

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.297 OF 2006

ALLAHABAD, THIS THE 20th DAY OF FEB. 2007.

C O R A M :

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

Prabhu Narain Ram,
S/O. Late Shri Banwari Ram,
R/O Village Daudpur, Post-Mohammdabad,
Yusufpur, District-Ghazipur.

.....Applicant
By Advocate : Shri Anand Kumar

Versus

1. Union of India, through Secretary,
Department of Post and Telecommunication,
Govt. of India, Dak Bhawan, Sansad Marg,
New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Director Postal Services, Allahabad Region,
Office of P.M.G., Allahabad.
4. Shri Udal Krishna, Director of Postal Services
Allahabad Region, Office of P.M.G. Allahabad, Allahabad.
5. Superintendent of Post Offices, Mirzapur.
6. Shri P.L. Gupta, Superintendent of Post offices,
Mirzapur.
7. Superintendent of Post Offices, West Division,
Varanasi-2.

.....Respondents

By Advocate : Shri S. Singh

Shri S. Singh

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Whether the impugned transfer orders dated 28-04-2005 (Annexure A-1) and 29-04-2005 (Annexure A-2) are legally tenable or not is the issue involved in this case.

2. Brief facts: The applicant was working as Sub-Divisional Inspector of Post Office, North Sub Division Varanasi w.e.f. 02-07-2002 and was promoted on ad hoc basis as A.S.P.O, West Sub Division Varanasi in Feb. 2004. The said promotion however had a short life as he was again posted as SDI(P) North Varanasi West in October, 2004 by the fourth Respondent. Many officials were engaged in certain inspection to detect certain frauds committed in the offices and the applicant, who was one among them, could detect such frauds in December, 2004. The applicant, due to heavy work load became sick and leave when applied was not sanctioned.

3. The applicant was kept under suspension w.e.f. 01-03-2005 but the same was revoked w.e.f. 03-03-2005. CBI made certain raid on 06-04-2005 but nothing objectionable was found. The applicant has not been paid his salary since June, 2005 onwards

4. With malafide intention, the applicant was transferred from the post of

SDI(P) North Varanasi West (Sensitive/significant post) to Complaint Inspector, Mirzapur, i.e. non sensitive insignificant post, vide impugned orders dated 28-04-2005 and 29-04-2005. The impugned transfer orders have been issued due to the mala fide intention of Respondent No. 4, Shri Udal Krishna, Director of Postal Services, who has some of his relatives in CBI whereby he has caused even raid in the house of the applicant. The following are the grounds raised in the OA by the applicant :-

- (a) Because the impugned transfer orders dated 28/29.4.2005 are full of malafide reasons which have been passed on the direction of the DPS, Allahabad, who is prejudiced with the applicant without assigning any reason as well as being a member of Scheduled Caste;
- (b) Because even the ad hoc promotion of the applicant was terminated on the direction of the respondent No. 4, i.e. Director of Postal Services, Allahabad;
- (c) Because on the complaint made by public, the applicant alongwith the SPO's Complaint Inspector, Varanasi West made inquiry into the aforesaid fraud committed by SPMs, Teliabagh and misappropriation of amount of Government money above six crores has been detected which is not possible by a single person.
- (d) Because inspite of giving appreciation and award the applicant only is being harassed by raid by C.B.I., suspension, transfer and denial of leave, bonus, salaries D.A. and promotions also.
- (e) Because the aforesaid raid by CBI against the applicant has been on the direction / report of the respondent No.4 but nothing was found objectionable.
- (f) Because the impugned transfer order of the applicant has been made from sensitive/ insignificant to non-sensitive/ insignificant post of Complaint Inspector, Mirzapur Division.



(g) Because none of the representations submitted to the respondents to set aside the transfer order as well as for payment of leave salaries, bonus and D.A. etc. have been replied so far although the illness of the applicant has been accepted.

(h) Because the post of SDI (P) is still vacant which is being officiated by Shri Sanjay Gupta, Complaint Inspector.

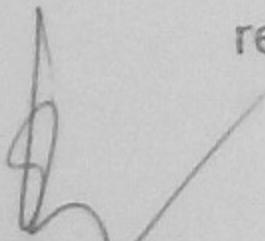
(i) Because the tenure of the office / station has not been completed till date but the respondents have violated the Government policy of transfer in this regard.

(j) Because the respondent No.4, i.e., the Director Postal Services, Allahabad is himself is fully responsible for the aforesaid fraud being the Director of Accounts (Postal) Lucknow as well as DPS, Allahabad and how he has been assigned the work of circle level enquiry into the aforesaid fraud and still holding the charges of DPS, Allahabad, i.e. To save the persons of his choice.

