

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 402/2003

Lucknow this the 2nd day of June, 2004.

HON. SHRI S.P. ARYA, MEMBER(A)

HON. SHRI M.L. SAHN, MEMBER(J)

Nand Lal Kushwaha (Nand Lal Prasad Kushwaha) aged about 57 years son of late Shri Ram Badan Kushwaha, resident of House No. 15, Meera Khelpura Behraich (presently working as Superintendent of Post offices, Behraich).

Applicant.

By Advocate Shri A.P. Singh for Shri R.C. Singh.

versus

1. Union of India through the Secretary, Ministry of Communication (Deptt. of Posts) New Delhi.
2. Director General of Posts, Govt. of India, Ministry of Communication, Deptt. of Posts, New Delhi.
3. Postmaster General, Gorakhpur Region, Gorakhpur.
4. Assistant Director Office of the Postmaster General, Gorakhpur Region, Gorakhpur.
5. Shri Vakil Ahmad, Superintendent of Post Office, Gonda Division, Gonda.
6. Shri Kamlesh Chandra Post Master General, Gorakhpur Region, Gorakhpur.
7. Shri Bahadur Singh, Director Postal Services, Office of Postmaster General, Gorakhpur Region, Gorakhpur.
8. Shri R.D. Ram, Assistant Director, Office of the Postmaster General Gorakhpur Region, Gorakhpur.

Respondents.

By Advocate Shri G.S. Skarwar.


O R D E R

By M.L. Sahni, Member(J)

The applicant Shri N.L. Kushwaha has challenged the transfer order dated 21.8.03 (Annexure A-1) from the post of Superintendent of Post offices Behraich to the post of Pravar Post Master Deoria on variety of grounds

as stated in para 5 of the O.A. He has accordingly, prayed that the order of transfer ~~being~~ having not been passed by the competent authority, be quashed directing the respondents to allow the applicant to work and discharge his duties at Behraich and pay him salary and other benefits regularly hithertoafter.

2. He has alleged that after he was posted at Behraich as Superintendent of Post Office on 7.3.01 and joined there on 8.3.01, he noticed that one Kamta Prasad working as Sub Post Master, Nanpara, District Behraich had been involved in two cases of fraud and irregularities and three charge sheets dated 16.12.2000, 19.9.02 and 9.1.03 had been issued to him under rule 14 of the C.C.S (C.C.A.) Rules 1965 (hereinafter mentioned as Rules, 1965). However, while departmental proceedings were still going on the said Shri Kamta Prasad retired from service w.e.f. 31.1.03 and therefore, the departmental proceedings against him automatically converted into proceedings under rule 9 of the C.C.S. (Pension) Rules, 1972. While enquiry officer, as the delegatee of the President of India was yet to submit his report, for taking appropriate action, to the President the applicant, instead of cooperating in the enquiry approached ^{Member of Parliament} Shri Beni Prasad Verma, who wrote to the higher authorities to drop the proceedings, for which comments of the applicant were called for, which the applicant submitted requesting further that the departmental proceedings be allowed to be brought to the logical conclusion, which annoyed the authorities, who vide letter dated 17.3.03 (Annexure A-10) ordered dropping of the disciplinary proceedings against Shri Kamta Prasad. According to the applicant, undue favour was shown to the delinquent employee by the authorities concerned and vide letter dated 7.7.03 applicant was asked to comply with the directions issued vide Annexure A-10. In the meanwhile, the applicant's son who was studying at Lucknow fell ill and the applicant proceeded on casual leave for one day



on 21.8.03 and while in Lucknow, he suddenly learnt that he had been transferred vide the impugned order.


3. The applicant assailed the order mainly on the ground that it has been issued by way of punishment with malafide ^{intentions} by incompetent authority without application of mind and contrary to rules especially rule 15, 34 and 35 of the PIT Manual Volume IV. He also alleged that the exercise of power by the respondents in transferring him is in colourable manner, is tainted with ulterior motive and is motivated by bias and revenge.

4. ~~Since~~ It was also stated in the O.A that ^{Since} no one has been transferred in his place and the respondent No. 5 has already been asked to hold the Additional charge of his post, therefore, he still is holding the charge constructively and accordingly prayed for interim relief which was granted on 26.8.03 in the following terms:

"...Till 1.9.03 the transfer order dated 21.8.03 shall remain stayed and the applicant shall be allowed to continue in case he has not handed over the charge."


The record shows that the above order is still continuing in favour of the applicant.

5. The respondents have filed their Counter Affidavit inter alia submitting that the conduct of the applicant was not above board and he had been issued warnings from time to time for his dishonesty and irregular behaviour/practices vide orders dated 7.7.03, 25.7.03, 18.8.03 and 21.8.03 (Annexures A, B, C and D respectively). They also stated that the applicant, for personal enmity and prejudices against the sub Post Master Nanpara Behraich, Shri Kamta Prasad issued falsely the charge sheets on 19.9.02, 16.12.02 and 31.12.02 /9.1.03 which were found without any cogent reason and hence the DPS Gorakhpur vide order dated 17.3.03 (Annexure F) the applicant was asked to comply with the same and when the applicant did not obey the instructions



of his superior authority. The employee concerned namely Shri Kamta prasad filed O.A. before the Tribunal, who vide order dated 4.7.03 (Annexure¹) directed for expediting the payment of retiral benefits to the said employee within 15 days. Still when the applicant did not comply with the orders of his superiors, and those of the Tribunal, the employee concerned approached the Member of Parliament, who took-up the matter with the Hon'ble Minister for Communication and I.T. who then recommended the transfer of the applicant, which was conveyed to Chief P.M.G. U.P. Circle Lucknow, who issued the impugned order being in the public interest and for administrative exigencies.

