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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.497 OF 1991.

Date of Decision: March 31,1992.

DR. ASHOK KUMAR MOHAPATRA

:Applicant.

-Versus-

UNION OF INDIA AND OTHERS

: Respondents.

For the Applicant

: M/s.Devanand Misra,Deepak Misra,
A.Deo,P.Panda,Advocates.

For the Respondents

:Mr.Aswini Kumar Misra,**Sr.Standing Counsel.**

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C O R A M:

THE HONOURABLE MR. K.P.ACHARYA,VICE CHAIRMAN.

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *Yes*.
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

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For the applicant : M/s Devanand Misra, Deepak Misra,
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For the respondents : Mr. Aswini Kumar Misra, Sr. Standing Counsel(Central).

C O R A M:

THE HON'BLE MR. K.P.ACHARYA, VICE CHAIRMAN.

JUDGMENT

K.P.ACHARYA,V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order passed by the competent authority contained in Annexure-3 transferring the Petitioner Dr. Ashok Kumar Mohapatra to Chapra.

2. Shortly stated, the case of the petitioner is that he is a member of the Central Health Services and after his posting as Medical

Officer in the P&T Dispensary at Cuttack, he worked for some time and vide order/Memo No.16-1/91-Medical/Pt. dated 19th December,1991, the Director General of Posts, ordered transfer of the Petitioner from Cuttack to Chapra and this order was conveyed by the Chief Post Master General,Orissa Circle vide his Memo No. ST/59-7/89 dated 20th December,1991 contained in Annexure 3 which is sought to be impugned and quashed. Hence this applicatin has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that during the incumbency of the petitioner as a Senior Medical Officer in the P&T Dispensary,Cuttack allegations were levelled against the Petitioner that he was molesting and misbehaving with lady patients and such complaints came ~~from~~
^{for} different sectors. The Petitioner was advised by the Opposite Party No.3 to be more discreet and instead of causing any improvement to himself an instance of similar nature was alleged to have been committed on 27th Sept., 1991. While the petitioner was examining a lady patient who is the daughter of one of the employees of the Postal Department namely Shri Nanda Barik, the Petitioner Molested and misbehaved with this girl for which there was great resentment expressed by the different employees of the Postal Deptt. especially those who are attached to the P&T Dispensary ,Cuttack. On receipt of a report to the above effect, the Chief Postmaster General caused a preliminary enquiry through the Assistant Postmaster General(Welfare) and incourse of enquiry, the vigilance cell examined a good number of witnessess including the petitioner,as well as the victim girl and it was found that the allegations were established *prima facie*, A report was submitted to the Director General of Posts who in his turn passed the order of transfer in public interest and for administrative reasons. It is further maintained by the Opposite Parties that the dissatisfaction and resentment has grown up so high against the petitioner and the situation has been so tense,continuance
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of the Petitioner in the said dispensary would be adverse to his own interest so much so danger to his life cannot be overruled. It is also maintained by the Opposite Parties that this action taken to transfer the Petitioner is in his own interest and should not be construed as a measure of punishment. It is finally mentioned that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Deepak Misra learned counsel for the Petitioner and Mr. Aswini Kumar Misra learned Sr. Standing Counsel(Central) for the Opposite Parties.

5. Mr. Deepak Misra, learned counsel for the Petitioner contended that whatever colour may be given to the case in hand, by the Opposite Parties, the impugned order of transfer is a punitive one and it is liable to be quashed on that account. Mr. Misra further contended that in case there were any allegations levelled against the petitioner it was very well open to the authority to initiate a proceeding under the disciplinary appeal rules and if the petitioner would have been found guilty then deterrent sentence could have been passed against the petitioner instead of adopting this method which casts a stigma on the Petitioner and seriously reflects on his service career especially when the enquiry was conducted behind the back of the petitioner.

6. On the other hand, it was contended by Mr. A.K. Mishra learned standing counsel for the Opposite Parties that the departmental authorities had not formed any opinion that the allegations had been conclusively established. A preliminary enquiry was conducted to ascertain the truth or otherwise because no Government servant ought to be allowed an exposure especially when his or her normal conduct was being dis-reputed and the preliminary enquiry having been conducted by a highly placed officer of the

Postal Department against whom the petitioner has no allegation came to the conclusion that the allegations had been *prima facie* established. Nowhere it would be found that any authority had come to a definite and positive conclusion that the allegations have been conclusively established. Such a positive finding is called for in a regular enquiry but not in a preliminary enquiry. Further more it was submitted by Mr. A.K.Misra that as per the judge-made-laws once principles of natural justice have been complied by giving an opportunity to the concerned officer to have his say in the matter, the order of transfer cannot be construed as punitive in nature and further more it was emphatically submitted by Mr. Mishra that in the interest of the petitioner himself, because of the tense situation prevalent against him, he should not continue as a Medical Officer in the said institution.

