

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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CIRCUIT BENCH

LUCKNOW

1-6-90.

O.A. 89/90(L)

Date of decision:

T.R. Dubey

...Applicant

versus

Union of India & others

...Respondents.

Shri R.C. Singh

...Counsel for Applicant.

Shri D.S. Randhawa

...Counsel for Respondents.

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Hon. Mr. P.C. Jain, Adm. Member.

Hon. Mr. J.P. Sharma, Judl. Member.

Judgment

(delivered by Hon. Mr. J.P. Sharma, J.M.)

The applicant employed as Sepoy in Customs Preventive Circle, Nautanva District Maharajganj, moved this application under section 19 of the Administrative Tribunals Act, 1985 assailing the order passed by Assistant Collector(Customs Preventive Division), Gorakhpur dated 2nd February, 1990 transferring the applicant from Customs Preventive Circle Nautanva to Customs (P& I), Varanasi; with immediate effect. The applicant claimed the relief that the impugned order of transfer dated 2nd February, 1990 (Annexure A-1) be quashed. The brief facts are that the applicant is an Ex-Serviceman and was appointed in the Customs Department as a Sepoy with effect from

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10.12.1979. The applicant remained posted at various places which have been shown by the applicant in para B of para 4 and lastly was posted in Nautanva where he joined in January, 1990 and from this place he was transferred by the impugned order one month after i.e. February, 1990 to Varanasi. The applicant has challenged the transfer order on the ground that the said transfer order has been passed without jurisdiction and in very high handed manner; that the said transfer order is arbitrary, malafide and has been passed to chastise the applicant for his honesty and due diligence which is violative of the Article 14 of the Constitution of India. Other officials posted with him who have been transferred subsequent to the applicant, have not yet been relieved by respondent No. 4. the Superintendent Customs Nautanva, District Maharajganj, while the applicant had been relieved with undue haste without being given the advance salary of one month and advance T.A., the applicant requested to stay his transfer by telegram dated 14.02.90 ( Ann A-8 ) but no action has been taken so far. The applicant also alleged ~~the~~ activities ↓ smuggling/with the connivance of Superintendent of Customs for which he made a complaint to Additional Collector.

2. The said transfer order was stayed after admission of this O.A. by the order dated 09.04.90. On 29.05.90 the respondents filed the reply to the application. In this reply, the respondents had prayed for vacation of the interim stay order.

3. The contention of the respondents is that the order dated 02.02.1990 transferring the applicant as Sepoy in the Customs Department from Nautanva District Maharajganj to Varanasi in the same Customs division was issued by the Assistant Collector (Customs Division) Gorakhpur as directed by Additional Collector, Lucknow vide letter dated 31.01.90 in public interest and in administrative exigency. At the time of arguments the learned counsel for the respondents

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has filed this letter which reads as follows:

"Subject: Complaint against the Customs Sepoy C/R

Please refer to your letter C. No. II (8) 4-Confl/90/41 dated 30th January, 1990 vide which the complaint made by the Superintendent Customs, Nautanwa has been forwarded and also Supdt. Customs, Nautanwa forwarded the complaint of Shri P.P. Ram Inspector, Customs, Nautanwa regarding the complaint of Shri T.R. Dubey Sepoy, Nautanwa, you may transfer Shri T.R. Dubey Sepoy to any non-sensitive place and take disciplinary action you may deem fit against him."

4. The respondents have further contended that after this transfer order was served on the applicant he was relieved from his duty but the applicant did not join at his new place of posting. The respondents admitted that as funds were not available in the last financial year, T.A. advance could not be given to the applicant. That the said transfer order was made in administrative exigency in public interest under the direction of Additional Collector Customs, Lucknow and the relevant confidential official record in this regard may be placed before the Tribunal. It is admitted by the respondents that the transfer order passed in the cases of Shri Ganga Sagar Singh and Shri Jagdish Prasad <sup>who</sup> were also transferred out of Nautanwa have not yet been complied with by these officials as these transfers were not on administrative grounds. It is further said that the Assistant Collector, Customs is competent to transfer a Sepoy within the jurisdiction within the division. It is said that the respondents are not aware about the alleged ailment of the applicant, nor the applicant is being harassed unnecessarily and transfer has been effected not against any policy or decision of the Government.

5. The applicant has filed the rejoinder affidavit reiterating the points raised in the application that the transfer has been effected in a malafide manner to harass the applicant.

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6. We have heard the learned counsel for the parties at length and have gone through the record of the case.

