

Central Administrative Tribunal, Lucknow Bench,  
Original Application No. 110/2004  
this the 14<sup>th</sup> day of May, 2004

HON'BLE SHRI M.L. SAHNI, MEMBER (J)

Suresh Chandra Srivastava aged about 37 years  
son of late S.N. Srivastav resident of RS 1-4/11,  
Sector I, Aliganj, Lucknow.

...Applicant

By Advocate: Sri Deepak Shukla

Versus

1. Union of India through Secretary to  
Govt. of India, Ministry of Home Affairs, Central  
Civil Secretariat, New Delhi.

2. Director, Central Bureau of  
Investigation, Block 3, (4th floor), CGO Complex,  
Lodhi Road, New Delhi.

3. Joint Director, CBI, SC II, Block 3  
(4th Floor), Lodhi Road, CGO Complex, Lodhi Road,  
New Delhi.

4. Superintendent of Police, Central  
Bureau of Investigation, Special Crime Branch,  
21/447, Indira Nagar, Lucknow.

5. Sri H.N. Mishra. Superintendent of  
Police, Central Bureau of Investigation, Special  
Crime Branch, 21/447, Indira Nagar, Lucknow.

...Respondents

By Advocate: Sri G.S. Sikarwar

ORDER

BY HON'BLE SHRI M.L. SAHNI, MEMBER (J)

By this O.A. the applicant Sri S.C.  
Srivastava has challenged the officer's order  
No. 13/2004 dated 12.3.2004 served on him  
on 16.3.2004 (Annexure A) and the transfer  
order No. JD/SC/II/2004 dated 12.3.2004, inter  
alia on the grounds that the copies of the  
later order has not been served on him and  
the same has been passed maliciously on the  
dictates of the superior authority without  
application of mind and in arbitrary manner  
without their being any exigency, administrative  
or otherwise or in the public interest as  
alleged in the officer's order No. 13/2004 dated  
12.3.2004. The malafides have been alleged  
against respondent No. 5 Sri H.N. Mishra,  
Superintendent of Police CBI, SCB who is alleged to have acted

to have ~~been~~ signed the impugned order (Annexure A). Copy of the impugned transfer order dated 12.3.2004 has, however, not been appended to the O.A. stating that the same has not been served on the applicant so far, and that the same has been got produced by the respondents. The respondents have also not filed the copy of the said order when they file the counter reply.

2. I have heard the learned counsel appearing on behalf of the applicant quite at length and have considered the detailed submissions made by him. Learned Counsel for the respondents has also been heard who has taken <sup>me through</sup> ~~their~~ counter reply filed on behalf of respondents No. 1 to 4. There is no separate reply filed by respondent No. 5 against whom allegations of malafides have been made in the O.A. During the arguments, however, learned counsel for the applicant did not press the allegations against respondent No. 5 who ~~admittedly~~ has not been served by the applicant, in his individual capacity.

3. I have carefully gone through the copies of documents which have been appended by the rival parties to substantiate their respective pleas.

4. Learned counsel for the applicant who ~~has~~ not pressed the allegations of malafides, has submitted that there is no justification in transferring the applicant from Lucknow to Delhi, as from the same organisation/institute ~~from~~ <sup>where</sup> ministerial staff has never been transferred on any occasion and that there was no public interest in transferring the applicant, and that there was no administrative exigency. Making references to the averments made in the application, learned counsel for the applicant stated that the applicant always worked to the best of his ability and that his work has been appreciated and he has been awarded from time to time, besides awarding him ~~recommendations~~ certificates. He has referred to such certificates copies of which have been annexed with this O.A. as well as with the R.A. filed by the applicant. Besides challenging the illegality of the transfer order and relieving order dated 12.3.2004, he has also expressed

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his inability to move out of Lucknow because he is suffering from heart ailments and having undergoing treatment in Lucknow and he had been on medical leave at the time when the relieving order was served upon him on 16.3.2004. He has also placed on records copies of the medical record showing that he has been suffering from Anginal pain, blood pressure and fistula requiring surgical operation in Lucknow. The applicant has also pleaded that two children who are studying in Lucknow have to appear in the examination to be held in April / May and to this effect, he has placed on record the copies of certificates issued by the school authorities.

