from page 46 yet applicant had been transferred out which again shows that there was no justification to post him out.

3. In the last but not the least counsel for the applicant submitted that transfer cannot be issued by way of punishment and if respondents feel that applicant had committed some misconduct, they should have initiated disciplinary action against him but without giving him opportunity he could not have been held guilty of misconduct nor could have been transferred on the ground of alleged misconduct.

4. Respondents on the other hand have filed a short counter affidavit stating therein that there were serious complaints against the applicant from various agencies that applicant while posted at CSD Agra was involved in illegal and nefarious activities by way of leakage of CSD Stores in the civil market through agents (Annexure S CA 4 & 5). On the basis of these complaints, investigations were carried out by Shri R.C. Das, Depot Manager CSD Jabalpur (Annexure S CA 6 to S CA 11). On the basis of his report since the charge of misconduct was proved against him, applicant was transferred in administrative exigency.

5. They have further submitted that applicant has been posted from CSD Agra to CSD Masinpur to avoid such illegal



and nefarious activities at the initial stage itself and also to avoid such links with agents and to avoid further nuisance and also to maintain the dignity of the Government of India. The investigation report was submitted by Shri R.C. Das who was an independent person. Respondents have also stated that the allegation of malafides against the respondent No.4 are absolutely wrong, vague and not sustainable. They have categorically denied that any tussle between applicant and respondent No.4 while their posting at Bikaner had taken place. The applicant ought to have reported the matter to the higher authorities but he never did so and it is for the first time now that after applicant has been found guilty and has been transferred due to his misconduct that he is making these vague allegations. They have thus submitted that since applicant has been transferred out from Agra in the best interest of the organisation to avoid any further leakage of the items from CSD canteens to the open market, no interference is called for by the Tribunal. Even otherwise, they have submitted that transfer is an incidence of service and he can always be transferred from one place to the other. In support of their contention they have relied on number of Supreme Court judgements to state that court should not interfere in normal transfer matters as it is best to be left to the authorities concerned to decide as to who is to be posted where and how best work can be taken from out an individual.

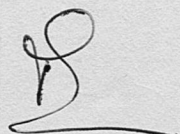


6. I have heard both the parties and perused the original records produced by the respondents, as well as, pleadings made by both the sides.

7. If I was to decide the case only on the basis of averments made by the respondents in their short counter affidavit probably the O.A. would have been allowed because at more than one place they have themselves stated that applicant has been transferred from Agra to Masinpur as his misconduct was proved. Whereas there is nothing on record to show that either any disciplinary action was taken against the applicant or he was ever given any opportunity to defend himself in accordance with law. Therefore, it is not understood as to how the respondents have stated in their counter affidavit that misconduct against applicant has been proved. It goes without saying that if respondents have a doubt against the applicant that he has been indulging any activities inconnivance with certain agents to leak out the products or items from the CSD canteens for being sold in open market, it is rather a serious matter and respondents should have initiated proper action against the applicant, if they had found some evidence against him for indulging in these activities but respondents counsel himself stated on instructions from the departmental representative present in court that there was no documentary evidence available against the applicant. In view of this statement, it is definitely wrong on the part of respondents to state that misconduct against applicant had been proved.



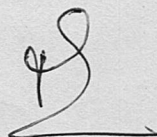
8. Perusal of the original records produced by the respondents however show that after complaints were made by different agencies, an enquiry was conducted by Shri R.C. Das, the Depot Manager CSD depot, Jabalpur who is an independent person and no bias has been alleged against the said person. After looking into all the aspects of the matter, the said Shri R.C. Das has recommended certain remedial measures to curb the practice of leakage of stores and since he also found the involvement of Shri Pankaj Agarwal LDC i.e. applicant in respect of the alleged leakage of CSD stores into civil market, he had suggested that Shri Pankaj Agarwal may be transferred to some other place and continuously watch thereafter or further action may be taken as deemed fit. Perusal of the original records further show that applicant was not suspected of this kind of leakage for the first time by Shri R.C.Das but even earlier also while he was posted at Bikaner, it was recommended by the authorities to initiate disciplinary action against Shri Pankaj Agarwal of CSD Depot Bikaner as there were certain complaints against him with regard to leakage of CSD stores in the open market inconnivance with certain other persons. When respondents showed all these original documents, I had asked them as to why no disciplinary action was initiated against the applicant if there were so many complaints against him, to which respondents replied that there was no documentary



proof against the applicant available on record on the basis of which he could have been dealt with in a disciplinary case.

