

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO: 370/2005

Lucknow this, the 10 day of Aug , 2006.

HON'BLE JUSTICE SHRI KHEM KARAN, VICE CHAIRMAN.

HON'BLE SHRI. P.K CHATTERJI MEMBER (A)

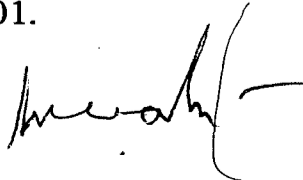
Ram Kripal Singh, aged about 48 years, son of Shri Ram Pyare, resident of 4/228, Vivek Khand, Gomti Nagar, Lucknow (posted as Upper Division Clerk in Passport Office, Government of India, Ministry of External Affairs, Nav Chetna Kendra, Ashok Marg, Hazratganj, Lucknow 226001).

Applicant.

By Advocate Shri R.C. Singh.

VERSUS

1. Union of India, through the Secretary, Ministry of External Affairs, New Delhi-110001.
2. Joint Secretary (CPV) & Chief Passport Officer, Government of India, Ministry of External Affairs, (CPV Division), Patiala House Annexie, Tilak Marg, New Delhi.
3. Deputy Secretary(PV), Government of India, Ministry of External Affairs, (CPV Division), Patiala House Annexie, Tilak Marg, New Delhi.
4. Passport Officer, Government of India, Ministry of External Affairs, NavChetna Kendra, Ashok Marg, Hazratganj, Lucknow-226001.
5. Shri R.R. Dash, Joint Secretary (CPV) and Chief Passport Officer, Government of India, Ministry of External Affairs, (CPV. Division) Patiala House Annexie, Tilak Marg, New Delhi.
6. Shri Ravi Shanker, Deputy Secretary (PV), Government of India, Ministry of External Affairs, (CPV Division) Patiala House Annexie, Tilak Marg, New Delhi.
7. Shri Vinay Srivastava, Passport Officer, Government of India, Ministry of External Affairs, Nav Chetna Kendra, Ashok Marg, Hazratganj, Lucknow-226001.



Respondents.

By Advocate Shri Sunil Sharma for Official respondents. Shri S.K. Srivastava for Respondent No. 7.

ORDER

BY HON'BLE SHRI P.K. CHATTERJI, MEMBER (A)

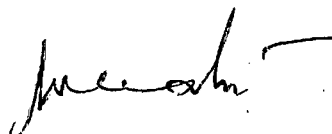
In this O.A. No. 370/2005, the applicant Shri Ram Kripal Singh, posted as UDC in the office of Passport office Lucknow under the Ministry of External Affairs has impugned the order of transfer of the applicant from Passport Office, Lucknow to the Passport Office, Bareilly issued by Deputy Secretary (PV), Government of India, Ministry of External Affairs, New Delhi (Respondent No. 3) under the approval of respondent No. 2 vide letter No. V-IV/578/47/85 dated 25.7.2005.

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

The applicant who belongs to scheduled caste category was appointed as temporary LDC and later regularized on the post of LDC and posted in Passport Office, Lucknow w.e.f. 11.6.85. After a few transfers to other places, he was back to the passport office, Lucknow in 1991 where he was promoted to the post of UDC from 1.11.99. The applicant was elected President of the Lucknow Branch of the All India Passport Employees Association. It has been alleged by the applicant in his O.A. that the association noticed certain malfunctioning of the passport office, Lucknow which was highlighted in the newspapers and the association was making certain demands with the department for setting right the irregularities. It has been alleged by the applicant that he fell in the bad book of the higher authorities including the passport office Lucknow, for this reason and that the transfer orders is a

consequence of that. During the visit by public relations officer (Vigilance) in the office of the Respondent No. 2 i.e. Passport office Lucknow, the officer noticed certain deficiencies on the part of the applicant after checking of the applicant's work and for this reason he was cautioned. However, the authorities did not stop with the issue of warning and the respondent No. 4 issued the office order dated 26.9.2001 under instructions from the Ministry's order No. V/Vig-II/842/32/2001 dated 25.9.2001 relieving the applicant from passport office, Lucknow to passport office Ghaziabad. The applicant made representation against the order which was allegedly made as punitive measure and finding no redressal, the applicant filed O.A.88/2002 before the central Administrative Tribunal, Lucknow. The O.A. was finally decided in favour of the applicant and the transfer order was quashed. The applicant made a request to the higher authorities to allow him to resume duty at Lucknow in compliance with this orders. Before he was allowed to resume duty on 27.3.2002, the applicant was served with a suspension order vide Memorandum No. V/Vig.II/842/32/01 dated 26.3.2002. After issuing of the suspension order the transfer of the applicant from passport office, Lucknow to Passport office Ghaziabad was also cancelled by the respondent No. 2.

