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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of Order : 2-2-1995

O.A. No. 23/1995.

Sua Lal

... Applicant.

versus

Union of India & Ors. ... Respondents.

Mr. R.C. Gaur, Counsel for the applicant.

Mr. A.K. Chhangani, Counsel for the respondents
No. 1 to 4.

None present for the respondent No. 5.

CORAM :

HON'BLE MS. USHA SEN, ADMINISTRATIVE MEMBER.

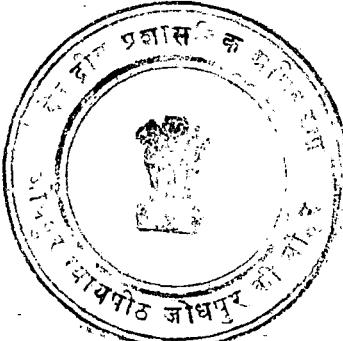
BY THE COURT :

This OA has been filed against the order dated 28.12.1994 (Annexure A/1) of the respondent No. 2 by which the applicant has been transferred out from Udaipur to Nasirabad seeking the redressal of quashing the same.

2. The applicant was working as Valve-man under the Garrison Engineer (Army), Udaipur (GE, for short). The facts of his case are herewith narrated. There was leakage in the main valve of the brigade water tank which he was required to open at 5.00 A.M. The leakage used to result in a fountain of water about 10 feet high making the applicant shiver at 5.00 A.M. The applicant requested his supervisor to get the valve

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repaired and when he did not do so despite his complaining for 7 to 8 days, he told the Supervisor to either get the valve repaired or he would complain to the GE (respondent No. 5). On this the Supervisor was very angry and threatened him with dire consequences. The applicant told him that he would report the matter to the higher authorities. Before the applicant could report to the higher authorities the supervisor lodged a complaint against him to the GE. The GE believed the supervisor and became totally biased against the applicant. This incident is stated to have taken place on 9.3.94. The GE initiated disciplinary action under the CCS (CCA) Rules against the applicant on the basis of this incident. The applicant has alleged bias and malafide on the part of the GE for the reasons that the disciplinary enquiry was conducted on a false complaint and there were several irregularities in the enquiry ; the enquiry was completed near about August, 1994, but he kept sitting over it and ordered the punishment of with-holding of two increments for two years on 14.12.1994 after he had received orders for his own posting out of Udaipur ; he did not give the medical advance to the applicant in time when his wife was operated upon in June, 1994, the applicant complained to the higher authorities about the matter which further prejudiced him ; when the Chief Engineer (GE, for short) and Command Works Engineer (CWE, for short) came to inspect the Unit on 25.12.1994 the GE prejudiced both of them against the applicant and managed to get his transfer orders issued ; the applicant had made

several representations against the GE which had prejudiced him against the applicant; there was an acute shortage of Valve-men under the GE, Udaipur, as against a requirement of 8 Valve-men only five were posted and so there was no need for him to be posted out ; the transfer policy letter dated 10.4.84 and the Government O.M. dated 29.11.72 (Annexure A/4) state that the Class IV employees should normally not be transferred from one station to another except in very special circumstances like adjustment of surpluses and deficiencies, promotions, exigencies of service or administrative requirement and the fact that the GE acted contrary to this policy in getting him posted out shews his malafide ; he had made it a prestige issue to get him posted out as no exigencies of service or public interest was involved ; once disciplinary action had been taken against him there was no need to have an attitude of vengeance against him and inflict an indirect punishment by posting him out in mid-session as he cannot shift his school going children in mid-session ; there was no need to get him posted out particularly when the GE himself was relinquishing charge in December, 1994. On the grounds as mentioned hereinabove the applicant has asserted that the transfer order has been issued for extraneous considerations and not in public interest and is tainted with malafides on the part of respondent No. 5.

3. The respondent No. 5 has filed a reply in which he has categorically denied that he was biased or prejudiced against the applicant. He has stated

that he had no conflict with the applicant ; that the posting order ^{has} been issued by respondent No. 2 and he had no role to play in the passing of these orders ; that the allegation that he became biased against the applicant on being briefed by the Supervisor is wholly baseless.