Referring to the copies of the officer's order No.1295/2000 dated 4th September, 2000 whereby one Sri Bhagwat Prasad Verma, UDC in the office of CBI, Lucknow was transferred on administrative grounds and in public interest but the order was quashed by the Tribunal on the ground that it was not issued by the competent authority. According to the learned counsel for the applicant the said order was issued by Dy. Director (Administration), CBI who was not held competent to pass the transfer order. Learned counsel for the applicant has contended that the transfer order has not been served upon him but from the recital in the office order dated 12.3.2004 bearing No. 13/2004 (Annexure A) it is made out that the transfer order NO JD/SC-II/2004 dated 12.3.2004 has been issued by the Jt. Director, CBI, CS II New Delhi who is not competent to pass such order.

5. learned counsel for the applicant has placed reliance on Director of School Education Madras and others Vs. O. Karuppa Thevan and another 1994 Supp (2) SCC 666, where it was held that in absence of urgency, transfer of employees whose children are studying in schools should be restrained from being effected till the end of the academic year. In the case of Bhagwati Prasad Verma Vs. Union of India decided on 13.11.2000, this Bench of the Central Administrative Tribunal in O.A. No. 502/2000 observed that LDCs/UDCs have not been transferred to elsewhere in the same capacity in the 50 years' history of CBI - that there were only two posts of UDCs one was

vacant and other was occupied by the applicant and after his transfer, both the posts would fall vacant because no ~~person~~ <sup>person</sup> ~~transfer~~ <sup>has</sup> been transferred in his place and it was held that authorities failed to satisfy the Tribunal about the Administrative exigency and the public interest under which the applicant was transferred to a far-away place. The Hon'ble Tribunal further held that the transfer order under such circumstances are arbitrary and not in public interest ~~of~~ for administrative exigency. The impugned order was accordingly quashed. This is the same case, copy of the order of which has been placed by the applicant on the present case filed as Annexure No. 9 already referred to above.

In Dr. Ramesh Chandra Tyagi Vs. Union of India ~~(Sahai)~~ (1994) 2 Supreme Court Cases 416 it was held that the transfer order issued by subordinate authority having no delegated power at the relieving time was invalid and non-est and secondly the subsequent order founded on the earlier order could also not stand. In Anirudhsinhji Karansinhji Jadeja and another Vs State of Gujarat (1995) 5 SCC 302 it is laid down that exercise of power under direction or in compliance of some other person or authority amounts to failure to exercise the discretion altogether.

6. Countering the allegations made in the O.A. and rebutting the arguments advanced on behalf of the applicant by his learned counsel, it is submitted by the learned counsel for the respondents that the applicant joined CBI in the ACB Branch at Lucknow on 7.8.82 as LDC and remained posted here till promoted as UDC, even <sup>after promotion</sup> he was posted in the CBI SIC-IV at Lucknow on 12.9.2001. He has thus remained posted at Lucknow for more-than 21 years. It is further stated that the applicant has concealed the material facts from the court by referring to the documents whereby remuneration have been paid to the applicant but did not mention number of memos <sup>from</sup> issued to him time to time for lack of devotion to duties, and trying to shift the responsibility ~~on~~