(k) Because the transfer of the applicant has been made only in order to harass the applicant who made assisted enquiries into the aforesaid fraud case. The applicant is not involved into the aforesaid fraud except S/Shri Ishwari Narain Singh, Late Ram Palat Ram, Srikant Yadav alongwith the respondent No.4.

(l) Because action of the respondents is bad in law, punitive, illegal, tainted with malafide, without jurisdiction, contrary to the Rules and established law.

5. Respondents have contested the OA. According to them, the transfer was on administrative grounds. It has also been submitted that the fraud referred to by the applicant was in respect of Kisan Vikas Patras, the total amount involved being in crores and certain Kisan Vikas Patras were recovered from the house of the applicants as well. The applicant already



stood relieved and his LPC had been sent to the new place of posting. Suspension ordered was on the contemplation of proceedings but was to be revoked due to pressure from the Union.

6. The applicant has filed his rejoinder and contended that the recovery by the CBI of Kisan Vikas Patra were genuine ones, bought in the name of the spouse of the applicant and they are not related to the fraud case. Certain orders relating to the duties and responsibilities attached to various posts have also been added to the rejoinder.

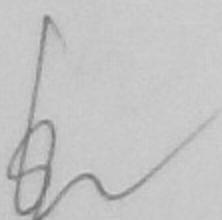
7. Counsel for the applicant submitted that Respondent No. 4 who has been by name impleaded as respondent and against whom mala fide has been alleged in the OA chose not to file any counter and as such all such allegations are to be taken as true and un-rebutted. It is the mischief played by the said Respondent No. 4 that has resulted in the illegal transfer.

8. Per contra, the standing counsel for the respondents vehemently contended that the transfer being one on administrative ground; that the applicant already stood relieved and LPC sent to the new place of posting; that the posting is not to any far off place but only within 60 kms and taking into account the post held by the applicant the same cannot be agitated; that in this case there is no question of one post being sensitive/significant and another non sensitive/insignificant; that as long as there is no depletion in

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the pay etc., the question of such posting from sensitive to insensitive etc., cannot be a ground of attack of transfer; that the applicant has been proceeded against under the relevant rules in contemplation of which only the applicant was kept under suspension but the suspension was to be revoked due to pressure from the Unions and there has been no proof of mala fide against the fourth respondent. It has also been argued that the scope of judicial review in matters of transfer being limited as held by a plethora of judgments, the impugned orders may not be interfered with.

9. Arguments heard and documents perused. First, as to the mala fide alleged against the respondent No. 4 and effect of non furnishing of counter by him in his individual capacity. Respondent No. 4 has been holding the post of Director of Postal Services, Allahabad, comparatively a senior post with adequate powers. It is alleged that the said respondent has some relatives in CBI and it is due to this link that the applicant's house was raided. Inconceivable. The CBI is an independent body and it is guided by its own rules and regulations and unless the authorities therein have been fully satisfied, there is no question of any raid being conducted on the suggestion of any relative of such officials! If the allegation of the applicant is accepted, it would amount to doubting the integrity of the CBI. The Apex Court in a number of its judgments has commended the impartiality and independent functioning of the C.B.I. Again, none of the allegations against the fourth respondent had been proved by the applicant. The Apex Court in



the case of **Delhi Development Authority v. UEE Electricals Engg. (P) Ltd., (2004) 11 SCC 213**, has held as under:-

16. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting in the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab*.) It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. (As noted by this Court in *E.P. Royappa v. State of T.N.*)

10. Next to be considered are the grounds levelled. In so far as posting from sensitive to non sensitive, the question does not arise since what is subject to judicial review on account of violation of constitutional provisions under Articles 14 and 16 is transfer from higher to a lower post, as held by the Apex court in the case of **E.P. Royappa v. State of T.N., (1974) 4 SCC 3**, wherein the Apex Court has held:

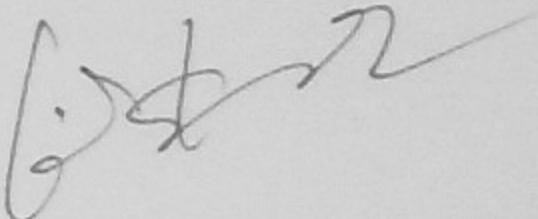
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So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Articles 14 and 16.

11. None of the other grounds independently or cumulatively could be treated as good grounds to interfere with the order of transfer. Hence, the OA being devoid of merits, merits only dismissal and it is so ordered. However, the respondents shall ensure that if the applicant had been absent without joining the new place of posting, awaiting the outcome of this OA, on the applicant's applying for leave, necessary sanction should be accorded as per rules and his salary if not paid, should be released after such regularization without any delay.

12. No costs.



Dr. K B S RAJAN
JUDICIAL MEMBER