

22

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.183/2009

Date of decision: 3-9-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Bharat Veer Jayant, s/o Shri Arjun Singh, aged about 43 years, by caste Jadav, R/o House No. 14, Type III AFRI, Main Campus New Pali Road, Jodhpur. Worked on the post of Research Assistant Gr. I in the office of Arid Forest Research Institute New Pali Road, Jodhpur.

: applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India through The Secretary, Ministry of Forest and Environment Paryavaran Bhawan, 5th Floor, CGO Complex, Lodhi Road, New Delhi.
2. Indian Council of Forestry Research and Education through its Secretary, Post Office New Forest Dehradun, Uttarakhand,
3. Director, Arid Forest Research Institute, New Pali Road, Jodhpur.

: Respondents.

Rep. By Mr. Vikas Seoul : Counsel for the respondents.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.

from Alam
Applicant Shri Bharat Veer Jayant, S/o Sh. Arjun singh, who was working as Vehicle Assistant, has filed this O.A challenging the impugned order of transfer dated 07.08.2009 (Annex. A/1) and the order dated 03.08.2009, (Annex. A/2) issued by the respondents, and claimed following reliefs:

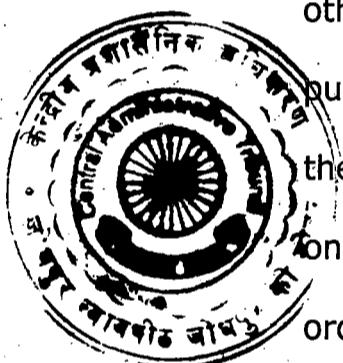
- A) The transfer order 07.08.2009(annex. A/1) and order dated 03.08.2009 (annex.A/2) may kindly be quashed and set aside and the non-applicant may kindly be directed not to relieve from the post of research assistant Gr. I
- B) The cost of the application along with any other relief, which this Hon'ble Tribunal deems fit just and proper in favour of the applicant, may kindly be granted.

-2-

2. The brief facts of the case are as follows:

The applicant was working as Research Assistant Gr. I (Vehicle Assistant) under the 3rd respondent, viz The Director, Arid Forest Research Institute, (AFRI for short) Jodhpur. There were allegations against applicant that included falsification of petrol, diesel and other lubricants bills required for the vehicles of AFRI, Jodhpur. The applicant Bharat Veer Jayant in connivance with one Khinya Ram (applicant in O.A. No. 180/2009,) who was working as Driver at that time cause loss to the tune of more than Rs. 90,000/- to AFRI, Jodhpur by fabricating the petrol, diesel and other lubricants bills during the year 2008. The said act was published in local news papers. Thereafter, CBI, Jodhpur took up the case and after investigation filed a charge sheet in CBI Court on 30.5.2009. The applicant was placed under suspension vide order dated 13.5.2008 and an inquiry was initiated against him. However, the said suspension was revoked with effect from 01.06.2009. The applicant was transferred out of Jodhpur to Centre for Social Forestry and Eco Rehabilitation, Allahabad, vide order dated 03.8.2009, issued by Director General, Indian Council of Forestry Research and Education, Dehradun (respondent-1); the consequent order dated 07.8.2009 was issued by the 3rd respondent. Both these orders are under challenge before this Tribunal in this O.A.

3. On filing of the O.A, notices were issued to the respondents and in compliance with the notices, the respondents appeared through their lawyer and filed their reply. In the reply the case of



-3-

the respondents is that the transfer of the applicant has been done due to administrative reasons because of the fact that the applicant, who is working as Vehicle Assistant in the office of the respondent No. 3, has fabricated fuel requisition slips and also forged the signature of respondent No. 3 on the fuel requisition slip book and thereby caused loss to the department to the tune of more than Rs. 90,000/- for personal gain. It is stated that when the matter came to the knowledge of the authorities, the applicant was suspended and departmental inquiry was initiated. Thereafter, a criminal case was also instituted against the applicant and the same was inquired into by CBI, Jodhpur. In the said criminal case, the CBI has submitted charge sheet. It is stated that the continuance of the applicant at the present place of posting is against the administrative interest of the department and as such the applicant was transferred to Allahabad. So the order of transfer of the applicant was just and proper and does not require any interference by the Tribunal.