6. It is also stated by the respondents that the transfer order is passed by the competent authority i.e. Post Master General, though the order was issued by Assistant Director as is evident from Annexure-L. It is further stated by the respondents, that the applicant intentionally avoided the transfer order and obtained the stay order, on the basis of which he has not handed-over the charge of the post from where he stood transferred having deemingly demitted the charge in pursuance of the transfer order dated 21.8.03. According to the respondents, the applicant is guilty of misusing his disciplinary powers by issuing the major penalty charge-sheet against Shri Kamta prasad and also disobedience of the orders of his superiors as well as of the Tribunal and hence is liable to be departmentally proceeded for the same, while he had no authority to question the orders passed by his superiors in dropping the charge-sheets issued against Kamta Prasad and withholding the pensionary benefits payable to him in respect of the Tribunal's order. It is further asserted by the respondents that the transfer order was passed in absolute necessity of administration and in the public interest because of the conduct of the applicant who was



disobeying the orders of superiors and for implementing the CAT's order passed in favour of the retired employee Shri Kamta Prasad, it was desired that the applicant should be transferred from the post.

7. We have heard the learned counsel for the parties and have carefully perused the pleadings including the documents, copies of which have been annexed by them.

8. Reliance has been placed by the applicant on the following case law whereby it has been laid down that on the existence of certain grounds the courts should interfere with the orders of transfer passed by the Executive authorities or if the transfer is made on the basis of a complaint of a subordinate, it can be interfered; that the transfer is not in the public interest or for administrative exigencies, or if an employee ~~has~~ ^{can} be transferred by way of punishment ~~if~~ & there are allegations of misconduct against him for which departmental proceedings can be initiated, because transfer is no solution for alleged misconduct:

1. AIR 1986 SAC 1955 B Vardha Rao vs. State of Karnataka.
2. AIR 1991 SC 532 Shilp Bose vs. State of Bihar.
3. AIR 1993 SC 1604 Union of India vs. N.P. Thomas
4. (1994) 6 SCC 98 NK Singh vs. Union of India.
5. 195 (Supp) 4 SCC 169 Abani Kanta Roy vs. State of Orissa.
6. (1991) 18 ATC 408 Bhaskar Prasad Tewari vs. Union of India and ors.
7. (1992) 20 ATC 66, Hanendra Kishore Sharma vs. Union of India and ors.
8. 1998 CD 242 Smt. Gayatri Devi vs. State of U.P. and ors.
9. 1984 Supp SCC 413 State of U.P. vs. Jagdeo Singh
10. 1991(2) UPLBEC 1303 State of U.P. vs. Shesh Mani Tripathi
11. 1992(10) LCD 84 Pradeep Godl vs. Regional Manager
12. Judgment dated 23.1.04 passed by Hon'ble Single Member in O.A. no. 1100 of 04 at Allahabad.
13. 1992(10) LCD 84 Pradeep Goel vs. Regional Manager.


14. (1991) 15 ATC 1 N.K. Suparna vs. Union of India & ors.

15. (1993) 23 ATC 426 Rajendra Roy vs. U.O.I.

In Rajendra Roy (supra) it is held that malafides can be inferred from the facts, pleaded and established. The learned counsel for the applicant submitted that the allegations made by the applicant in this case in his O.A. lead to establish inference that the order of transfer is motivated by malice because the superior authorities somehow or the other wanted him to get their illegal orders complied with which the applicant was not obliging because dropping of the charge sheet by the competent authority without holding enquiry into the allegations made into the charge-sheet, against Kamta Prasad was not permissible under the rules applicable in the case of the employee concerned. The learned counsel further submitted that since P&T Manual Volume IV requires that the transfer order was required to be issued by the competent authority and the same is not done, therefore, it is also contrary to the law as laid down ⁱⁿ by the following judgments:

1. 1936 Privy Council page 253 Nazir Ahmad vs. King Emperor.
2. 1996(14) LCD page 516, Babu Ram verma vs. SDO
3. AIR 1969 SC 634 Ram Chandra vs. Govind.

In the case of Babu Ram (Supra) it has been held that "it is well settled that where a procedure for a performance of a particular act is prescribed, the same has got to be done in that manner or not at all. The above mentioned view is propounded by the Privy Council in a case of Nazir Ahmad v. King Emperor AIR 1936 Privy Council at page 253 and is followed by the Hon'ble Supreme Court in a case of State of Gujarat vs. Shanti Lal reported in AIR 1969 (SC) at page 634 as well as in a case of Ram Chandra v. Govind reported in AIR 1975 (SC) at page 916."




