

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW
BENCH, LUCKNOW**

Original Application No.253/2011
This the 19th Day of August 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (I)

Hari Govind Singh, aged about 50 years, S/o Sri Sheetla Bux Singh, Senior Telecom Assistant Sub Divisional Engineer Office (Group Telecom) Ram Sanehighat District Barabanki R/o Poore Ausan Majre Bani Koder P/S Kotwali Ram Sanehighat District Barabanki.

...Applicant.

By Advocate: Sri S.K. Singh.

Versus.

1. Chief General Manager, Bharat Sanchar Nigam Limited, Lucknow.
2. Telecom District Manager, Bharat Sanchar Nigam Limited, Barabanki.
3. Sub Divisional Engineer, Group Exchange, Bharat Sanchar Nigam Limited, Ram Sanehighat Barabanki.

.... Respondents.

By Advocate: Sri G.S. Sikarwar.

ORDER (Dictated in open Court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (I)

This T.A. has been filed for the following relief's:-

- “(i). Quash the impugned order passed by the O.P. No.2, on 07.04.11 which is annexed as Annexure No.1 to this writ petition.
- (II). Direct the opposite parties to permit the petitioner to continue his duty peacefully without

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any hindrance and pay the salary and other service benefit as permissible under law.

(III). Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(IV). Allow the Original Application with cost."

2. Case of the applicant is that he is working on the post of Senior Telecom Assistant in the office of Sub Divisional Engineer (BSNL) at Ram Sanehighat District Barabanki. One unknown person on behalf of Ramesh Chandra Dwivedi, Regional General Secretary, Rashtriya Lok Dal (Political Party), Region Faizabad, complained to Hon'ble Chief Minister against the petitioner. An inquiry was conducted but nothing adverse was found against the applicant. Even then he has been transferred by way of punishment at the behest of political party, which is not tenable in the eyes of law. The impugned transfer order dated 07.04.2011 has been annexed at Annexure-1 and it is said that in fact this order has not been officially served. Subsequently, an Office order of respondents has also brought on record that applicant has been sanctioned leave from 08.06.2011 to 30.06.2011 and 01.07.2011 to 07.08.2011.

3. The respondents have contested the O.A. saying that transfer order has been passed in administrative exigencies and

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it is not by way of punishment or at the behest of any political party. It is also said that the order was sent by registered post to the residential address of the applicant but the same was returned to the office. Nevertheless he has already been relieved on 08.06.2011, it is pleaded. It has been further pleaded that the applicant has been posted at Telephone Kendra Ram Sanehighat (Barabanki) w.e.f. 18.09.1986 till June 1996 and again from July, 1996 at the office of Sub Divisional Engineer (Group Telephone) Kendra till 07.06.2011. A government servant or employee of a public undertaking has no legal right to be posted forever at any particular post or place of his choice. The post of the applicant is a transferable post and it is only an incident of service. Moreover, order has been passed in public interest. Regarding alleged malice, it is said that the applicant has not impleaded any person in the array of the parties against whom malice is alleged.

4. In the rejoinder affidavit most of the pleadings have been reiterated and nothing worth mentioning has been said.

5. Heard the learned counsel for the parties and perused the material on record.

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6. The learned counsel for applicant places reliance on the following case laws;

(i). Somesh Tiwari Vs. Union of India and Others reported in [2009 (27) LCD 886]- In this case it has been held that if a transfer is punitive in nature and there is malice in law, then such an order is vitiated. In this case it was found that an inquiry was conducted against the petitioner on an anonymous complaint but the allegations were not proved. But recommendation was made for his transfer. In the present case also an inquiry was held against the applicant but nothing was found. But that complaint appears to have been made around May, 2010 and the applicant submitted his explanation on 20.10.2010 (Annexure-5). According to the applicant nothing was found against him. This pleading has not been denied. The impugned order is dated 01.03.2011/07.04.2011 i.e. after few months of complaint. There is a bald pleading that this transfer order has been passed in lieu of punishment and on account of the anonymous complaint in which nothing found against the applicant but there is nothing on record to substantiate this pleading.

(ii). Servesh Kumar Awasthi Vs. U.P. Jal Nigam and Others reported in (2003) 11 Supreme Court Cases-74-In this case, it was held by Hon'ble Supreme Court that transfer of an officer

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at the behest of politicians without any guidelines provided therein, it would be construed an arbitrary or malafide transfer. It was further laid down that power of transferring an officer cannot be wielded arbitrarily. But as said above in the present case there is nothing on record to show that the impugned transfer order was passed at the behest of any politician whose work was not done by the applicant etc. Therefore this case law is not applicable in the present case.

7. In the present case, as pleaded in para-8 of counter affidavit, which has not been controverted in rejoinder affidavit, the applicant has been posted at Ram Sanehighat, Barabanki w.e.f. 18.09.1986 till June 1996 and w.e.f. July, 1996 at another office i.e. the office of Sub Divisional Engineer (Group Telephone) Kendra at the same place i.e. Ram Sanehighat till 07.06.2011 i.e for the last about 25 years. It is needless to say that transfer of a govt. employee is an incident of service. There should be no interference by any Court or Tribunal in the transfer matters unless the transfer order has been passed without any authority or against the statutory provisions or there is any malice in law or it is against the Professed Policy. In the present case there is nothing on record to show that the

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impugned transfer order comes within the ambit of any of the aforesaid grounds.

8. Finally, therefore, this Tribunal does not find any ground to interfere in the matter. The O.A. therefore deserves dismissal and accordingly, it is so ordered. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 19.8.11
Member (J)

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