4. Heard the learned advocate of the applicant as well as the learned advocate of the respondents and perused the records of the case. During the hearing, the learned advocate of the respondents submitted that since the order of transfer was made by the competent authority keeping in view the administrative exigencies, which has been elaborated in the reply filed on behalf of the respondents, as such the Tribunal should not interfere with the orders of transfer. In this regard, the learned advocate of the respondents placed reliance upon the decisions of the Apex Court



-4-

in the case of **Somesh Tiwari vs. Union of India and ors.**
[(2009) 2 SCC 592] and **State of UP and others vs. Siya Ram and another** [AIR 2004 SC 4121].

5. On the other hand the learned advocate of the applicant contended that the order of transfer is malafide one and if the same is allowed to be implemented then in that case the applicant will be deprived of from his legal right of defending his case before the CBI Court, where criminal case is pending against him and also before the departmental authorities, where disciplinary proceeding is going on against him. He further submitted that every individual has got legal right to defend himself in any criminal case pending against him. He submitted that Allahabad, where the applicant has been transferred, is far away from Jodhpur and if the transfer order is implemented then the applicant will not be in a position to attend the court proceedings as well as in departmental proceedings on each date and in this manner he will be highly prejudiced and so he prayed to quash the order of transfer.

6. In support of his argument, learned advocate of the applicant placed reliance upon the decision of the Apex Court in **Ramadhar Pandey vs. State of UP and others** [1993 (4) SLR 349] **Y** **Kurikesu vs. Sr. Superintendent of Telegraph Traffic** [598 Swamys C.L Digest] **Kailash Chandra Sharma vs. Director, Sheep and wool Rajasthan & ors** [RLR 1992 (2)441] **Mahendra Kishore Sharma vs. UOI and ors.** [(1992) 20 ATC 66].





7. It is true that ordinarily Court or Tribunal should not interfere with the order of transfer issued by a competent authority if it is done in administrative exigencies as held in the cases **Somesh Tiwari vs. Union of India and ors.** [(2009) 2 SCC 592] and **State of UP and others vs. Siya Ram and another** [AIR 2004 SC 4121], but if it is shown that the same has been issued with malafide intention or if the same causes any prejudice to the employee or the same is violative of principles of natural justice, then in that case, the Court or Tribunal has got jurisdiction to interfere with the order of transfer.

8. In this case, it is admitted position that criminal case as well as departmental inquiry are pending against the applicant. From the pleadings of the parties, it appears that in the Criminal case the CBI has already submitted charge sheet on 30.05.2009 and since thereafter more than one year and three months have elapsed and this circumstance indicates that the criminal case is ready for trial. It is the cardinal principle of natural justice that no one can be punished without putting him on trial and without giving him proper and sufficient opportunity to defend himself. The criminal procedure code requires that in the absence of accused no trial can proceed. Under the circumstances, if the transfer order is implemented it will be very difficult for the applicant (accused) to attend court on each and every day from Allahabad and properly defend himself. The consequence will be that on the one hand the trial will be hampered and on the other hand the legal right of the applicant to defend himself in the criminal trial will be adversely



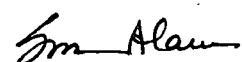


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affected. Likewise, it is admitted position that till today, the departmental proceeding is also pending and as yet it is not concluded (the reasons best known to the respondents). If the transfer order is given effect to then the applicant's interest will also be adversely affected in defending himself before the inquiry officer. In the above mentioned circumstances, the order of transfer of the applicant from Jodhpur to a far off place (Allahabad) is against the principles of natural justice and appears to be malafide one as the same will deprive the applicant from his legal right to defend himself before the criminal court as well as before the Disciplinary Authority. I am, therefore, of the view that the transfer order should not be allowed to sustain and it should be quashed.



9. In the result, I find merit in this case and as such the O.A. is allowed and the order of transfer dated 03.08.2009 (Annex. A/2) and consequent order dated 07.08.2009 (annex. A/1) whereby the applicant was transferred to Allahabad from Jodhpur are hereby quashed and set aside. However, it is observed that after conclusion of the criminal trial and departmental proceedings initiated against the applicant, the respondents will be at liberty to transfer the applicant to any place. In the facts and circumstances of the case, there will be no order as to costs.



[Justice S.M.M. Alam]
Judicial Member.

Jsv.

दिनांक १३/११/६५ के अनुसार तार
संकेत संख्या १११५
जो भाषा-१११५ का रिपोर्ट है।

अनुमति दिलाई गई
केन्द्रीय प्रशासन के अधिकारी
जोधपुर न्यायिक, जोधपुर