9. Further it has been submitted on behalf of the applicant that since transfer order has been passed in his case at the behest of politician therefore, it is also in violation of the law as laid down in the following judgments:

1. 1998 SCD 242-Smt. Gayatri Devi vs. State of U.P. and ors.
2. 1999(1)LBESR 461, Phoola Dvi vs. State of U.P.

In the case of Phoola Devi (supra) the Hon'ble High Court has held that courts should normally not interfere in the matters of transfer and posting ^{and} it is done by the concerned officers of the department. It should ^{however} not be done at the instance of politicians.

10. In the light of the above stated facts and the law discussed and relied upon by the contending parties, now we proceed to examine the legality and validity of the impugned order Annexure A-1 dated 21.8.03. According to the applicant, this order is motivated by ill will, vengeance and malafides while the respondents claim that it had to be passed in the interest of administration and public policy to uphold the dignity of public services.

11. The circumstances which led to the passing of the impugned order Annexure A-1 were stated in detail already and admitted facts are that one Kamta Prasad, a retired official working with the applicant was issued charge sheet, dated 16.12.2000, 19.9.02 and 31.12.02/9.1.03 which ~~was~~ however, dropped by the authorities concerned and required the applicant to release the pensionary dues of the said Shri Kamta Prasad. When the applicant failed to comply ^{with} the said ^{orders, the} official ^{concerned} obtained the order ^{from} of the Tribunal for the same, but still he was not paid his dues. He, therefore, approached the Hon'ble Member of Parliament and the Hon'ble Member wrote to Hon'ble Minister concerned for appropriate action. The Hon'ble Minister directed (not desired) to transfer the applicant as per endorsement made on the D.O. letter



(Annexure J(I) which reads as follows:

"Shri Nand Lal ^{h-}Kushwaha may be transferred from Behraich, U.P. to some other District in U.P. immediately."

Sd/

6.8.03

Su Thirunavukkarasar,
Minister of State for Communication and I.T.
Govt. of India, new Delhi.


The above D.O. letter is addressed to Hon'ble Minister of Communication and Information Technology Govt. of India, New Delhi and is written by Shri Padmsen Chaudhari Hon'ble Member of Parliament. From the endoresement dated 16.8.03, it is clearly made out that the order of transfer dated 21.8.03 (Annexure A-1) was issued on the directions of Hon'ble Minister as contained in the endorsement stated above. From this sole circumstance, we find the cotention of the learned counsel for the applicant having substance, ^{that} where procedure for performance of a particular act has been prescribed, the same has got to be done in the manner or not at all. It is not disputed by the respondents that the competent authority who has passed the transfer order has acted in this case on the directins of the Hon'ble Minister and thus had no occasion to apply his own mind to the facts of the case for effecting the transfer of the applicant. The law as laid down in Nazir Ahmad (supra) and followed by the Hon'ble Supreme Court in State of Gujarat vs. Shanti Lal (supra) and Ram Chandra v. Gonid (supra) is squarely applicable in the present case.

12. Again, the observations made in the case of Sheo Kumar Sharma vs. basic Shiksha Adhikari, 1991(1)UPLBEC 690 as quoted in Phoola Devi's case (supra) are quite relevant:


"It is regretted that a Minister should pass a transfer order which function is to be discharged by the competent authority in the Department. If any thing adverse to the conduct of the incumbent comes to the knowledge of a Vidhyak or

some other public representative then he may forward it to the competent authority requesting him to consider the same and do the needful in the matter, but interference by directing transfer straightaway is not compatible to the principle of law by which a country having a democratic set-up is to be governed. All the persons in position should know that this is not the Government of the men however, high position they may occupy but is the Government of laws."

13. The authorities concerned in the department when passed the impugned transfer order on the directions of the superior authorities, the same cannot be deemed to have been passed for administrative reason/exigencies or in the public interest. The respondents though have tried to justify their action by pleading that the applicant was not complying with the order of his superiors, nor of the Tribunal, therefore, he was guilty of misconduct, hence his transfer was necessitated in this case. In this respect, it is stated that no doubt alleged disobedience on the part of the applicant cannot be approved, but we cannot agree with the respondents that the transfer on this ground could be a solution. In this respect the case-law as relied upon by the learned counsel for the applicant and discussed in detail clinch the issue very clearly. The well-settled position of law as laid down and cited by the learned counsel for the applicant squarely applies to the applicant's case and, therefore, we feel no hesitation in holding that the impugned order (A-1) passed in this case is not in accordance with rules and the established position of law, hence we set-aside the ^{order} A-1 and direct that the applicant shall ^{be deemed to} continue on the post at Behraich whereon, we have ^{been} given to understand, that he is still holding the charge in pursuance of the interim order dated 26.8.03. It is, however, made clear that the departmental authorities shall be at liberty to proceed against the applicant in accordance with rules, if he is




guilty of any alleged misconduct, and disobedience of the orders of the superior authorities. The O.A is accordingly allowed but without any order as to costs.


(M.L.SAHNI) 2/6/2004

Member(J)

s.a.


(S.P.ARYA)

Member(A)