7. Regarding the competence of the Assistant Collector, to transfer in the same division, the learned counsel for the respondents has referred to section 4 covering transfer matters of the Central Excise Circle and Divisional office Procedure Manual, 1975 Edition, where in, under para 124 in sub-clause 'A' it is said that transfers of Class IV staff shall continue to be made as hitherto by the Head of Office as defined in para 103, Central Excise Circular and Divisional Office Procedure Manual. Para 103 at page 40 section I gives out that Head of Office, meaning, the Circle Officer in respect of the staff in a Circle, Divisional Officer in respect of the staff in a division and the HAC in respect of staff of Collector Head Quarters office. The sepy is a Class IV servant in the Customs Department and power to transfer is given to the Head of Office which can be exercised by the Circle or Divisional Officer. It is said that Varanasi and Nautanca are in the same P&I Division. The learned counsel for the applicant pointed out that this is regarding the Department of Central Excise and it is not covered by the Customs Department. However, the Heading and ~~of~~ the title of the Manual shows that it was issued under the authority of Central Board of Excise and Customs and further the learned counsel for the respondents pointed out that these are sister departments and the staff of Excise and Customs is often interchangeable and the ~~same~~ Manual applies to the Customs Department also. Thus, it cannot be said that the ~~transfer order passed by~~ Assistant Collector of Preventive Circle Gorakhpur was not authorised to transfer the applicant. Regarding the contention of the applicant that that the said transfer is malafide, the applicant in the application has pointed out that he has made certain complaints against Inspector of Customs Shri R.P. Ram who was encouraging smuggling activities. The applicant sent a Telegram dt.27.1.90,

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the contents of which have been filed at page No. 26 of the Original Application (Annexure A-4), though it has no date, but the learned counsel at the time of arguments, within the notice of the respondents' counsel, has shown the postal receipt of sending the telegram on 27.01.90. The applicant has also sent a complaint dated 31.01.90 against certain smuggling activities (A-5). In the letter dated 31.01.90, which has been quoted above, it is made out that certain complaints were made by Superintendent (Customs), Nautanwa, as well as by Inspector R.P. Ram and also the complaint by the applicant, <sup>so</sup> Sepoy T.R. Dubey may be transferred to any non sensitive place and take disciplinary action whatever deemed fit against him. This letter completely unlocks the motive behind the transfer, and such a transfer / ~~said to be~~ <sup>order cannot be</sup> in public interest or in administrative exigency / ~~has not been~~ <sup>not it</sup> ~~convassed~~ <sup>otherwise</sup> successfully / by the learned counsel for the respondents. The applicant joined in January, 90 and soon after joining he made certain complaints against the staff posted with him in the said customs outpost on Indo-Nepal Boarder and specifically cited instances of certain smuggling activities with the connivance of Inspector Ram and other Sepoys. / ~~Thus,~~ <sup>and soon after the impugned order was passed</sup> there appears to be a motivated reason which prompted the respondent No. 3 to shift the applicant to other place and without holding the enquiry he obtained the consent for transfer of Additional Collector, Lucknow. The Additional Collector, Customs also did not like to get clear facts and advised the Assistant Collector (Customs) 'P' Division Gorakhpur to transfer the applicant to some non sensitive place. The facts are similar to as reported in the authority of Alok Kumar Das vs. Union of India reported in 1990 U.P.E.B.E.C, Volume I, page 22. In this reported case the Allahabad Bench of the Central Administrative Tribunal observed: that if the order of transfer has been passed in colourable exercise of power with a motive other than the purpose for which it is conferred then it amounts to malice in law, as it

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is supported by a motive which has arisen according to conduct of the applicant in the course of employment, vis-a-vis the respondents<sup>u</sup>. In the present case also it was information given by the applicant to the respondents regarding undesirable activities of certain colleagues posted at Nautanwa outpost. The learned counsel for the applicant also placed reliance on the authority of Umesh Chandra Tiwari vs. State (1988 L.I.C. page 668 ) where in the Hon'ble High Court of Allahabad has held that if orders are passed at the direction of other authority without resorting to the disciplinary <sup>action</sup> then such a direction was unjust and the transfer orders so passed, cannot be sustained.

