Date of judgment 17.8.90

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CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

Registration (O.A. No. 207/90 (L)

M.S. Ansari ... Applicant

Vs.

Union of India & others ... Opp. Parties

Hon'ble Mr. P. Srinivasan, AM.

Hon'ble Mr. DP Sharma, JM

# JUDGMENT

(Delivered by Hon'ble DP Sharma, Judicial Member)

The applicant, a Divisional Accounts Officer, was earlier posted in Barabanki Division of Sharda Canal under the Executive Engineer, moved this application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order of his transfer dated 2?-5-1990, passed by the Senior Deputy Accountant General (Works) from the office of Executive Engineer, Sharda Canal Division, Barabanki to Manori 'B' Construction Division-2, Chinyali in Uttar Kashi.

2. The brief facts are that the applicant was promoted and appointed from selection grade of Divisional Accountant to the post of Divisional Accounts Officer (Group 'B' gazetted) by the Accountant General (A & E) vide his order dated 28-2-1990 and has been posted as Divisional Accounts Officer, Sharda Canal Division, Barabanki (Annexure-I). Choice was also called from the applicant to indicate the station where he would like to be posted in case of his transfer during AGT 1990. The applicant gave his choice of station at Lucknow, Unnao, Rae Bareli and Kanpur (Annexure III). The appointing authority for Divisional Accounts Officer [illegible] Group B post according to the applicant, is Dy. Accountant General/Accounts [illegible]. The applicant has been [illegible] by Senior Deputy Accountant [illegible]

terms of para 332 Comptroller and Auditor General's Manual of Standing Order (Admn.), Volume-I which states as under;

"Posting of Divisional Accountants to divisions are ordered by the Senior Dy. Accountant/Deputy Accountant General acting under general control of the Accountant General. Posting should also be designed to provide a trained Accountant in each division office and an experienced Senior Accountant to new construction division or the divisions, the accounts of which either heavy or of a peculiar nature". (Annexure R-2). The Senior/Dy. Accountant General ordered the transfer with due approval of Accountant General (A&E)-II, who is the appointing authority of the applicant. The power of transfer has been exercised with the approval of the competent authority. Service condition of the cadre of the Divisional Accountants to which cadre the petitioner belongs even after his promotion as Divisional Accounts Officer, Grade-I is governed under the relevant Central Government rules and administrative control of these officers is vested with Accountant General (A&E)-II, U.P. Allahabad. The Fundamental Rule 15(a) does not apply to the petitioner as he has been transferred from one station to another without any change in the designation, post or status. The transfer order was made in the month of May, when there is general vacation. The transfer has been effected by the competent authority keeping in view the public interest and administrative exigencies. Choices are invited from the employees, who are liable to transfer, but it does not vest any legal right in them to get their particular station of choice.

[illegible] The respondents have further stated that promotion of the petitioner after restructuring of the cadre of Divisional Accountants [illegible] change his function as Accountant. The petitioner [illegible] same function as Divisional Accounts Officer [illegible] performing as Divisional Accountant [illegible] good [illegible] for the respondents [illegible]

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General, who was not competent authority in violation of Fundamental Rule 15(a) and para 133 of Chapter IV of the Comptroller and Auditor General's Manual of Standing Orders (Administrative), Volume-I and para 333 of Chapter VII. Further para 37 of the aforesaid Manual provides that excepting cases of exigencies, all transfers should be made only during summer vacation and intimation of such transfer should be given in the month of March to officer concerned. The applicant prays that the transfer order be quashed.

3. The opposite parties 1 to 3 filed a reply contesting the application that it is not maintainable. The applicant belongs to the cadre of Divisional Accounts Officer, Grade-I which is a cadre of Divisional Accountants under the administrative control of the Accountant General (A&E)-II, U.P., Allahabad. The cadre of Divisional Accountants was re-constituted in various grades vide Comptroller and Auditor General Circular No. 1154-N2/140-88, dated 15-12-1988 (Annexure R-1). The appointing authority of the Divisional Accountants, Group B (Grade-I) is the Accountant General (A&E)-II, U.P.. The Accountants shown in the above circular i.e. Divisional Accountant (Ordinary Grade 50% (1400-2600), Divisional Accounts Officer, Grade-II (N.G.) (1640-2900) and Divisional Accounts Officer, Grade-I, Group B Gazetted 20% (2000-32000) fixed a percentage of 50%, 30% and 20% works in the public works offices/divisions of the U.P. State Government against post of a Divisional Accountant sanctioned by the State Government. The applicant was due for transfer from the office of Executive Engineer, Sharda Canal Division, Barabanki, on completion of three years period, out of Barabanki during annual general transfer 1990, which was generally done in May/June. This transfer was considered by duly constituted Board and on the recommendation of the Transfer Board [illegible] approval by the Accountant General (A&E) [illegible] The appointing authority of the [illegible] [illegible] ([illegible]), [illegible]