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others for the works assigned to him, sitting over the files, dereliction of duties, deliberate non-compliance of the order of the superiors, frequent unauthorised absence without any intimation, non-maintenance of proper records and refusal to receive urgent daks etc. Copies of such memos have been annexed collectively as Annexure No. R-1 to the counter reply filed by the respondents. Respondents have denied that the work force was short in the office, <sup>or</sup> ~~are~~ that applicant had to over-work to finish his job or back-log. They have stated that whatever <sup>work</sup> ~~was~~ was allotted to the applicant, he used to delay in completing the job and have been creating back-log as a consequence some important matters of account section, establishment sections including TA bills were either badly delayed or ignored by the applicant which had to be got attended by other colleagues of the applicant. It is also stated by the respondents that the applicant was provided the assistance of other staff also to complete the work assigned to him but he usually <sup>was</sup> ~~was~~ found reluctant to complete the job and in February 2004, due to his overstaying on leave without intimation, some of the officials of SCB Lucknow suffered hardship and therefore could not get their salary for the month of January, 2004 in time. It is also submitted that the applicant was in habit of sitting over the files and deliberately consuming a lot of time or creating hindrance <sup>in</sup> ~~to~~ discharge of duties by other officials. He could not dispose of assigned work within the stipulated time and that he was

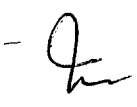
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in habit of delaying the office work<sup>2</sup> by his conduct ~~and~~ he was polluting the working atmosphere of the office administration; that the applicant <sup>developed</sup> totally apathy towards the official duties for which several memos had to be issued to him by various controlling officers from time to time but the applicant did not improve ~~in~~ his habits or ~~in~~ style of working. Consequently, the matter was brought to the knowledge of the Head office who issued the transfer order ~~based~~ on the reported facts and that it was found that interest of the office at Lucknow shall be served if the applicant is transferred and accordingly the competent authority who has been delegated the powers vide Annexure R-II passed the appropriate transfer order and that the impugned order suffers from ~~no~~ illegality or infirmity as alleged. Allegations of malafides has also been denied in the counter - reply filed by the respondents. Their claim is that due to urgent nature <sup>work</sup> could not be kept unattended for indefinite period and required to be attended to on time <sup>otherwise</sup> serious embarrassment <sup>was caused</sup> to the organisation, an institution having a very high reputation and credibility. It is also submitted on behalf of the respondents that conduct of the applicant could have lead to serious embarrassment to SCB because the branch at Lucknow had <sup>been</sup> investigating cases referred <sup>to</sup> by the Hon'ble High Court, Allahabad and that the applicant had a direct or indirect bearing on the pace of investigation.

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7. Learned counsel for the respondents has submitted that ~~let~~ it is undisputed that the applicant holds a transferable post and unless specifically provided in the service conditions, he has no choice to remain posted at one place throughout his service career. According to the learned counsel for the respondents, transfer of the applicant has been made in public interest and efficiency of public administration. He has further contended that transfer and posting is the prerogative of the administration and public interest is to prevail over the individual convenience or interest. He has referred to the law as laid down in the Gujarat Electricity V.A.R. Sugnamal Poshani (AIR 1989 SC 1433) wherein the following law was laid down:-

"Transfer from one place is generally a condition of service and the employees has no choice in the matter. Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of transfer order. If order of transfer is not stayed, modified or cancelled, the concerned public servant must carry-out the order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules."

 It is further submitted that the transfer of the Govt. employees on a transferable post is a necessary incident of service - career. That, the assessment of the quality of an employee

is to <sup>be</sup> made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. ~~That~~ only realistic approach is to leave to the wisdom of ~~that~~ hierarchical superior to make the appropriate decision; ~~that~~ this must be left in public interest to the departmental heads and interference by the courts should be rarely done. He also contended that the courts or Tribunals are not the appellate forums to decide on transfer of officers on administrative grounds and transfer order could only be challenged if the same are vitiated either by malafides or by extraneous considerations, which two factors are not present in the instant case as the allegation of malafides have been withdrawn and nothing regarding extraneous considerations has been alleged by the applicant.

8. I have thoughtfully considered the rival submissions made on behalf of the parties and also examined the case-law as referred to by their learned counsel~~s~~ to substantiate their arguments.

