

(5)
Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 659 of 2007

____ day this the 16 day of August 2007

Hon'ble Mr. K.S. Menon, Member (A)

Hari Lal Singh, aged about 56 years, S/o Sri Raghuveer Prasad, Posted as Senior Divisional Accounts Officer in Temporary Departmental Construction Unit Maintenance (Electrical) Public Works Department, Lucknow, Permanent Resident of 140 Rampriya Road, Allahabad.

Applicant

By Advocate Sri Vikash Budhwar

Versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), New Delhi.
2. Comptroller and Auditor General of India, 10 Bahadur Shah Jafar Marg, New Delhi.
3. Accountant General (A & E) II, U.P. Allahabad.
4. Deputy Accountant General (Admn.) in the Office of Accountant General (A&E) I, U.P. Allahabad.

Respondents

By Advocate Sri Satish Chaturvedi

O R D E R

By K.S. Menon, Member (A)

This O.A. has been filed against the Order dated 26.06.2007 issued by respondent No.4 as per which the applicant stands transferred from the Office of the Executive Engineer Temporary D.C.U. Maintenance (Electrical) Division, P.W.D., Lucknow to the Office of Executive Engineer Construction Division (PP) Ambedkarnagar with immediate effect. Being aggrieved by the above impugned order, the applicant has sought the following reliefs: -

Jas

- {i} to set aside the Transfer Order dated 26.06.2007 passed by Respondent No.4 (Contained as Annexure No.1 to the Compilation I);
- {ii} to issue an order or direction in the nature of Mandamus Commanding/directing the Respondents to not to interfere in the post of the applicant on the post of Senior Divisional Account Officer Temporary Departmental Construction Unit Maintenance (Electrical) Public Works Department, Lucknow.
- {iii} to issue any other suitable order or direction on which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- {iv} to award cost of this petition in favour of the applicant.

At the time of admission of this case, an interim status quo order was passed by this Tribunal on 05.07.2007, which is still continuing.

2. The facts of the case in brief are as under: -

The applicant was appointed as a Divisional Accountant on 15.04.1970 in the Office of respondent No.3. He was transferred to the Office of the Executive Engineer Temporary D.C.U. Maintenance (Electrical) Division, P.W.D., Lucknow on 03.03.2006, where he claims, he had been discharging his duties to the satisfaction of his superiors. On 26.06.2007 to his utter surprise, he was transferred to the Office of the E.E. Construction Division (PP) Ambedkarnagar by respondent No.4, which he claims is illegal and violative of Article 14 and 16 of the Constitution of India for the following reasons: -

- {a} The transfer was not made by the transfer committee hence it is in violation of the stated transfer policy of the department;
- {b} Normal tenure is 3 years in a particular division and six years in a station, whereas he has spent a little more than a year in the present division.
- {c} Dispensation of said norms can only be made in exceptional circumstances to be recorded in writing on account of extreme personal circumstances-this has not been done.
- {d} Transfer order was issued a day after a letter dated 25.06.2007 was written to him regarding some Confidential Complaints against him for which he was given no opportunity to give his comments.
- {e} Being an office bearer of the Divisional Accounts Office/Accountants Association, the transfer order has been issued to curb the activities of the Association, which is malafide and illegal.

82

(70)

The applicant contends that in view of the above, the impugned transfer order is arbitrary and illegal and should be set aside.

3. The applicant represented against the impugned transfer order vide his letter dated 30.06.2007. The applicant was given a personal hearing by respondent No.3 on 02.07.2007. During the hearing the applicant had requested his transfer order be cancelled/stayed. However, not satisfied with the assurance given by respondent No.3 that the matter would be looked into, the applicant is alleged to have said that he would bring every possible pressure to bear on the Accountant General to cancel or stay the transfer order, he went a step further to say that if his request was not acceded to, he would immolate himself right outside the A.G's Chamber. The applicant in paragraph No.7 of his Supplementary Rejoinder Affidavit has denied that he made such a submission. Scrutiny of the departmental file (WMI-legal) submitted to the Court by the learned counsel for the respondents contains two notes written by the respondent No.3 dated 02.07.2007 immediately after the hearing given to the applicant which clearly describes the conversation that took place between the applicant and the respondent No.3. From the notes, it appears that the applicant did issue such a threat, which prompted the respondent No.4 to write to the District Magistrate Allahabad to take appropriate steps to maintain law and order within the office premises, which has about 3000 employees. Given the circumstances of the case and the seriousness of the issue, the preemptive action taken by the respondent No.3, is justified besides the disciplinary action contemplated against the applicant.

4. The learned counsel for the respondents submits that the stated transfer policy of the department serves as general guidelines and is merely indicative and the tenure specified in the policy can be deviated from in the interest of the department on administrative grounds. Besides clause (d) of the said policy provides for taking into consideration adverse comments given by

J.W.

