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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 19.7.1995

On No. 291/95

K.C. Pal ... Applicant.

versus

Union of India & Ors. ... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

CORAM:

Hon'ble Mr. N.K. Verma, Member (A).

BY THE COURT :



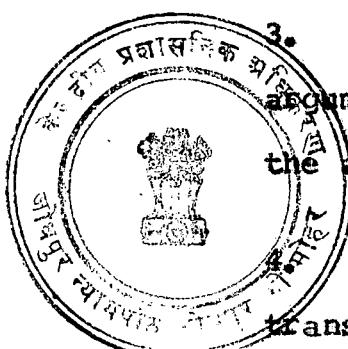
Heard learned counsel for the applicant.

The applicant has been transferred by Annexure A/1 dated 7.7.95 to the Stores Unit, Transport and Clearance Unit, Kota, temporarily.

Learned counsel for the applicant strenuously submitted that this transfer order is ~~based~~ on malafide intention on the part of the respondent No. 3, who is ill-will against the applicant, who is Secretary / Vice President of a Union. The applicant is presently located at Rawat Bhatta and he has been posted to Kota at a distance of 70 K.M. The applicant was under suspension for certain misbehaviour till May, 1994 and this transfer has been ordered soon after the suspension was revoked only to harass and put him to inconvenience while the disciplinary action processed by

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the respondents is under-way. The enquiry against him was ordered on 15.6.1994 and the enquiry is being continued at Rawat Bhatta. Learned counsel for the applicant took me to the incidence which happened to be in May, 1994, which could be the motive for harassing the applicant by transferring him to a place other than the Headquarter where the disciplinary enquiry is being processed.



3. I have given careful considerations to the arguments of Shri S.K. Malik, learned counsel for the applicant.

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The order Annexure A/1 dated 7.7.1995 transferring the applicant temporarily which is not a regular transfer and entitles him to retain his quarter etc. at the old station. On the other hand, he will be deemed to be on tour while he is under temporary transfer. If the same does not exceed six months he will also be claiming daily allowance on a regulated scheme upto a maximum period of three months. Therefore, the allegation of malafide intention only to harass him cannot be borne out of this order. Even the disciplinary case being processed at Rawat Bhatta will not be affected by this transfer as prosecution witnesses will be convened to attend the enquiry at his old station of posting and he himself will be paid the normal TA/DA for attending the enquiries at that place. Transfer of Government servant is an incidence of service and is ordered in the exigencies of administration. It cannot be a

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case that while an official is undergoing disciplinary proceedings he acquires immunity from transfer. May be ^{allow} the transfer is ordered in order to ^{allow} ~~lay~~ the disciplinary proceedings to be completed smoothly and without any difficulties.

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In any case, this is a matter within the domain of the administrative authority. At one point

Shri Malik also brought to my notice that the order has been passed by an officer not competent

to transfer the applicant and also that he has been transferred to a Corporation outside the

Department. Both these contentions are not borne out from the Annexure A/1 which has been

passed by the respondent No. 3 under the directions of the competent authority i.e. Director of

Purchase and Stores. Shri Malik also cited Apex Court judgement in a case of Dr. Ramesh Chandra

Tyagi vs. Union of India cited at (1994) 27 ATC 112

wherein the transfer order was assailed on the

ground that the delegation of power to transfer did not exist on the date of passing of transfer order. This citation does not come to any assistance in this case in view of the fact that the

respondent No. 3 has not ordered the transfer on his own. Annexure A/1 clearly says that the

applicant was transferred under the directions of the competent authority i.e. the Director of

Purchase & Stores and there is no averment that this officer was not competent to order the transfer.

The transfer once ordered by the competent authority can be communicated to the applicant by any officer junior to the competent authority and this order cannot be said to be suffering from any infirmity or illegality. As regards the applicant being a Member / office bearer of the Union (Secretary / Vice President), the learned counsel was not able to produce any evidence that such an office bearer acquires immunity from transfer from one station to another.

Considering all the aspects in this matter, I am not inclined to agree that any malafide intentions were involved in ordering the transfer of the applicant. The personal inter-action with the respondent No. 3 which was not very complimentary occurred in May, 1994 and the orders of transfer have been passed in July, 1995, thus, clearly indicating that no nexus exists between the said incidence and this transfer. As such this application fails and is dismissed in limine at the admission stage.


N. K. Verma
(N.K. VERMA)
Member (A)

cvr.