7. I have given my anxious consideration to the arguments advanced at the bar and I have carefully gone through all the citations submitted on behalf of the petitioner and on behalf of the Opposite Parties. The law laid down in those judgments need not be quoted in extenso because a consistent view has been followed by the Hon'ble Supreme Court, almost all the High Courts in India and different Benches of the Central Administrative Tribunal including the Principal Bench. The ratio decidii of all those judgments are as follows:

1. Transfer of an employee from one place to the other or from one post to other should not be normally interfered with unless there exists malafide on the part of the competent authority or violation of statutory mandatory rules;
2. whenever the impugned order of transfer is an innocuous one the court should lift the veil to find out the real reason for which the order of transfer was passed and whether it was a simple order of transfer for administrative reasons or in public interest or it was punitive in nature;

3. in case it is punitive in nature then it should be struck down otherwise it should be sustained;

4. in case the transfer has been effected owing to certain allegations levelled against the person aggrieved then such order of transfer should not be quashed, if pending initiation of disciplinary proceeding, a preliminary enquiry has been conducted and opportunity has been given to the person aggrieved to have his say in the matter thereby principles of natural justice having been complied and if no stigma is cast upon the person aggrieved, the order of transfer should not be quashed -rather it should be sustained.

8. Instead of discussing in detail all the citations relied upon on behalf of the petitioner for the ends of justice some judgments should be discussed in detail especially the case of K.K.Jindal Vs. General Manager, Northern Railway and others reported in ATR 1986 CAT 304 strongly relied upon by Mr. Deepak Misra. Before I discuss the argument advanced by Mr. Deepak Misra on the basis of this judgment, it would be helpful to succinctly state the facts of the case. The petitioner Mr. Jindal was appointed in 1973 as a Coaching Clerk and ultimately he was promoted after receiving rewards, merit certificate and cash rewards for his competency and efficiency. Ultimately due to certain rivalry between two unions certain allegations were levelled against the petitioner Mr. Jindal. One of the rival union pressed upon the authority for his transfer from Nizamuddin Railway station to Bhatinda. As a part of the drive to tone up the administration and remove certain officers from sensitive posts with public dealings against whom allegations were levelled the petitioner was one of those officers who had been transferred and feeling aggrieved by the order of transfer the jurisdiction of the Principal Bench was invoked. The case of the Opposite Parties set up as stated in their counter affidavit affidavit is that the transfer was ordered because the petitioner had indulged in undesirable activities and because there was a cloud cast on his integrity. Mr. Deepak Misra emphatically relied upon the observations made by the Division Bench in paragraph 16 of the judgment which runs thus:

"xx xx . These conclusions drawn behind the back of the Petitioner upon the complaints made, cast a stigma on the petitioner and positively mar his future prospects Since the Petitioner was occupying a sensitive post with public dealings, the respondents could perhaps have legitimately transferred him on administrative grounds on receipt of complaints. But the transfer made upon reaching a conclusion that he is indulging in undesirable activities goes a step further inasmuch as it finds him guilty of a conduct not expected of a public servant. Any action taken on that basis apart from attaching a stigma to the petitioner certainly impairs his future career as a public servant. The transfer is punitive."

Before concluding the judgment at paragraph 25, the Division Bench further observed as follows:-

" From the above discussion it is clear that the impugned transfer is thus for reasons other than merely administrative. That is only the ostensible reason. 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 it constitutes a colourable exercise of power."

9. This judgment of the Division Bench was later considered by a Full Bench of the Central Administrative Tribunal which will be discussed in detail at the appropriate stage. It is worthwhile to mention that in the present case dealt by me suspicion has not taken the place of proof because preliminary enquiry was conducted by examining the witnessess including the victim girl and opportunity was given to the present petitioner to have his say in thematter and after conclusion of the enquiry the finding was that the allegation was *prima facie* established.

