

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 165 of 1992

Versus

Hon'ble Mr. S.N. Prasad, Member (J)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the impugned transfer order dated 26.3.1992 (Annexure-1) and for further directing the respondents to post the applicant at Lucknow.

2. Briefly, stated the facts of the case, inter alia, are that the applicant was appointed as Peon by the Regional Officer, Directorate of Field Publicity Lucknow in 1970 and worked at different stations and lastly in the year 1983 he was transferred from Rae-bareily to Gorakhpur. In the year 1990, the applicant made a request to the Director, New Delhi for posting him at Lucknow on humanitarian ground. The application was forwarded and recommended by immediate officer concerned (vide Annexure 2 and 3). Consequent to the posting of Sri Shyam Lal, peon, at Gorakhpur on transfer, the applicant was to be posted to Lucknow in place of Sri Jai Shree Prasad (vide Annexure-4), and the applicant instead of being posted to Lucknow has been posted to Rae-Bareily by the impugned order dated 26.3.1992. The main grievance of the applicant is that the impugned transfer, is arbitrary and against the policy of the department and the impugned transfer has been

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passed by violating the principle of natural justice
and by favouring a junior employee posting at Lucknow.

3. In the counter-affidavit filed by the respondents it has, interalia, been contended that there has been no violation of any statutory mandatory rules and any guideline, and it has further been contended that according to his own admission of the applicant as mentioned in the application, the applicant is a patient of tuberculosis ^{him} and as such ^{due} to his ill health, it was not found feasible to post him at headquarter's unit because a unit peon at Lucknow is required to work hard for the unit as well as the Regional Office which includes delivery of letters to distant places, distribution/display of publicity material in different parts of the city ^{by} cycle etc., and as such performing the duty of Chowkidar according to duty chart prepared every month which is difficult for the applicant who is patient of Tuberculosis for the last many years and as such taking into consideration the ill health of the applicant and as per transfer policy guidelines, he was accommodated in Rae Bareli Unit which is close to Lucknow, and as such the application of the applicant being devoid of any merit, is liable to be dismissed with cost.

4. Supplementary-counter affidavit has also been filed by ~~the~~ Smt. A Dutta Regional Officer, Directorate of Field Publicity, Lucknow on behalf of the respondents and the applicant has also filed supplementary rejoinder affidavit.

5. I have heard the learned counsel for the parties and have gone through the records of the case.

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6. The learned counsel for the applicant while drawing my attention to the contents of the application and to the contents of Annexure C-1 to the Counter-Affidavit and to the papers annexed to the pleadings of the parties, has argued that a perusal of this Annexure 41 which is copy of the letter dated 17.3.1992 ~ New Delhi to Directorate of Field Publicity, /Regional Officer Directorate of Field Publicity Lucknow shows a clear reference of letter no. 2/Admn/36/AP/T/91-92-ROL dated 9.3.1992 and has argued that above letter dated 9.3.92 has not been filed by the respondents and as such adverse inference should be drawn against the respondents, and has further argued that this clearly shows that the proposal was made by administrative Officer previously for transferring the applicant from Gorakhpur to Lucknow; but later on that was changed and instead of Lucknow, the applicant has been transferred to Rae-bareily; and has further argued that the contents of the respondents has set out in para 4 to 9 of the Supplementary Counter-affidavit by the aforesaid Smt. A Dutta shows that the impugned transfer ~ to the applicant ~ has been made as a measure of punishment and as such the impugned transfer being malafide should be quashed and in support of his arguments, he has placed reliance on the following rulings.

1. A.I.R. (1968) S.C. page 1473, Gopal Krishnaji Katkar (Appellant) Vs. Mohd. Hazi Latif and others (respondents).

2. (1991) (2) UPLBEC page 1302, Shashi Mani Tripathi (Petitioner) Vs. Inspector General of ~~Police~~ and others U.P. Lucknow (Respondent)

3. (1992) (i) UPLBEC page 223, Pradeep Goel

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(Petitioner) Vs. Regional Manager, Region-II, SBI,
Zonal Office Meerut and others (Respondents).

6. The learned counsel for the respondents while adverting to the contents of the application of the applicant, counter-affidavit and supplementary counter-affidavit of the respondents and the papers annexed thereto have argued that the transfer is an incident of service and an employee holding transferable post may be transferred to any place and no employee has got any legal right or claim for being posted at particular station of his choice for any long period and has further argued that the transfer is not a punishment, and has further argued that the impugned transfer has been passed validly and properly within the frame work of the policy guidelines, and there is no violation of any statutory rules or any principle of natural justice, and has further argued that from the perusal of the application of the applicant itself it is apparent that the applicant was posted at Lucknow from 1970 to 1972 and Rae-bareily from 1972 to 1974 and again Rae-bareily from 1979 to 1981 and again Rae-bareily in the year 1983 which is nearest to his home district, Lucknow, and has further argued that while drawing my attention to the policy guidelines for transfer of various categories of staff as detailed in Annexure C-9 has argued that keeping in view the ill health of the applicant and keeping in view the arduous and hard physical labour involved at Lucknow, the applicant has been transferred to Rae-Bareily which is the nearest place from his home.

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district Lucknow, and has further argued that there is no malafide on the part of the respondents and the ^{~ order ~} impugned transfer is quite valid, proper and as such [~] the application of the applicant should be dismissed, and in support of his arguments he has placed reliance on ~~following rulings~~ reported in (1989) (3) SCC page 445 "U.O.I. & Others (Appellants) Vs. H.N. Kirtania (Respondent)".

7. I have perused the above rulings.

8. This is worth while making mention of this fact that ~~the~~ according to his own admission of the applicant ^{~ tuberculosis ~} he is patient of ~~TV~~ for the last 10 years and keeping in view the content ^{of} ~~of~~ the respondents to the effect that at Lucknow there is arduous and difficult ^{physical} ~~mentally~~ work of Class IV (Peon) and keeping in view the fact that the contentions of the respondents as set out in para 4 to 9 of the supplementary-affidavit of Smt. A. Dutta as referred to above, and keeping in view the facts that there is no any charge-sheet and no any involvement of the applicant in any fraudulent transaction, I find that the impugned transfer order cannot in any way be ~~said~~ to be malafide or having been passed by way of punishment as the applicant has been posted to the nearest place of his home town i.e. Rae-bareily from Gorakhpur. I have carefully perused the annexures and all the papers annexed to the application, Counter-Affidavit and Supplementary-affidavit and I find, after considering all the evidence and material on records, that the impugned transfer order has been passed on administrative ground and not due to any malice or due to malafide on the part of the respondents.

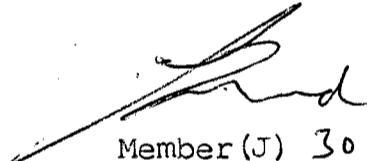
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9. Thus, from the fore-going discussions and after scrutinising the entire evidence on records and keeping in view in the circumstances of the case and having regard to the above rulings ^{~ I find ~} that the rulings relied upon by the learned counsel for the applicant are found to be of no avail to the ^{~ applicant ~} as the facts of this instant case are found to be different and distinct ~~and~~ from the facts of the above rulings, whereas the above ruling relied upon by the learned counsel for the respondents goes a long ^{way} in supporting ~~of~~ the above arguments of the learned counsel for the respondents. In the result the application of the applicant being devoid of merit is hereby dismissed without any order as to costs.


Member (J) 30.9.92

Lucknow Dated 30.9.1992

(RKA)