8. Of course, the authorities can pass an order of transfer from one place to another in the interest of public service or it may be due to exigencies of service or also on account of administrative reasons. The courts cannot normally interfere in such matters and the learned counsel for the respondents referred to the authority of Shanti Kumar vs. Regional Deputy Director reported in AIR 1981 S.C. page 1577 but there is no question of going back from the established law, <sup>however,</sup> ~~nothing~~ <sup>transfer order of</sup> ~~in~~ <sup>the present</sup> case. Just by saying that the transfer has been made in the interest of public, in the same division, does not take the malafide out of the order. In the present case, the applicant was made to join at Nautanwa in January, 1990 and on the 2nd February, 1990 on the directions of the Additional Collector, Customs, he was ordered to be transferred by Assistant Collector, Customs P&T division Gorakhpur. In the reply filed by the respondents, in this case, the only reason given out is that the transfer has been in the public interest. In the letter referred to above, there is a punitive basis of transfer. Further, in the counter affidavit administrative exigency or public interest has not been discussed. It is said by the respondents that the confidential record shall be placed be-

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fore the Tribunal, but as it was not to be shown to the other side it was ~~xxxxxx~~ the respondents with held, ~~the same~~.

In fact, what prompted the respondents to transfer the applicant ~~was~~ <sup>ought</sup> assumed to have been made out clearly, <sup>and that</sup> should come within the purview of the interest of the public

service. The learned counsel for the respondents also referred to AIR 1979 Supreme Court page 1136 K.B. Shukla vs. Union of India. In the aforesaid authority, it is held that the responsibility for good administration is of the government. The maintenance of an efficient, honest and experienced administrative service is must for the due discharge of that responsibility. Therefore, the Govt. alone is the best ~~to~~ judge as to the existence of exigencies of such a service requiring the appointments by transfer. The matter has been analysed in the context of the above authority. In the present case, the posting of a Sepoy at a particular place, who is a Class IV employee, and one month after at the other place in the middle of the session should have been made only on extreme necessity, either because the person to be transferred was a misfit or he could have been utilised elsewhere in efficient manner. The aforesaid letter of the Additional Collector of Customs, Lucknow shows that he was ordered to be posted in a non sensitive area

While the applicant has <sup>facts</sup> stated in the application that he had made complaints of corruption against the Inspector Ram and other ~~sepoys~~ who were posted alongwith him at Nautanwa. The reference of complaints is also clear in the letter referred to above of Additional Collector ~~xxxxxx~~ directing the shifting of the applicant to some other place. The transfer is an incidence of service and the order of transfer does not result in alteration of any condition of service to disadvantage of transfere. In any case, there should be no colourable exercise of power which may give rise to inference of mala-fide.

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9. The learned counsel for the respondents has referred to Ram Das Pandey vs. State of West Bengal reported in 1977 (1) SLR 225, when there is a challenge of any order on the ground of malafide, then malafides must be alleged and proved. In the present case, the applicant has clearly alleged malafide nature of the order of transfer as well as arbitrary exercise of the power by the respondents. The malafide is that which is not based on bonafide intentions i.e. not in good faith and something to do with bad faith, ~~although in~~ Swarnlata vs. Union of India reported in 1979, volume II, S.C.C. page 165 it has been held that the burden lies to prove malafides on the person who alleges it. In the reported case, no malafides as such were imputed against the Union Public Service Commission. However, in the present case, it is clearly alleged by the applicant that the Superintendent of Customs and the other employees, ~~are in the~~ collusion encouraging smuggling for their own gains and the applicant has taken risk of making a complaint against a public servant and specifically cited the instances which needed proper investigation before condemning the applicant unheard.

10. We have analysed the order and there is a motive behind this order for shifting the applicant from the present place of posting. As such the applicant has made out a case that the transfer has been made with ulterior motives arbitrarily and not in the exigencies of service or in the interest of public service.

11. The transfer order also has been challenged on the ground that the applicant was not keeping good health and the family is to be disturbed which has only settled a month before. It is because of this that certain norms have been prescribed in effecting the transfer of the public servant. Not only this, it is always deemed proper to effect transfer after the close of Academic Session. It is also an established norm that transfer does not serve the public purpose if

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the person is/ from one place to another after a short interval. Delinquency of an official cannot be corrected by an order of transfer, if a person is not good at a particular station, he will not be good too at the transferred station. It is not the case that the transfer was required immediately or that the applicant had indulged in such activities which may make the administration beyond control at the particular place of posting.

12. We are, therefore, of the opinion that the impugned order of transfer dated 02.02.90 is not passed in the interest of the public and is quashed. The parties shall bear their own costs. However, this order will not bar any other subsequent order for transfer on valid and bonafide reasons.

*J. P. Sharma*

(J.P. SHARMA)  
JUDL.MEMBER. 11/6/90

*P.C. Jain*  
(P.C. JAIN)  
ADM.MEMBER 11/6/90

*Received copy  
of judgment for  
applicant  
K.C. Singh  
18/6/90*

*Received copy  
H.N. Narain Singh  
20/6/90*