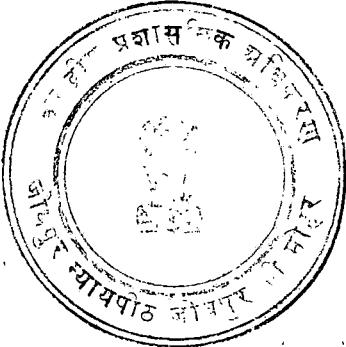
4. The Respondents No. 1 to 4 in their reply have also denied that there was any malafide in the issue of the posting orders. They have stated that the matter regarding the disciplinary enquiry mentioned by the applicant is a totally different issue and can not be linked up with the transfer orders. If there were any irregularities in that enquiry that can be appealed against in accordance with law. The applicant can not allege malafide in the transfer order because he believes there were irregularities in that enquiry. The complaint regarding delay in payment of the medical advance bill is baseless as the payment was made in time. It has also been denied that the Respondent No. 2 and 3 were briefed or influenced by the GE in the issue of the transfer orders. It has been asserted that the transfer order has been made purely in the exigencies of service and on administrative requirements. The posting order has been made by the Chief Engineer viz. respondent No. 2 against whom no malafide has been alleged by the applicant. The posting order is in accordance with the guidelines issued by the Government since it has been made in the interest of the State. ^{Further,} The posting orders have not been issued by way of punishment but in the interest of the State, i.e. exigencies of service.

5. On the last date of hearing the respondents were directed to produce a copy of the letter dated 10.12.1994 referred to in the impugned transfer order at Annexure A/1. The same was produced by the respondents and I have gone through it. This letter is addressed to the CG, Southern Command, Pune, i.e., respondent No. 2 from the office of the CG, Jaipur Zone. In this letter a recommendation has been made to transfer the applicant besides some others, out of the Zone as they have been " misbehaving with ~~his~~ their superiors, making false/baseless complaints against officers and department, creating nuisance in the station and resorting to means which are adversely affecting the functioning of the MES at Udaipur ". This letter would show that the applicant amongst others have been creating problems for the administration by their false complaints against the MES administration-complaints which could prove nothing worthwhile and their posting out would strengthen the smooth functioning of the CG division at Udaipur as stated therein.

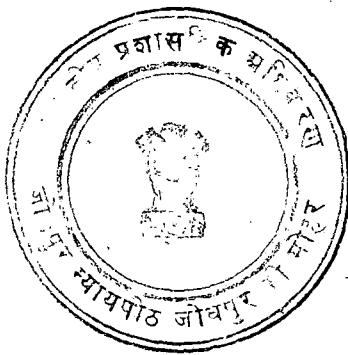
6. Besides the pleadings the oral arguments of the learned counsel for the parties were also heard.

7. At this stage, I would like to make a mention of the Full Bench judgment in the case ^{of} Shri Kamlesh Trivedi versus Indian Council of Agricultural Research and another (Full Bench Judgment CAT-1986-89, page no. 80).

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It was held in this judgment, " that in our opinion if at the conclusion of the disciplinary proceedings, one of the enumerated penalties is imposed and having regard to the totality of circumstances, including the penalty imposed, the competent authority also deems it advisable to transfer the employee, it has undoubted power to do so. Such an order of transfer would not be vitiated. K.K. Jindal's case did not lay down that such a transfer was liable to be struck down. Nor could it be inferred from anything said therein that it would amount to double jeopardy. A bonafide decision taken in exercise of administrative discretion after the disciplinary proceedings have ended in the imposition of some penalty can not be quashed either as contravening any principles of natural justice ^{or} as amounting to double jeopardy." In the light of this judgment the contention of the applicant that having been punished at the conclusion of the disciplinary enquiry he has been indirectly punished again by way of transfer cannot hold. In this very judgment it has also been held, " It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the Government servants or a right

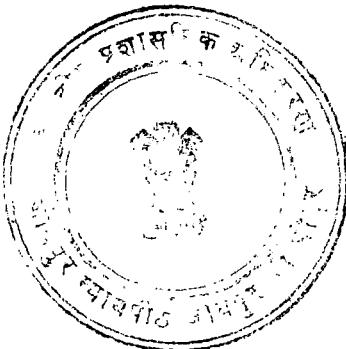


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in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny. In view of this the claim of the applicant that the very fact that his transfer was in contravention of the policy guidelines of the Government in the matter and, therefore, it was malafide would not carry force. Moreover, the transfer contravention of the was not even in transfer policy in so far as it purports to have been made in the exigencies of service which is permissible as per the policy guidelines.