I am rather surprised at the reply given by the respondents. If one goes through original records and also the annexures filed with the CA, one would find that the agencies had given specific name of Shri Pankaj Agarwal and few other persons who were responsible for this leakage of stores. It is rather a serious matter and it would not be all that difficult to find out, as to, at what level, the stores are being smuggled out, if ~~only~~ a proper procedure is adopted and check is carried out by the officers concerned, it can be ensured that this kind of leakage does not takes place. After all, such a thing if is ~~existing~~^{existing}, it must be checked and stopped.

9. I am also surprised to see that no action has been taken against the other persons, who were named by the same agencies. After all such type of complaints must be taken to a logical conclusion. Either the complaints would be substantiated after the chargesheet is issued or the individuals would be declared as innocent in the absence of any evidence against them on the basis of disciplinary action. In no circumstances the ^{sword of} suspicion alone can be allowed to hang on the heads of these individuals for all times to come. Therefore, it would be better if a proper enquiry is initiated to rule out the involvement of persons



against whom allegation have been made. However, these observations are being made because respondents have made certain averments in the counter affidavit which are not correct. I would only say that the counter affidavit is not at all happily worded but I leave it at that.

10. Turning to the question with which we are really concerned namely whether applicant's transfer can be said to be due to malafide. In the given circumstances, I would say that since there is strong suspicion against the applicant that he had been indulging in the leakage of CSD canteen's stores to open market inconnivance with some agents, it was most proper to transfer him to some other place so that atleast such activities are stopped for the time being. It is also seen that enquiry was conducted by Shri R.C. Das who is the Depot Manager of CSD Canteen, Jabalpur. Therefore, his findings cannot be said to be prejudiced or biased because neither applicant had served under him at any point of time nor there is ~~any~~ allegation of malafides by the applicant against him. The allegation of malafides are only against Ms. Shanta Kumar Nair i.e. respondent No.4 but neither transfer order has been issued by her nor she can be said to be responsible for getting the applicant's transfer ~~red~~ out from Agra. Records show applicant's transfer was done on the basis of report submitted by Shri R.C.Das. I do not think, it requires



interference because transfer had to be issued in administrative exigencies.

11. As far as applicant's personal problems are concerned. The headquarters had already deferred his transfer for two months so that he could make the alternative arrangements for his family members.

12. Hon'ble Supreme Court has repeatedly held that Courts should not interfere in transfer matters unless they are found to be malafides in nature or they are in violation of some statutory rules. Applicant's counsel argued strenuously to suggest malafides by showing two different orders while in the first order there was some remarks against serial No.3 in the endorsement but the same was scored out in the order communicated to the applicant. Perusal of the both these orders show that order dated 06.02.2003 was an internal correspondence meant to be delivered to the applicant through proper channel, therefore, this was not the actual transfer order served on the applicant. This was infact a message conveyed to the Manager, CSD Depot, Agra and Masinpur. Applicant was served only with the order dated 17.02.2003 and if certain remarks were scored out against serial No.3, it would not make the transfer malafide as that is for the office to decide as to which part of order is to be communicated to the individuals concerned. As far as the point of discrimination is concerned, that would also not be



sustainable in law because applicant had to be transferred out from Agra due to some special circumstances. While those circumstances were not against other candidates, therefore it cannot be said that applicant has been discriminated against. Since ^{there} was suspicion against the applicant and no documentary proof had come on record, the best solution was to post him out for the time being because that would be in the interest of organisation.

13. In view of the above discussion, I find no good ground to interfere in this matter. Accordingly the O.A. is dismissed and the stay granted is vacated. It would however, be open to the applicant to join at the place of his posting and then give a detailed representation regarding any difficulties which he may face. If he gives such a representation, I am sure, higher authorities would apply their mind to the facts and then pass a reasoned order thereon. *£ No costs. £*



Member (J)

Shukla/-