3. Thereafter, the applicant filed another O.A. No. 175/2002 before this Tribunal challenging the suspension order. The application was finally decided in favour of the applicant vide judgment of the Tribunal dated 23.4.2002 and the suspension order was quashed. It would be pertinent to quote the operative portion of the judgment.



“In view of the discussion in paragraph Nos. 6 to 10, we quash the order of suspension dated 26.3.2002. The applicant shall be reinstated in service within 15 days of the receipt of this order. It will however, be open for the respondents to issue a charge sheet to the applicant and to consider whether it is necessary to place the applicant again under suspension having regard to the gravity and seriousness of the charges against the applicant.”

4. While the suspension order was withdrawn on 8.5.2002, on the same date respondent No. 2 issued a memorandum of charge sheet to the applicant vide letter No. V/VIG.II/842/32/01 dated 8.5.2002 containing four articles of charges. The charge sheet along with articles of charges has been furnished by the applicant, a copy of which is annexed as Annexure No. 10 to the original application. The disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 was finally concluded by the disciplinary authority vide order No. V/VIG.II/842/32/01 dated 17.6.2005 in which the punishment of withholding of two annual increments without cumulative effect was imposed on the applicant. After conclusion of the disciplinary proceedings on 25.7.2005 vide memorandum No. V.IV/578/42/85, the applicant was transferred to passport office, Lucknow to Passport office Bareilly in the interest of service. The order was issued by respondent No. 3 by the approval of the Respondent No. 2. It is this transfer order which has been challenged by the applicant.

5. Counter Affidavit was filed on behalf of the respondents.

6. Heard Shri R.C. Singh learned counsel for the applicant. It has been alleged by the learned counsel for the applicant that the impugned order has to be set aside for to reasons. ,

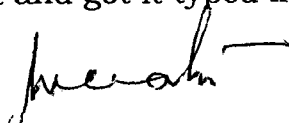
Muhammad

1. It has been issued as punitive measure

2. The order is malafide as it is a consequence of the long standing malice and prejudice that the passport officer and the other authorities were holding against the applicant. Regarding the allegations of bias, the learned counsel pointed out that it started right from the time when he became president of the Union. The applicant started agitating against making demands for certain reforms in the office for removal of irregularities as ventilated in the press. The subsequent developments like sudden visit by the officer from the vigilance wing of the ministry from Delhi for scrutiny of his work papers was the consequence of the irregularities which the applicant earned because of his pressing for certain demands in the office. The learned counsel has drawn our attention to the articles of charge in the charge sheet against the applicant. Article II of the memorandum of charges says that the applicant indulged in misrepresentation of facts in O.A. 88/2002 before the Hon'ble Tribunal Lucknow in so far as pertaining to the period of his absence from office.

7. The learned counsel also brought to our notice, for substantiating the charge of bias of the officers against the applicant, an incident which he has narrated in para 4.17 of the O.A. which is as follows:

"That on 03.06.2002 the respondent No. 7 called the applicant to his office and advised that no fruitful purpose will be achieved unless he tenders apology and accepts the allegations. The respondent No. 7 dictated an application from the side of the applicant and got it typed in office and



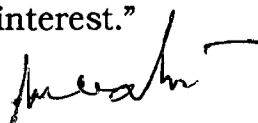
asked the applicant to sign and submit the same so that no further proceedings are done against him.”

8. Regarding the questionability of charges in the punitive measure, the learned counsel has drawn our attention to a circular “sandesh” which the passport officer circulated amongst his staff on 8.7.2005. This circulation was issued to the office who were agitating the order of transfer of the applicant from the office at Lucknow. The circular interalia stated that the transfer of the applicant was made after his confession of having accepted bribe which discharging of his work in the passport office Lucknow. The learned counsel for the applicant highlighted this matter in particular as a proof that the transfer of the applicant was a punitive action and therefore it was false as stated in the transfer order, that it was made in the interest of service.

9. Heard the learned counsel Shri Sunil Sharma for official respondents and Shri S. K. Srivastava for respondent No. 7.

10. The learned counsel on behalf of the respondents drew our attention to the relevant orders regarding the norms of transfer particularly to the clause in respect of UDC/LDC and clarified that transfer could be made of a person who has developed vested interest in the office and whose continuance in the office may not be desirable from the point of view of efficiency and proper functioning of the office the relevant portion is quoted as follows:

“On the basis of departmental proceedings it is established that the official concerned has been found guilty of serious irregularities and his/her continuance in that office is likely to be detrimental to public interest.”