8. The reasons for the transfer have been quite clearly spelt out in the letter dated 10.12.94 supra. I would not agree with the stand of the applicant that because there was already a shortage of Valve-men in the division of the GE, Udaipur, his posting out indicated that it was for extraneous considerations and not for public interest that the transfer was made. Filling up of vacancies is not the only consideration to decide as to who should be posted where. As revealed from the letter of 10.12.1994 ibid it was in the interest of the smooth functioning of the division of the GE, Udaipur, that the transfer was recommended. Even though disciplinary action had been taken against the applicant on charges of misbehaviour or false



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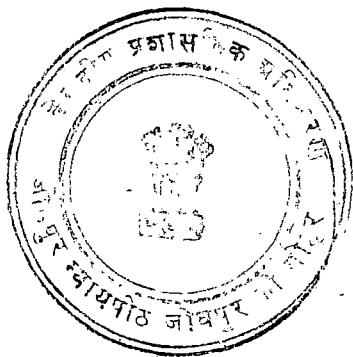
complaints against officials as mentioned by the counsel for the applicant during the oral arguments the administrative authorities were within their power to transfer him out considering the totality of circumstances as has been held in the Full Bench Judgment ibid. Various other grounds on the basis of which the applicant has tried to prove malafide like delay in passing the medical advance bill which has been denied by the respondents, bias on account of representations made against the respondent No. 5 and briefing by the Supervisor which also have been denied by the opposite party can not in my opinion be considered as valid evidence in the form they stand as they are mere statements which are emphatically denied by the respondents in their statements. The irregularities, if any, made in the disciplinary enquiry mentioned by the applicant which are not the matter in dispute in this OA can not also be considered as valid ground to prove malafide in the transfer order.

9. During the course of hearing the learned counsel for the applicant referred to the judgment in the case of *Parveen versus Union of India* (SLJ, 1974 (2)) to point out that a mere statement of the respondents that the transfer has been made in the exigencies of service is enough to show that the action was bona fide can not be accepted. The Delhi High Court rejected in this judgment the argument that it is not incumbent on the Government to place



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full materials before the Court when a challenge is made to a transfer as being malafide. He also referred to the case of Bhikha Daya versus Div. Commr. Supdt. & Others (SLH, 1986 (4) (CAT)) wherein the bench had held, " that in this transfer, the hands of the authorities are not entirely clean and we would invite attention of the senior officers of the respondent's organisation, to examine whether in such a case, arbitrary use of power is not clearly being made and to take steps against the officers who might have been guilty of them, after a full inquiry. we find that the exercise of the power of transfer in this case, if not vitiated by malafide, is not free from being arbitrary". Lastly he quoted the case of K.C. Ganguly versus Union of India (SLJ, 1983, (1)) decided by the Calcutta High Court in which the transfer of the petitioner made on the basis of adverse remarks ^{in a D.O. letter} affecting his integrity and nature of work without giving him an opportunity of showing cause was struck down as being violative of the principles of natural justice.



10. As would be seen from the facts and circumstances of the case narrated above these judgments relate to cases which were quite distinguishable from the present one. The respondents have produced the necessary material as desired by the Court to find ^{out} the circumstances leading to the transfer. As discussed above no malafide or arbitrariness can be proved in the transfer

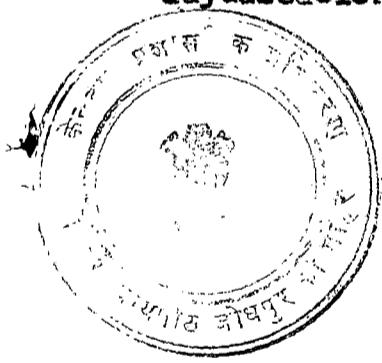
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order. Nor is it a case like that of K.C. Ganguly versus Union of India supra.

11. In view of my discussion of the case as above the allegation that the transfer order at Annexure A/1 should be struck down as being malafide, arbitrary and illegal cannot be upheld. The OA stands dismissed with no order as to costs. Needless to state that the applicant may make a representation, if he so desires, to the concerned authorities bringing out the difficulties he would have to face as a consequence of the transfer order. The authorities may consider the representation sympathetically if received and take action as deemed fit within one month of its receipt. However, the decision of the authorities in the matter shall not be open to adjudication again by this Bench.



Usha Sen
(USHA SEN)
Member Adm.