9. So far <sup>as</sup> the contention of the applicant regarding ill-health is concerned, the applicant can get better treatment in a place like Delhi where he stands transferred and also relieved vide the impugned order Annexure "A". I also find no merit in his contention that examination of his children is creating any problem for his moving out of Lucknow because the examinations have been over ~~by~~ now and new sessions ~~have~~ started during the month

of May, at present. // So far as, the challenge as against the competency of the authority passing the transfer order, in this case <sup>is concerned</sup> the respondents have placed on record Annexure R-II which pertains to delegation of financial powers to Jt. Director, North, CBI. Along with this forwarding letter Annexure R-II, <sup>it</sup> ~~he~~ <sup>has been</sup> appended a statement showing the Financial and Administrative powers of the Jt. Directors / CBI and <sup>at</sup> S.No. 23, it is stated that all Jt. Directors have full-powers within their jurisdiction to transfer the officers from one station to another upto the rank of Inspectors Group 'B'. Learned counsel for the applicant during his arguments has contended that this delegation of power, firstly, is not legal and valid and secondly, it pertains to the officers upto the rank of Inspectors and does not apply to the ministerial staff of which the applicant is a member being a UDC. I find no merit in his contention because S.No 23 clearly shows the transfer of officers upto the rank of Inspectors (Group B). ~~These inspectors~~ <sup>officers</sup> cannot be said to be exclusive of the ministerial staff Group B because Jt. Directors have the over-all control over the ministerial staff working in the CBI in various branches and in the present case, the transfer order, copy of which has not been produced either by the applicant or by the respondents, is <sup>purported</sup> ~~perpetuated~~ to have been issued by the Jt. Director, CBI <sup>under powers</sup> ~~as~~ delegated to him vide Annexure R-II. I also find no merit in the contention of the applicant, that the

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relieving order Annexure-A does not specify that the transfer is in the administrative interest or that it is ~~for~~ in administrative exigency. I have found from the impugned order Annexure-A, that the applicant has been relieved from his duties in the public interest in pursuance of the order issued by the head-quarter which is also dated 12.3.2004. it is well-settled that transfer order need not be speaking order and since the transfer order is not before the Tribunal, whatever is gathered from the office order No.13/2004 datd 12.3.2004 (Annexure A), it is found that same is issued in the public interest which has been clearly elaborated by the respondents in their counter-reply. In a recent case, ~~of~~ the Hon'ble Supreme Court reported as 2004 Supreme Court Cases (L&S) 453 (Pearlite Lines (P) Ltd. Vs. Manorama Sirsi where it has been observed:

Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. The plaintiff has neither pleaded nor has there been any effort on her part to show that the impugned transfer order was in violation of any terms of her employment. In the absence of a term prohibiting transfer of the employee, prima facie, the transfer order cannot be called into question. Further, it is to be considered that if the plaintiff does not comply with the transfer order, it may ultimately lead to termination of service. Therefore, a declaration that the transfer order is illegal and void, in fact amounts to imposing the plaintiff on the defendant in spite of the fact that the plaintiff allegedly does not obey order or her superiors in the management of the defendant company. Such a relief cannot be granted. The plaintiff has not complied with the transfer order as she never reported for work at the place where she was transferred. As a matter of fact, she also stopped attending the office from where she was transferred. Non compliance with the transfer order by the

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plaintiff amounts to refusal to obey the orders passed by superiors for which the employer can reasonably be expected to take appropriate action against the employee concerned."

9. The above observations are quite relevant for my consideration in deciding the present O.A. because in the present case also, there is no condition of service that applicant cannot be transferred from Lucknow to Delhi or any place in India and the applicant cannot take shelter under the precedent that none in the history of <sup>CBI</sup> ~~the~~ Lucknow has ever been transferred from CBI office at Lucknow to anywhere. The judgement cited by his learned counsel do not help the applicant because the facts and circumstances of the present case are not quite akin to those of the decided cases. On the other hand the decision as laid down in the Gujarat Electricity Case (Supra) squarely applies to the facts of the present case.

10. Having cumulatively considered the facts and circumstances of the present case and law applicable in this case, I feel satisfied that the applicant could not succeed to establish that the impugned order suffers from any illegality or infirmity as alleged by him. I accordingly find O.A. as meritless and hence dismissed the same. No cost.

  
(M.L. Sahni)

Member (J)

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