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judgment of delivered by this Tribunal in OA No. 515 of 1990. This application was filed almost on similar grounds and was dismissed on [illegible]-7-1990.

5. We have heard the learned counsel for both the parties at length and have gone through records of the case. The first point urged by the learned counsel for the applicant is that the transfer has been made by an authority not competent to transfer. In this connection learned counsel for the applicant refers the authority of the Hon'ble Supreme Court, reported in AIR 1976 (SC), page 1899 [illegible]B. Kanta Mishra Vs. High Court of Orissa. Referring paras 24 and 25 of this judgment the learned counsel pointed out that powers of Principal Accountant General (PAG) could not have been exercised by the Senior Deputy Accountant General (Works). But the aforesaid authority is not at all applicable so far as the case of the applicant is concerned because firstly this case is regarding the punishment inflicted by an authority, who was not competent to do so and secondly subsequently the act was ratified by the Governor during pendency of appeal, but it has been held that once there is a void order, it cannot be ratified subsequently. The present case is a simple case of transfer and it is to be seen whether the order has been passed by a competent authority or not. In this connection CAG Manual and Standing orders, Volume-II (Section-B) lays down the powers and Fundamental Rules and at serial no. 10 powers to transfer the government servant from one post to another and column-5 dealt with the powers in respect of Class-II officers and non-gazetted staff within the jurisdiction of their own offices. Section [illegible] [illegible] of this Manual order at page-87 of the above book of 1973 also clearly goes to show that the Accountant General is a competent authority. The department has placed before us [illegible] 1990 file and it goes to show [illegible] 1990, [illegible] II has approved the [illegible] transfer [illegible] 1990 [illegible]

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commendation for the good work done by the Annual General Transfer Board. A perusal of the file shows that the Board consisted of Shri S.K. Mishra, Senior Deputy Accountant General (W), Shri K.K. Srivastava, Dy. Accountant General (Pen) and Shri A. Srinivas Kumar, Dy. Accountant General (Funds). After the approval has been given by the Accountant General-II on 25-5-1990, the relevant transfer order was issued on 29-5-1990. Thus, in this case if the work has been entrusted by Accountant General-II to the Board for facilitating the timely disposal of various annual transfers, then it cannot be said that the power has not been exercised by the competent authority. Final order ofcourse has been issued by the Senior Deputy AccountantGeneral (Works), but actually this has been done with the prior approval of the Accountant General II. In view of this fact, there is no illegality or irregularity regarding competence of the authority passing the order of transfer of the applicant. This point was also raised in the case of Jagdish Prasad Vs. Union of India before the Allahabad Bench of the Tribunal in OA No. [illegible]/90 and the similar order of transfer dated 29-5-90 was challenged. The Bench held that it creates no infirmity in the order as it is only an error of description. If the Accountant General was competent to order the transfer, his approval of the proposal of transfer is only sanction for the transfer. Thus this point is covered by the judgment and we are totally in agreement with the view taken by the Hon'ble Vice Chairman, K. [illegible], and Hon'ble KJ Raman, AM.

