

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 129/2007

Lucknow this the 9th day of April, 2007.

Hon. Mr. Justice Khem Karan, Vice Chairman.

Sri Vishal Nath Rai aged about 55 years, son of Sri Ram Bahadur Rai, R/o 2/347, Vishal Khand, Gomtinagar, Lucknow.

Applicant.

By Advocate Shri Kapil Dev, Senior Advocate, assisted by Shri A. Moin.

1. Union of India through Secretary, Department of Personnel and Training New Dehi.
2. State of U.P. through the Secretary, (Appointment) Government of U.P., Civil Secretariat, Lucknow.
3. Joint Secretary, (Appointment Section,) Government of U.P., Civil Secretariat, Lucknow.
4. Election Comission of India, Nirvachadan Sadan, Ashoka Road, New Delhi through Secretary.
5. Sri Anil Kumar Sagar, District Magistrate Siddharthnagar.

Respondents.

Shri Manish Mathur for Election Commission of India.

Shri A.K. Chaturvedi for State Government.

Shri K.K. Shukla for Dr. Neelam Shukla for respondent No.1

Order (oral)

By Hon. Mr. Justice Khem Karan, Vice Chairman.

1. Heard on admission of this O.A. as well as on the request for Interim Relief.
2. The applicant, a member of Indian Administrative Service, has filed this O.A., aggrieved of the orders dated 31.3.2007 (A-1) and order doted 1.4.2007 (A-2) passed by the State Government, on recommendations or directions of the Election Commission of India (respondent No.4). While, by order dated 31.3.2007, he has been transferred from the post of District Magistrate, Sidharthnagar and has been asked to wait for his new posting, by order dated 1.4.2007, the State Govt. has posted respondent No.5, as District Magistrate, Sidharthnagar. He prays that the two orders be quashed and he be allowed to continue as District Magistrate there.



3. He alleges, the impugned order of transfer has been passed, without application of mind, on the report dated 31.3.2007 (A-3) of Special Observer, wherein he stated about alleged irregularities/discrepancies in distribution of Electronic Photo Identity Cards (for short EPICs), in urban area of a particular Lekhpal Circle. According to him, firstly the work of Lekhpal concerned, relating to distribution of EPIC, was subject to control and supervision of lower functionaries such as Revenue Inspector, Naib Tehsildar, Tehsildar and Sub-Divisional Magistrate, so the District Magistrate sitting at 4th step of the ladder, could not have been held directly responsible for alleged discrepancies/irregularities and could not have been singled out for such action. His second main ground for attacking transfer order is, that there are about 90 Lekhpals in the district and no inference of lack of supervision on the part of applicant, ought to have been drawn on the basis of irregularities, committed by one Lekhpal.

It is said that even ^{if} ~~of~~ the Commission had requested/directed the State Govt. to shift the applicant from there, the Govt. should have applied its mind and should not have acted mechanically. In supplementary affidavit filed today, one more ground has been added and the same is that the order of transfer is patently stigmatic and deserves to be quashed on this ground.

4. This much is not in dispute that process for electing the members of Legislative Assembly by the State of U.P., is under way. There is further no dispute that under the directions of the Commission EPICs of the voters, were to be prepared and distributed amongst the voters, well in advance by the officials concerned. With a view to check it, the special observer, ^{selected} appears to have ~~the position~~ of one circle, on random basis and found the irregularities/deficiencies as noted in A-3. Shri Kapil Deo, the learned Senior Advocate has contended that the impugned order of transfer, has



been passed because of the said irregularities/deficiencies as found by Special Observer, so is stigmatic and deserves to be quashed, in view of the law laid down by the Hon'ble High Court, Allahabad in Ajai Jauhari vs. State of U.P. and others reported in 2004(1) AWC, 940 and Nabi Ahmad Khan vs. State of U.P. and others reported in [(1996) 2 U.P.L.B.E.C 1202]. His second contention is that since the State Govt. has passed the impugned order dated 31.3.2007 at the dictate of Commission, without applying its own mind, so it deserves to be quashed, ,on that ground also, in view of Anirudhsinghji Karansinghji Jadeja vs. State of Gujarat (1995) 5 SCC, 302. Shri Kapil Deo goes on to argue, only the applicant has been singled out, though the report dated 31.3.2007 (A-3) clearly stated about similar irregularities in District Lakhimpur and Sitapur. According to him, the applicant could not have been condemned in this way on the basis of solitary instance, that too without giving him an opportunity to explain his position.

