

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 307/2009

This the 7<sup>th</sup> day of October, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

Nasir Ali, aged about 40 years, son of Late Shri Chhunnu, resident of DS-84, Aliganj, Kursi Road, Behta Subhauili, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Directorate General NCC, West Block-IV, R.K. Puram, New Delhi.
3. The Deputy Director, Directorate NCC, U.P., Ashok Marg, Lucknow.

Respondents

By Advocate: Sri K.K. Shukla for Dr. Neelam Shukla.

(ORDER)

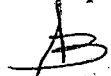
**Hon'ble Ms. Sadhna Srivastava, Member (J)**

The applicant is aggrieved with the order dated 10<sup>th</sup> July, 2009 as contained in Annexure A-I whereby he has been transferred from NCC Directorate, U.P., Lucknow to NCC Directorate, Uttarakhand, Dehradun allegedly on administrative ground.

2. The facts are that the applicant working as Group 'D' employee remained absent from duty unauthorizedly from time to time for last many years. Instead of proceeding departmentally against him for his alleged misconduct, the competent authority at Lucknow addressed a letter dated 19.6.2009 as contained in Ann-4 (filed with the Counter affidavit) requesting Director General, NCC at Delhi to post him out. DG, NCC agreeing to the proposal has passed the impugned order transferring him to Dehradun.

3. Heard the learned counsel for the parties and perused the record.

4. The main plank of the applicant is that the impugned order is not a routine one or because of any administrative exigency but it has been passed to ease out an inconvenient employee.



5. The learned counsel for the applicant has submitted that the applicant should not have been transferred on disciplinary grounds. In case the respondents intend to take any disciplinary action or to draw any disciplinary proceedings the same is open to the respondents and thereafter to take necessary action as per the finding thereon. The transfer on disciplinary grounds to ease out an inconvenient staff is not permissible under the law. In support of his contention the learned counsel for the applicant has placed reliance on the decision of Kerala High Court in the case of P. Pushkaran Vs Chairman, Coir Board, Cochin and another reported in 1979 (1) SLR, 309 wherein the following observations of the High Court is more relevant:-

“The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This court can, and should, in cases where, it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.”

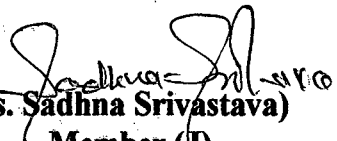
6. In the case of State of U.P. and another Vs. Sheshmani Tripathi reported in 1991 (2) UPLBEC 1302, a Division Bench of the Allahabad High Court has held that transfer on administrative ground where a complaint was received against the petitioner therein, cannot be made a valid basis for transfer. In case a complaint is found to be correct, it is open to the Govt. to take action against the officer concerned, but transfer is no solution to this problem.”

7. In the case of J. Ram Chandran Vs. Andhra Pradesh State Cooperative Union, 1993 (3) SLR page 1 and Bombay High Court in the case of Sheshrao Nagarao Umak Vs. State of Maharashtra (1985) 2 LAB LJ 73, have also laid down that Govt. is the best judge to decide how to distribute and utilize the services of its employees. However, this power has to be exercised honestly and not based on any extraneous consideration.



8. In view of the above facts and circumstances, this Tribunal is of the opinion that the impugned order was made on account of alleged misconduct on the part of the applicant and not for any other administrative reason i.e. it is punitive in nature. If so, the same has to be quashed with an observation that the applicant must improve his performance failing which he could expose himself to disciplinary action.

9. Resultantly, the impugned transfer order dated 10.7.2009 is hereby quashed and set aside. No costs.

  
(Ms. Sadhna Srivastava)  
Member (J)

HLS