10. I would now proceed to consider the law laid down by the Full Bench which is reported in ATR 1988(2)CAT 116(Shri Kamelsh Trivedi Vs. Indian Council of Agricultural and Research and another and I would express my opinion as to the applicability of the principles laid down by Their

Lordships to the facts of the present case. In the said case, the petitioner who was a Beldar in the Office of the Indian Agricultural Research Institute, Pusa, New Delhi who prayed for quashing the order passed by the competent authority transferring the petitioner to a particular post in Bihar with immediate effect in public interest. The matter at first came up before a Division Bench and it was contended on the basis of the observations made by the Division Bench in the case of Jindal that the transfer order in question was punitive and arbitrary in nature and in the light of the judgment passed by the Tribunal in the case of Jindal(Supra), the impugned order of transfer should be quashed. The Division Bench in the case of Kamalesh Trivedi came to the conclusion that the report of the enquiry committee shows that the applicant was associated with the enquiry and his statement had been duly recorded. A finding of misconduct on the part of the applicant as providing the basis for transfer could not be held to be bad or contrary to the ruling given in K.K.Jindal's case. Hence the Division Bench framed certain issues and referred those issues to a Larger Bench for expressing its opinion and they are as follows:

"(i)

Whether the competent authority can transfer a delinquent official on the basis of the findings of a proper inquiry conducted in accordance with Article 311(2) of the Constitution where the provisions of the said Article are applicable and/or in accordance with the rules governing disciplinary proceedings and the charges are held to be proved after following the prescribed procedure; and

(ii)

if the answer to (i) above is in the affirmative whether an inquiry wherein no chargesheet has been served or statement regarding imputation of misconduct given but the delinquent official's statement has been recorded by the Enquiry Officer or the enquiry committee, as in the instant case, can be considered to be a proper or adequate enquiry for the purpose of arriving at a finding of guilt which would provide a legally sustainable ground to effect a transfer".

11. The Full Bench not only considered the observations made in the case of Jindal but also considered several judgments of the Honourable Supreme Court. Incidentally, it may be mentioned that in Jindal's case Hon'ble Mr. Justice Madhav Reddy, the Chairman and Hon'ble Mr. Kausal Kumar had constituted the Division Bench and the very same Hon'ble Judges were also party to the Full Bench judgment. After discussing the ratio of several judgments, the Full Bench observed as follows:

" Therefore, when an order of transfer is attacked as penal, it must be considered from the basic postulate that no Government servant is entitled to be retained at a particular place, that transfer is an incidence of service and the Government has the power and authority to transfer in the exigencies of administration. However, any transfer must be ordered in public interest".

12. Thereafter the Full Bench observed as follows:

" It may be pointed out that no decision has been brought to our notice which declares that transfer constitutes a penalty. None of the Service Rules governing disciplinary proceedings have enumerated transfer, as one of the penalties that may be imposed. All that these decisions have observed is that the transfer may have been ordered by way of punishment. Since transfer is not one of the enumerated penalties, the procedure laid down for holding a disciplinary proceeding is not directly attracted. But complaints against a public servant as to his conduct, efficiency, integrity and suitability for the post he is holding may be made to the competent authority and in the interest of good and responsive administration, appropriate action has to be taken expeditiously. The competent authority may or may not find any truth in that complaint, but having regard to the administrative exigency may be of view that a more suitable or more efficient person should be posted and for making place for such a person effect a transfer. May be having regard to the nature of the complaints received, the competent authority may think that in the interest of the employee himself, transfer should be ordered. (emphasis is mine) In another case, having regard to the position an employee holds and the influence he commands at the place of his posting a proper inquiry into the complaints itself may necessitate a transfer".

13. Another important observation of the Full Bench needs to be quoted which would apply in full force to the facts of the present case.

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" The first portion of these observations(meaning observation made in Jindal's case)namely 'since the petitioner was occupying a sensitive post with public dealings,the respondent could perhaps have legitimately transferred him on administrative grounds on receipt of complaints' is often overlooked in placing reliance upon this judgment to challenge the order of transfer and only the latter portion of these observations is highlighted."

14. The Full Bench further went on to clarify what the Division Bench meant to say and in that connection, the Full Bench further observed as follows:

" All that this judgment declares is that a positive finding as to misconduct cannot be given while ordering transfer as any such finding would attach a stigma to the transferee; the transfer would inthat sense be punitive. It would be further observed that the court did not lay down in that judgment that any order of transfer made consequent upon complaints should always be preceded by an inquiry.What the court observed was that finding of misconduct which attaches a stigma to a public servant cannot be arrived at without inquiry and any order of transfer based upon such a finding would be bad."