In the present case as explained by the learned counsel for the respondents as the applicant himself accepted the charge of taking bribe, it was not at all desirable to let him continue in the office at Lucknow and his transfer out side Lucknow where he was posted for the last 14 years became necessary in the interest of service. The learned counsel categorically denied that the transfer order was a consequence of biased and prejudice of the concerned officer against the applicant. The charge against the applicant was one of lack of integrity and his continuance in the office would be detrimental to the service and particularly the image of the government department. The learned counsel has also stated categorically that there is no settled law that if a statutory punishment is imposed upon an official for certain irregularities and misconduct, he cannot be at the same time be transferred from his post.

11. Learned counsel for the applicant as well as respondents quoted copiously from various judgments of the Apex Court on the matters relating to the transfer. It would be pertinent to mention extract of the judgments quoted by the learned counsel at the stage of hearing.

12. One of the contentions of the learned counsel for the applicant was that the applicant was victimized by the respondents for his trade union activities. He was considered to be a thorn on their path and therefore, they removed him at the slightest pretext. Learned counsel for the applicant quoted from the judgment of the Central Administrative Tribunal, Calcutta Bench in the case of Bijoy Kumar Gharami Vs. Union of India and others Reported in (1998) 8 Administrative Tribunals Cases 895. While passing the judgment the Tribunal had observed that transfer of an employee based on misconduct

mean

attaching stigma to the applicant is punitive and cannot be ordered without affording reasonable opportunity of representation. Learned counsel for the applicant also quoted from a judgment passed by CAT Madras Bench in the case of Alexander Kurian Vs. Director, Central marine Fisheries Research Institute, Cochin and reported in (1988) 6 Administrative Tribunal Cases 421. In this judgment it was held mere assertion by the Government that transfer is in public interest does not validate the order unless there are specific grounds to support it. In this case the applicant's transfer deviating from the norms laid down was stated to be without justification and struck down.

13. Learned counsel for the applicant also quoted from judgments of CAT, Lucknow Bench in the case of Vinod Sahi Vs. Union of India in O.A. No. 410 of 1995. In this judgment, the Tribunal held that it was the duty of the respondents to place before the Tribunal the facts which led them to conclude that it was not in the interest of administration to retain applicant at the station where he was already working. The counsel for applicant also quoted the following extracts from the judgment:-

"4. Arguments advanced on behalf of the learned counsel for the parties, has been heard and considered. It is no doubt true that the authority competent to transfer can, for administrative exigency or in public interest, transfer an officer from one place to another and the said officer cannot challenge the same. However, in Umesh Chandra Tiwari Vs. State of U.P. The Hon'ble High Court of Allahabad has held that "a Government, undoubtedly is the best judge as how best the services of its employees can be utilized and at what places but the employee too has a right to seek protection that he was being victimized by resorting to transfer for oblique motive or the transfer order was unjust or unfair." The said decision of the Hon'ble High Court of Allahabad is based on the decision of the Hon'ble Supreme Court given in the case of B. Varadha Rao Vs. State of Karnataka and E.P. Royappa Vs. State of Tamil Nadu.

Umesh

14. After citing the afore mentioned judgments of the Apex Court and the Tribunal, learned counsel expressed the view that it was a clear case of malafide. The respondents have not been able to bring out clearly and establish that the transfer of the applicant was necessary in public interest and that they issued the transfer order under exigencies of service. On the contrary the appeal which was issued by the respondent No. 4 to the agitated employees clearly and amply prove that he was harbouring malice against the applicant.

15. Learned counsel for the respondents also quoted from different judgment of the Apex Court/ Tribunal countering the charge of malafide. Learned counsel referred to the judgment of the Apex Court in the case of Rajendra Roy Vs. Union of India and another (1993) 23 Administrative Tribunals Cases 426 decided on November 17,1992 and quoted from the judgment that:-

“The appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and /or for wreaking vengeance against him because respondent 2 was anxious to get rid of him and seized the opportunity of transferring him from Delhi to Calcutta by transferring another employee back to Orissa from Calcutta. As a result of transfer of that employee back to Orissa, a necessity arose to transfer an employee to Calcutta to replace that employee. It cannot be reasonably contended by the appellant that he should have been spared and some one else should have been transferred. The appellant has not made any representation about personal hardship to the department. As such there was no occasion for the department to consider such representation.

The order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer.”

meesh

16. Learned counsel pointed out that in the case of transfer of employee- mala-fides- inference of , must be based on firm foundation of facts pleaded and established and not merely on insinuations and vague allegations.

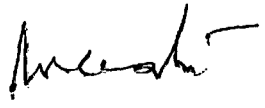
17. Learned counsel also quoted from the Apex Court judgement in B. Vardha Rao Vs. State of Karnataka 91986) 4 SCC 131- AIR 1986 SC 1955. The relevant portion of the judgment is as follows:-

“The norms enunciated by the Government for the guidance of its officers in the matter regarding transfer are in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer to the Government servant.”