6. The learned counsel for the applicant further refers to Fundamental Rule 15 and Para 163 of the CAG Manual and Standing Orders, Volume-I. Para 163 deals with posting and transfers. It lays down that Accounts/Audit Officers in offices and posts under the Accountant General, Director of Audit, Defence Services, [illegible] Chairman Audit Board and Ex-officio Addl. Deputy Comptroller and Auditor General (C) and [illegible] Director of [illegible] [illegible] offices [illegible]

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control of the respondent authorities. They are also liable, like all other Central Government Servants, to be transferred from one office to another subject to the provisions of FR 15. The Comptroller and Auditor General may transfer an officer to any post or office within the Indian Audit and Accounts Department. The learned counsel for the applicant pointed out that if the power of CAG which is being exercised by the Accountant General and so it cannot be further delegated and in this connection reliance has been made by the learned counsel on State of U.P. Versus Sirdhari Singh, reported in AIR 1964 (SC), page 358. After giving our careful consideration to the authority (supra), we find that in the present case the power has been exercised by the Accountant General. There was no further delegation of power so the argument has no force. The authority therefore, is not relevant at all in the present case. Further this authority is conferment of judicial power and does not deal as such with the powers given to subordinates by the Head of the Office or Department. In any case the present authority is not applicable to the facts of the present case.

7. The learned counsel for the applicant further pressed that the choice given by the applicant was not considered and no reason has been given. Obviously the choice is taken before hand to accommodate a particular person but in actual general transfer if the authority does not look to the choice given by the particular candidate, there cannot be any challenge for non acceptance of the choice, unless malafide is shown. The matter came before the Transfer Board constituted by Accountant General to facilitate the work of transfer involving about 370 officers and we find that the applicant has not been discriminated at all.

8. The learned counsel for the applicant further argued that the applicant has been [illegible] only on 28-4-1990 and has not worked for [illegible]. But here also the [illegible] period of [illegible]

three years at a station is to be reckoned from the date an official remaining at that station in whatever capacity and his promotion in the next grade will not wipe out his earlier stay at the station.

9. The learned counsel for the petitioner has further referred to Para 36 of Chapter II of the Additional Accountant Establishment at page-10. This para lays down that an Accountant cannot be kept for a period longer than of three years in any particular division and if for any special reason ~~is~~ change cannot be made at the expiry of that period, ~~and~~ the matter should be brought to the notice of the Deputy Accountant General for orders. This point has already been discussed above. The stay of the applicant at his place of posting as Divisional Accountant Officer Sharda Canal has exceeded three years and he was well informed in time on 9-2-1990 by memo (Annexure R-5) to give the choice. If the applicant had any grievance, he could have come before the Tribunal prior to actual general transfer was considered in the May 1990.

10. It has been further argued by the learned counsel for the petitioner that notice of transfer was not given in the month of March which was required under rule, but that is not mandatory. Actual transfer order shows that it should be carried out between 15th June to 15th July and that is the period where necessary academic session either commences or starts commencing.

11. Learned counsel for the respondents has particularly referred to the judgment of Jagdish Prasad (Supra) and filed a copy of the said judgment. We are in full agreement with the judgment and the view taken therein. This case is almost covered by this judgment delivered by the Central Administrative Tribunal, [illegible] in a similar matter against a similar order.

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Further, in D.K. Dave Vs. State of Gujrat, reported in 1989 (3) SCC at page 398 it has been held;

"Therefore, even if there is some difficulty or irregularity or lapse in passing orders of transfer the same have got to be ignored. If the corrective are to be applied by the court the confusion will be worst compounded. In the aforesaid circumstances unless it is expressly shown that the order of transfer is passed as measure of penalty and it is by way of victimisation it would not be proper for these court to exercise the power under Article 226 of the Constitution of India and interfere in matter of transfer."

12. The Hon'ble Supreme Court in Gujrat Electricity Board Vs. Atma Ram reported in 1989 (2) SCC, page 602 held that transfer is an incident of service and the person, who has come to challenge it, should first join and then present the difficulties before the administration which he is likely to suffer at the new place of posting. The guidelines or the administrative instructions are to be observed in the interest of the public and general administration. The appointing authority is the best judge to exercise the powers and prerogative as to who is the person to be posted at which place. The administrative exigency requires posting of a particular person. In the present case the order of transfer is neither malafide nor it is punitive order. The annual general transfer has been considered by senior most officers of the office of the Accountant General and there is no allegation of arbitrariness or discrimination against them.

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In view of the above, we find that the applicant has no case, the application is devoid of merits and is dismissed leaving the parties to bear their own costs. The interim stay granted by the Tribunal on 23-5-1990 is vacated.

MEMBER (J)

MEMBER (A)
17/8/90

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