5. Shri Mathur appearing for Election Commission of India has argued that by virtue of his being District Magistrate, the applicant was also District Electoral Officer and directly accountable to the Election Commission and had he not been holding any other office, such as the office of District Magistrate, the Commission could have shifted him without intervention of the State Government. But since he was also holding the office of District Magistrate, so the Commission asked the State Government to pass suitable orders. Shri Mathur has submitted that a perusal of Annexure -3, (copy of the report of the Observer), would reveal that there were various discrepancies/lapses in regard to distribution of EPICs and that was found on random checking. Shri Mathur says that discrepancies or lapses found in the report gave an impression to the Election Commission that the supervisory functions were not being

properly discharged and so it thought it proper to see that effective arrangement was made by shifting the applicant and others. Shri Mathur says that not only the applicant, but S.D.M. was also shifted and some suitable action initiated against other officials. According to Shri Mathur, the Election Commission was perfectly within its power under Article 324(6) to make such request for shifting the applicant.

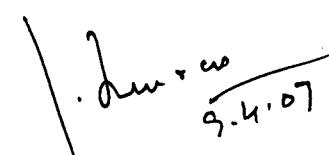
6. Shri A.K. Chaturvedi has said the request of the Commission for shifting/transferring the applicant from the post of District Magistrate, Siddharthnagar, was virtually a direction and so it acted accordingly. He says respondent No. 5 has joined there as D.M. Sidharthnagar. Shri Shukla has also tried to oppose the O.A. by saying that in such transfer matters, the court or the Tribunals should not interfere unless of course the same is malafide, stigmatic or punitive.

7. I have ~~heard the~~ ^{considered} respective contentions. The first ~~contention~~ ^{point} is as to whether the petition raises any fair point for trial, so that it may be admitted for hearing. The question as to whether the case for interim relief is made out or not, will arise only if the petition is so admitted for hearing. The scope for interference by Courts/Tribunals in such transfer matter is limited one, as transfer is incident of service. I am also of the view that such transfers as one before us, made on the request or directions of Election Commission, during the period election process is underway, have to be kept in different category, from the transfers made otherwise than on intervention of the Commission or from casual or routine transfers. What the Hon'ble High Court has said in the cases cited by Shri Kapil Deo, may not be applied to such cases, where transfer is being effected with a view to ensure free and fair election. Each case will have to be examined in the light of its facts and circumstances. From a bare reading of impugned order of transfer, it is difficult to say that it is stigmatic or



punitive. There is nothing in the order to say so. Just possible, it might have been effected as a result of the report of Special Observer. If the Commission took the view that transfer of the applicant would facilitate the election process, I do not think the Tribunal will be justified in interfering with the same. Prima facie, I ~~find myself in~~ ^{do not} ~~position to~~ find myself in agreement with Sri Kapildeo, on the point that the State Govt. had any discretion to act or not to act, as per direction of the Election Commission. That proposition is fraught with danger and if accepted, may lead to anomalous situation, if not to constitutional crisis. Judeja's case, referred to by Shri Kapildeo in support of his argument that the Authority passing the order has to apply its own mind, cannot be applied to the case in hand. That was a case where the S.P. had given approval u/s 20-A T.A.D.A Act for recording F.I.R., on the directions of his superior. Thus, there the facts were totally different. It is doubtful, whether the State Govt. has any ~~directions~~ ^{discretion} to follow or not to follow the directions of Commission, in so far as posting or shifting of officials with a view to ensure free and fair election, is concerned. The argument that transfer is discriminatory, also does not appeal to me.

8. Thus, O.A. is not such which can be admitted for hearing. O.A. is accordingly dismissed as not admitted. No order as to costs.


Vice Chairman.

s.a.