(8)

Inspecting Officers during audit of accounts of the said division or any other complaints from the E.E. of the Division concerned regarding the performance of the officer concerned, which are finally substantiated. In the instant case the transfer of the applicant was not routine but made on administrative grounds and in public interest as an exceptional case, as complaints regarding the applicant were received from the Office of the Comptroller and Auditor General of India. The explanation of the applicant and other officials cited in the complaint were obtained, besides confidential reports from other sources to ensure probity and integrity in public life. After investigation and based on the various reports obtained the respondents were satisfied that public interest would best be served if both officials are transferred and hence the said transfer orders were issued in respect of the applicant and Shri Rajiv Prakash, whose name figured in the complaints received.

5. On the point made by the applicant that the order was not issued by the Transfer Committee, the respondents contend that in all cases generally the Committee makes recommendations and orders are issued by the Competent Authority. In this case the situation obtaining was different and the Competent Authority issued the orders on administrative grounds, hence there is no illegality in the issuance of the Order. On the fifth point by which the applicant has challenged the impugned order dated 26.06.2007 as mentioned in paragraph No. 2(e) above, it shows that as per the applicant's own submission (Rejoinder Affidavit R.A.-1) and the respondents counsel's submission the applicant was not an office bearer when the transfer order was issued, hence the applicants submission in this regard is totally baseless. On the above grounds, the respondents' counsel contends that the O.A. deserves to be dismissed with costs.

6. Heard the counsel for the both parties and perused the pleadings and the written submission placed on record, and copies of Judgments, relied on by both counsels.

(8)

7. The respondents have enunciated a transfer policy dated 19.04.2000 (annexure-3) by which Transfers are to be generally regulated in the department. The applicant submits that sub paragraph (e) and (f) of the said policy have been violated by the respondents. Sub paragraph No.(e) and (f) stipulates that cases of transfer should be considered by a Transfer Committee constituted for the purpose and the normal tenure of posting should be 3 years in a Division and 6 years in a Station respectively. In his case the transfer order has been issued by respondent No.4 and not by the Committee. Besides his transfer from the present Division by means of the impugned order is being made before the expiry of 3 years in the said division hence the Order is illegal and liable to be set aside. In paragraph No.15 of their counter, it has been brought out that Transfer Committee considers transfer cases in a routine manner and the role of such a Committee is recommendatory in nature. On the issue of tenure it must be said that the policy is a mere guide line to administer the transfer cases, it is not binding and cannot be interfered in by Courts unless it is vitiated by malafides or violates a statutory provision. Both these aspects are not attracted in this case. Besides as brought out in the Counter, the applicant has been in Lucknow for 8 years, out of the past 12 years. The present transfer is to another Division near Lucknow itself, therefore, there is no uprooting or separation from the family. Besides, the present case is not a routine case and has been passed by the competent authority on administrative grounds and in public interest. There, therefore, appears to be no illegality in the transfer order issued and the contention of the applicant has no merit, hence rejected.

8. The Supreme Court has in 2006 SCC (L&S) 1890 S.C. Saxena Vs. U.O.I. and others held: -

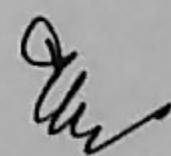
"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

8
m

They therefore felt that there is no reason to interfere in the Order of the Tribunal and the High Court. The applicant should first report for duty where he is transferred and then represent citing his personal problems. The Supreme Court has rightly observed that such a tendency needs to be curbed.

9. Countering the argument of the applicant that no reasons for the transfer have been given in the transfer order in accordance with Paragraph No.2 of the policy dated 19.04.2000, the learned counsel for the respondents has relied on the Judgment passed by Central Administrative Tribunal, Calcutta SLR 1991 (1) in Saroj Kr. Basu Roy Chowdhury Vs. Union of India and others, in which Calcutta High Court Judgment in Shyam Sunder Chakraborty Vs. U.O.I. (CR 7848 – W/75) has been relied on by the Tribunal. In this case, the Calcutta High Court has held that "*there is no statutory obligation to record in writing the very special reasons. If reasons are recorded, obviously it would be disputed in every case..... It would be impossible for administration to pass any order of transfer. Powers conferred by Rule 37 are to be exercised in the interest of the service and the authority, who exercises such powers, is the best judge to consider administrative convenience and also the convenience of the transferees. Unless the Court is satisfied that the order is made for collateral purposes or it is passed mala fide, a writ court should not ordinarily interfere with such administrative order passed in the interest of service.*"

10. Shri Budhwar has drawn the Court's attention to, the fact that one day prior to the issue of the impugned order dated 26.06.2007, the respondents issued a memo on 25.06.2007 wherein the applicant was informed that there were serious complaints against him regarding his integrity and he should take steps to rectify the same. The learned counsel submits that the impugned transfer order has been passed being the back of the applicant and tantamounts to a punishment without affording an opportunity to the applicant to put forward his stand. He further contends that since the transfer order has been passed on the



basis of adverse material then it cannot be in public interest and administrative exigency and has been issued in colourable exercise of power, as such, the impugned order is illegal and liable to be set aside. The learned counsel has relied on the following case laws: -

{I} Shri K.K. Jindal Vs. General Manager, Northern Railway & Ors. A.T.R. 1986 C.A.T. 304.