15. Lastly before finally concluding the judgment, Their Lordships summed up their conclusions and the ratio decendii is as follows:-

" 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.(emphasis is mine).If the transfer is ordered in the exigency of service without giving any finding of 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.(emphasis is mine).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"

16. Keeping all these observations, I would now proceed to consider as to whether the dictum laid down by Their Lordships apply to the facts of the present case. Before I proceed to consider the case in detail for better appreciation, at the cost of repetition I may say that an allegation was levelled against the petitioner that he had molested and misbehaved with a lady patient. She felt aggrieved and the matter was reported to the authority i.e. Chief Post Master General who in his turn caused an enquiry and held that a prima facie case had been established and hence he ordered that in public interest and for administrative reason, the petitioner should be transferred and accordingly on his recommendation, the Director General of Posts passed necessary orders transferring the Petitioner to Chapra. Therefore, in such circumstances, this court has been relieved of lifting the veil especially because the admitted case of the parties is that the transfer has resulted from preliminary enquiry conducted in regard to the allegation levelled against the petitioner. The question is as to whether any stigma is cast over the service career of the petitioner needs to be examined in detail. At the outset it may be stated that nothing has been mentioned in the order of transfer regarding these allegations. From the relevant file, I find that the officer who conducted the preliminary investigation has examined the lady patient the brother of the patient, father of the patient and some employees of the P&T Dispensary including the present petitioner Dr. Mohapatra. The victim girl gave a vivid narration as to how Dr. Mohapatra asked her as to whether she has slept with any boy and if so whether she has experienced sexual enjoyment and if he(the doctor) is allowed to massage her breasts then she will have a pleasant sensation and she was further questioned as to whether she has

seen her father and mother sleeping together and so many other question of vulgar nature which are completely irrelevant in regard to the fact of examination of the patient who had complained of some disease in her eye. The examination was conducted by the doctor in a room. No body else was present in the room so as to lend any corroborat^{ion} of this statement. That apart, Dr. Mohapatra was specifically asked about these allegations made by the girl in her statement and Dr. Mohapatra has given a denial to those allegations. The other witness^{ess} examined by the concerned enquiry officer are post occurrence witnesses who said that the girl had disclosed the vulgar questions put by the Doctor soon after the occurrence. On the basis of such evidence, the enquiry officer found that the allegations were prima facie established and on the basis of the allegations and the findings of the enquiry officer, the Chief Post Master General expressed his opinion which needs to be quoted, to counteract certain arguments advanced by Mr. Deepak Misra, The Chief Postmaster General observed as follows:-

" There were certain allegations against Dr. Mohapatra that he physically checked, although the same was not necessary, the chest of an un-married girl against protest and that he had put objectionable and indecent questions to the girl patient. The whole episode took place between two persons i.e. Dr. Mohapatra and the girl patient. The enquiry report has prima facie established and ^{the} offence. In a society like ours, which is little traditional, no unmarried girl will dare to give a false statement. In fact the statement makes a very disquiet reading. The question of girl patient giving a statement under pressure or for some motive does not arise as in an earlier occasion the relation between the girl patient or her father with Dr. Mohapatra was quite normal and in fact a Doctor is not in a position to harm any official, which can be apprehended between staff and administration. The reputation of Dr. Mohapatra is not good as would be seen from what I have stated in the beginning and under current of dissatisfaction is prevailing in the dispensary. In fact the Senior Doctors have stated before me in an informal discussion that he has brought bad name to the medical profession and also to P&T Dispensary, Cuttack. In fact it is shocking that a doctor will go to such a low extent and mis-utilise his position and I am convinced that continued presence of Dr. Mohapatra will act as an irritant to the staff patients and particularly to the

ladies. At any time there may be a volcanic eruption and it will not be prudent to keep such a doctor on duty xx xx xx".

17. While concluding, the Chief Postmaster General observed that this act of the doctor not only brings a bad reputation to the department but also the employer i.e. the Government. As an immediate measure, he should be transferred out of the Orissa Circle. On a perusal of all the relevant records no where it could be found that the competent authority has come to a positive and definite conclusion that the allegations have been brought home against Dr. Mohapatra. On the contrary the opinion expressed by the enquiry officer and that of the Chief Post Master General is that the allegations have been *prima facie* established. In my opinion, this does not cast any stigma as yet on the service career or prospects of the petitioner because, the Chief Post Master General is of opinion that a regular enquiry will be instituted to find out the truth of the allegations but for the present the petitioner should be transferred in the interest of the patients and in the interest of the petitioner himself lest there may be a volcanic eruption. Mr. Deepak Misra contended all these facts having came up before the court and discussed in detail sufficiently indicates that a stigma is attached to the service career and prospects of the Petitioner. In my opinion this argument is not acceptable because it is at the instance of Dr. Mohapatra that these facts have come to the court for discussion. It is most un-justifiable to say on the one hand that the person aggrieved has a right to invoke the jurisdiction ~~for~~ ^{of} the court for protection and while considering as to whether necessary protection according to law could be given to the petitioner, the case of the Opposite Parties must have to be considered and the Opposite Parties are bound to come up with the reasons for supporting their order which has to be discussed in court. Hence I do not find any merit in the aforesaid contention of Mr. Deepak Misra learned counsel for the Petitioner. The Petitioner having been associated

with the preliminary enquiry by giving him an opportunity to have his say in regard to the allegation levelled against him, principle of natural justice has been complied and therefore, the law laid down by the Full Bench has fullest application to the facts of the present case. I do not consider the impugned order of transfer to be either punitive in nature or any stigma attached to the petitioner. Therefore, the impugned order is not liable to be quashed. It is hereby upheld.