Para 6 “One cannot but deprecate that frequent unscheduled and unreasonable transfers can uproot a family, cue irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization. It therefore, follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore, we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of class III and Class IV employees stand on a different footing. We trust that the government will keep these considerations in view while making an order of transfer.”

18. The learned counsel also quoted from another judgment relating to the issue of transfer in the case of Smt. Shilpi Bose Vs. State of Bihar AIR 1991 SC 532. The relevant portion of the judgment is as follows:-

“In our opinion, the courts should not interfere with a transfer order which are made in public interest and for



administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

19. Learned counsel for the respondents also quoted the relevant judgment of the Apex Court in the case of Janardan Vs. UOI AIR 2004 SC-1632. In this case certain officials were transferred by superior authority for misbehaving with their senior officers and was transferred out of their stations. The transfer order was challenged first in the Administrative Tribunal at Guwahati Bench where the O.A. was rejected. However, on a writ petition submitted to Guwahati High Court, the officials got a decision in their favour. After the judgment of the Hon'ble High Court Special Leave Petition was filed in the Supreme Court which nullified the orders of the Hon'ble High Court observing "The Hon'ble high Court while exercising jurisdiction under Article 226 and 227 of the Constitution of India 1950 had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public under taking as illegal right to be posted for ever at any one particular place of his choice since transfer of particular employee appointed to a class or category of transferable post from one place to other is not only an incident, but a condition of service necessary too in public interest functioning in the public administration."

20. We have to decide as to whether the transfer order dated 25.7.2005 (A-1) issued by respondent No. 3 and consequent relieving order dated 27.7.2005 (A-2) issued by the respondents No.4 are bad in law being punitive in nature and actuated by mala fides and extraneous consideration and also to decide as to whether the clause III of the transfer policy (Annexure I) to affidavit of Vinay Srivastava

M. S. Srinivasan

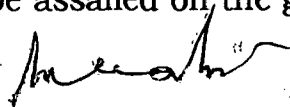
14.8.2005 is unsustainable in law being in conflict with disciplinary rules namely CCS (CCA) Rules, 1965.

21. Clause III of the revised transfer policy of the Central Passport Organization is as follows:-

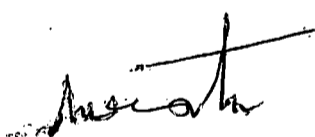
"The transfer will be effected strictly based on length of stay of an official at the station except that it becomes necessary to transfer an officer for the following reasons:-

Clause III- On the basis of department proceedings, it is established that the official concerned has been found guilty of serious irregularities and his/ her continuance in that office is likely to be detrimental to public interest.

22. Keeping in view that the learned counsel for the applicant had termed the applicant's transfer in addition to the departmental proceedings as double jeopardy, we have examined the quonotation of class III of the transfer policy. The transfer policy makes it clear that notwithstanding departmental proceedings, transfer before tenure can be made when it is necessary to do so in public interest. There appears to be no conflict between this clause and CCA (CCS) Rules, 1965, in as much as the latter does not specify that when the disciplinary action has been taken against an official for certain irregularities, he should not be transferred as well. It is not necessary to link the transfer which is made in public interest to the disciplinary proceedings. The extracts from the relevant judgment of the Apex court which has been made in the aforesaid paras make it abundantly clear that the transfer in public interest and in a situation that an officer has developed vested interest for long stay in a place cannot be questioned on the point of law. For this reason, we are of the view that the transfer order cannot be assailed on the ground of double jeopardy nor can



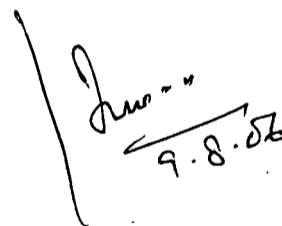
the transfer policy be questioned for being in conflict with CCA (CCS) Rules 1965. On the same ground we are unable to treat the transfer order as a punitive action related to the irregularities which were committed by the applicant. He was proceeded against under departmental rules for certain irregularities and the disciplinary authority issued suitable orders. It may be true that the irregularities could not have been committed by him, had he not developed vested interest due to his long stay in the same station. But that would not mean that the transfer order was made for the irregularities committed by him and since he was punished through disciplinary action for the irregularities, transferring him for the same reason is double jeopardy. We are unable to uphold such a contention as we do not see any connection. An official is liable to be transferred in public interest if due to remaining in one place for too long, he has developed vested interest. The relevant judgment from the Apex Court and Tribunal cited enunciated that such transfers are justifiable. We are, therefore, not able to find any merit in the O.A. which is dismissed without any order as to costs.



(P.K. Chatterji)

Member (A)

Vidya



(Khem Karan)

Vice Chairman