{II} Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research & another A.T.R. 1988 (2) C.A.T. 116.

In K.K. Jindal's case (supra), it was held that: -

"The basis for the order of transfer is the suspicion as regards his conduct. Without any further enquiry they have convinced themselves that he is indulging in undesirable activities and proceeded to act on that conclusion. That being the real reason, transfer ordered to bypass the enquiry needed to translate the suspicion to a positive conclusion, to our mind constitutes a colourable exercise of power. It is also discriminatory and arbitrary. The impugned order is, therefore, quashed."

In Kamlesh Trivedi's case, the Full Bench to whom the matter was referred, held that: -

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a chargesheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the 'operative reason' for transfer, it is liable to be quashed."

11. The facts and circumstances of the above cases are clearly different and distinguishable. Shri Satish Chaturvedi, the learned counsel for the respondents strongly opposes the above arguments. He points out that the transfer order is not punitive but was done in an administrative exigency in public interest. He has made available the departmental file to the Court, in which the special reasons for the transfer have been recorded.

Q
LW

12. It is seen from the departmental file that a complaint was filed by one Sri T.N. Nigam, Retired Steno to the Comptroller & Auditor General of India regarding bribes being demanded for finalization of G.P.F. final payment by Shri Rajeev Prakash, a Senior Accountant of Fund Section of the respondents Office dealing with PWD employees, allegedly in the office room of the applicant. The applicant's comments on this complaint was received & taken on record. The notings also indicate that there were several similar complaints against Shri Rajeev Prakash from which it was evident that there existed a nexus between Shri Prakash and the applicant. It has also been mentioned that perhaps a prolonged stay (8 out of the last 12 years) in Lucknow could have contributed to the development of vested interests. The Accountant General, therefore, in order to break the nexus, ordered the transfer of both the officials. In the case of the applicant his transfer to any vacant division, as per his grade in Ambedkarnagar near Lucknow was approved. Shri Chaturvedi contends that since the transfer was done in an administrative exigency in public interest it is not illegal or arbitrary and hence warrants no judicial interference.

13. Shri Chaturvedi has relied on a number of case laws in support of his arguments. On the specific point of the transfer order being arbitrary and punitive in nature, the learned counsel has cited the case of Behari Lal Vs. Superintending Engineer, Lift Irrigation Mandal, Varanasi and others (1998) 1 U.P.L.B.E.C. 519 wherein it has been held that "Transfer-Although should not be made on ground of complaint. But when it becomes necessary in the interest of administration to transfer an employee because his conduct is not proper and likely to invite future trouble, in such a case transfer cannot be held to be arbitrary.

14. Shri Chaturvedi has on the issue of transfer order in violation of Stated Policy and guide line, has drawn the attention of the Court to following case laws: -

{i} 1993 AIR SC 2444 Union of India and others Vs. S.L. Abbas.

(13)

{ii} 2005 SCC (L&S) 55 para 7 & 8 State of U.P. & Others Vs. Gobardhan Lal.

{iii} 1999 (5) SLR 687 Anil Dhall Vs. Union of India and others.

In the above case laws, it has been held that [i] Guidelines issued by the Government do not confer upon employees legally enforceable right; [ii] Transfer is prerogative of the authorities concerned and the Court should not normally interfere therewith, except when {a} it is vitiated by malafides or {b} in violation of any statutory provision or {c} having been passed by an authority not competent to pass such an Order [iii] Order of transfer on administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force and administrative exigencies have to give way to these guidelines.

15. After carefully considering the submissions made by the two counsels, the facts and circumstances of this case and written submissions and case laws placed before the Court, I am not inclined to interfere with the impugned transfer order, as I am of the view that the Administrative machinery will come to a stand still if on each such occasion judicial intervention is sought. Scrutiny of the departmental file clearly reveals that complaints were received against the applicant and another official Shri Rajeev Prakash regarding acceptance of bribes in settling GPF final payment cases. The matter was investigated by the Accountant General, who came to the conclusion that there was some truth in the complaints. In order to ensure probity and integrity in public life by breaking the nexus so formed by the applicant with Shri Rajeev Prakash, the Accountant General transferred both besides initiation of disciplinary proceedings against the applicant which is under consideration. This appears to be the operative reason for the transfer order and in passing this order, the respondents have held that exigencies of administrative and public interest must take precedence over individual inconvenience and hardships. In fact the respondents have been more than considerate in transferring the applicant to

(14)

another division near Lucknow area so that there is no uprooting or separation from the family. The impugned order is, therefore, neither arbitrary nor ~~does~~ ^{nor} is it vitiated by malafides and does not violate any statutory provision and hence not illegal. Accordingly, the status quo order granted on 05.07.2007 stands vacated.

16. In view of the above, the O.A. is devoid of merits and is accordingly dismissed. No order as to costs.

J. Munoz
Member (A) 16/8/07

/M.M./