18. Before, I part with this case, I feel persuaded to quote the observations of the learned Single Judge(Hon'ble Vice Chairman of Principal Bench Shri Mathur) in a case reported in **ATR 1988(I)CAT 498**(Ashok Kumar Sabharwal Vs. Union of India and others). I am conscious of the fact that after relying on the judgment of the Full Bench, it may not be necessary to state the law laid down by the Learned Single Judge but facts of the case of Sabharwal being practically similar in nature to the facts of the present case, I feel inclined to take notice of it. So far as the facts constituting Sabharwal's case is concerned, it may be stated that Sabharwal was working in the Delhi Railway Station as a parcel Clerk. He was assaulted by one of his colleagues and later he was abused in his office by two of his colleagues. Report was submitted. The highest authority i.e. area Superintendent transferred Sabharwal to another place from the Delhi Railway Station on a demand made by some members of the Union. It was argued before the Learned Single Judge that the impugned order of transfer was passed by way of punishment and was colourable exercise of power though it was said to be on administrative grounds. The Learned Single Judge after discussing the law laid down in K.K. Jindal's case(Supra) observed in paragraph 5 of the judgment as follows:-

" After hearing the arguments on behalf of the applicant and the respondents, two things are clear, that the relation between some Parcel Clerks or even members of the Two Unions were not cordial and that the applicant has been transferred by the authorities not as a punishment, but on administrative grounds .If a transfer is made even to apease a large number workers,it would be an

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administrative order to ensure smoother functioning of the Railway . Railways are a public utility service and in the larger interest of smooth functioning of such an organisation,certain discretion has to be left with the railway authorities .Even if it is accepted that the transfer was result of inter-union rivalry,if in the larger interest of keeping a healthy atmosphere in the organisation, (emphasis is mine) the competent authority felt it necessary to transfer the applicant. I feel that it would not be correct for a court to interfere in such a transfer"

19. In the present case, the P&T Dispensary is equally a public utility service institution and it is expected that in such an institution utmost cordiality should be maintained between the Doctor(Petitioner) and the employees including their patients.The atmosphere ~~is~~ appears to be very ^{so} ~~very tense~~ much so the Chief Post Master General's is of opinion that at any moment there may be a volcanic eruption. Therefore, I am of opinion that in the interest of the petitioner and in the larger interest of the public who are supposed to come to the Hospital for treatment, the petitioner should not continue any further in that institution and in such circumstances, I donot find it just and expedient in the interest of justice to quash the impugned order of transfer.

20. Lastly, it was contended by Mr. Deepak Misra that the petitioner is a chronic patient suffering from some disease in the nose and he has undergone operation on several occasions.Hence it was maintained that his posting at a station in Bihar may deprive the petitioner of adequate treatment and on account of his health, a sympathetic view should be taken. It was therefore, prayed on behalf of the petitioner that there are some posts vacant at Bhubaneswar.True it is, the Petitioner in order to substantiate his case that he is suffering from some disease in the nose, has filed certain medical certificates from the treating doctors but in the case of Mrs. Shilpi Bose and others Vs. Union of India and others reported in AIR 1991 SC 532, Their Lordships of the Hon'ble Supreme Court have held that in matters of this nature including violation of any administrative instructions affected party

should move his higher authority and the courts should not interfere. Of course there is no violation of administrative instructions but the aforesaid contention of Mr. Deepak Misra strictly comes within the purview of the administrative authority to take into consideration the above facts stated by the Petitioner and to pass orders as deemed fit and proper in view of the dictum laid down by Their Lordships of the Hon'ble Supreme Court. I do not feel it justifiable to give any direction.

21. Before I part with this case I must observe that in case any disciplinary proceeding is initiated against the petitioner, the enquiry officer or the disciplinary authority are free to come to their independent finding without being guided or influenced by any observations made in this judgment which has been made for the purpose of this case only. Finally, I hold that I find no merit in this case which stands dismissed leaving the parties to bear their own costs. The stay order stands automatically vacated.

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VICE CHAIRMAN



Central Administrative Tribunal,
Cuttack Bench, Cuttack/31.3.92.
K.Mohanty.