

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 269/2008

This the 7th day of October, 2008

HON'BLE DR. A.K.MISHRA, MEMBER (A)

Ashok Kumar Shukla aged about 39 years son of Shri Radhey Shyam Shukla, Sorting Assistant, RMS, Faizabad.

Applicant

By Advocate; Sri R.S. Gupta

Versus

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi. 110001.
2. Chief PMG, U.P.Circle, Lucknow.
3. Sr. Supdt. Railway Mail Service, 'O' Division, Lucknow.
4. Sri Atul Kumar Srivastava, SSRM 'O' Division, Lucknow.

Respondents

By Advocate: Sri G.K.Singh

ORDER

BY HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been filed against the order dated 23.7.2008 of respondent No. 3 transferring the applicant from Faizabad to Lucknow.

2. The applicant was working as a Sorting Assistant at Faizabad since 4.9.2004. It is the grievance of the applicant that he was neither the senior most, nor the junior most Sorting Assistant at Faizabad, but, unfortunately, has been picked up for transfer without following any coherent policy. He has advanced grounds of personal inconvenience as his wife is presently working as a Lecturer in a local college at Faizabad. Besides, his children have already taken admission for the current academic year in a local school. His transfer away from Faizabad during the mid academic session would affect their studies and disrupt his family life. He has also alleged malafide against the respondents stating that he had, on an earlier occasion demanded copies of diaries of SSRM 'O' Division and of Sri B.P. Shukla, ASRM, Lucknow RMS, under Right to Information Act. This action on his part has provoked the respondents who are now prejudiced against him and bear malice towards him.



2. In my order dated 1.8.2008, I directed the respondent No. 2 to consider the representation of the applicant against the transfer order and pass appropriate speaking order. According to the respondents, although, no specific representation was made by the applicant pursuant to this direction of the Tribunal, nevertheless, the respondent No. 2 passed a detailed speaking order on the earlier representation of the applicant vide his Memo NO. STA/RMS/8-RA/08/6 Lucknow dated 19.8.2008. The respondent No. 2 has narrated the unsatisfactory service record of the applicant for which disciplinary action had to be taken against and suitable penalty was imposed upon the applicant. Further, keeping in view his fraudulent and mischievous practices, a conscious decision was taken to debar him from working in any sensitive branch. He was allowed to work only in Ordinary Mail Section. Since there was a single mail office at Faizabad, the applicant got the opportunity to put pressure and work in any branch according to his own will. But at Lucknow where there are many separate offices, he would be posted only in such office as would exclusively deal with ordinary mails. Such an arrangement would keep the mischievous potential of the applicant in check. His representation dated 25.7.2008 was accordingly rejected as, according to Respondent No. 2, there was no justification to interfere with the transfer order, which had been made in the exigency of administration.

3. The applicant has characterized this order on his representation as illegal and non speaking in nature, besides being punitive. According to him, irrelevant and unwarranted materials have been cited in this order as a justification for his transfer. At the time of hearing, the counsel for the applicant urged that the transfer order might be stayed at least till the end of the academic session. He cited the following case law in support of his contention:-

1. **1994 Supp. (2) Supreme Court Case 666, Director of School Education, Madras and others Vs. O. Karuppa Thevan and another.** The Hon'ble Supreme Court held in this case that there was no law which required an employee to be heard before passing his transfer order when the

authorities make such a transfer on the exigencies of administration. As regards the plea of children studying in school, it was held that although there was no such rule, yet while effecting a transfer during mid-academic term, the fact of its impact on the children might be given due consideration if the exigencies of service were not urgent.

2. **(1992) 1 Supreme Court Cases 306, Bank of India Vs. Jagjit Singh Mehta.** The Hon'ble Apex Court enunciated the general principle that, ordinarily and as far as practicable, the husband and wife who are both employed should be posted at the same station even if their employers are different. At the same time, it was also emphasized that this guideline did not enable any spouse to claim such a posting as of right if the departmental authorities did not consider it feasible. As a matter of fact, in this case, the Hon'ble Apex Court rejected the appeal of an officer of Bank of India who was transferred out on getting promotion and could not be accommodated at the same station where his wife was working.

3. **(2004) 7 Supreme Court Cases 405, State of U.P. and another Vs. Siya Ram and another.** In this case Hon'ble Apex Court held that transfer, unless shown to be malafide or in violation of statutory provisions, is not open to interference by the Court. The question whether the transfer was in the interest of public requires appreciation of peculiar facts and circumstance of each case. Hence should not be gone into by High Court in exercise of power under Article 226 and 227 of the Constitution of India. Similarly, it was also held that transfer of an employee to an unwanted post, after initiation of disciplinary proceedings was not punitive in nature and hence not liable to interference under Article 226 of Constitution of India. It is not understood how this case law is going to support the applicant.

4. As against this, the counsel for the respondents cited the following cases:-

1. **State of M.P. and another Vs. S.S. Kouran an others AIR 1995 SC 1056;**

-4-

2. **Writ Petition No. 1624 (S/B) of 2006, Radhey Shyam Vs. UOI and others before Hon'ble High Court, Lucknow Bench.**
3. **Writ Petition No. 26447 of 2004, Mukesh Singh Vs. State of U.P. and others, before Hon'ble Allahabad High Court.**
4. **Writ Petition No. 3484 (S/S) of 2001 Darshan Singh Rawat Vs. State of Uttranchal and another decided by Hon'ble Uttranchal High Court.**
5. **Shiipi Bose Vs. State of Bihar and others AIR 1991 SC 532**
6. **State Bank of India Vs. Anjan Sanyal and others 2001 SCC 508**
7. **Eddisons Paints and Chemicals Limited Vs Workman AIR 2001 SC 436**
8. **Gujarat Electricity Board and another Vs. Atma Ram S/o Gomal Poshani AIR 1979 SC 1433.**

The ratio of all these cases is that transfer is an incidence of public service, no public servant has a vested right to continue at a specific place of posting. In the State of M.P. and another Vs. S.S. Kouran and others AIR 1995 SC 1056, the Hon'ble Apex Court observed, 'the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheel of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision."

4. The respondent No. 2 has indicated the background which led to the decision to transfer the applicant away from Faizabad and to post him at an office dealing with ordinary mails only. As has been observed in many cases, it is for the administration to appreciate the facts and circumstances of each case and to transfer government servant according to the needs as well as their suitability. The applicant's wife is working in a private college at Faizabad. Her's is not a transferable job. This does not confer a right on the applicant to continue indefinitely at Faizabad because his wife is working



there. It was for the respondents to consider whether the transfer order could be postponed till the end of this academic session ,but, if on appreciation of all facts and circumstances, the respondents come to a conclusion that administrative exigency should override such a request , we do not see any reason to interfere with the decision of the respondents.

5. The plea of malafide has not been substantiated. The applicant has not mentioned which respondent particularly had any reason to act in a malafide manner against him. It has been stated in the C.A. that many employees are seeking information under RTI Act; that does not make the authorities prejudicially disposed towards all of them. It was also clarified that three letters out of 4 were furnished to the applicant. If the applicant is not satisfied with the response under RTI Act, he has the opportunity to appeal against it. But it is an altogether different matter and has no relevance as a proof of malafide against him by any specific respondent.

6. In view of the aforesaid analysis, I do not see any merit in this Original Application which is accordingly dismissed. No costs.


MEMBER (A)

HLS/-