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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH  
JAIPUR.

O.A.No.383/93 .

Dt. of order: 8.9.1993

V.S.Sharma : Applicant

Vs.

Union of India & Ors.: Respondents

Mr.Virendra Lodha : Counsel for the applicant

Mr.U.D.Sharma : Counsel for respondents

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Hon'ble Mr.Gopal Krishna, Member(J)

Hon'ble Mr.O.P. Sharma, Member(A)

PER HON'BLE MR.O.P.SHARMA, MEMBER(A):

Applicant V.S.Sharma, has filed this application under Sec.19 of the A.Ts Act, 1985 being aggrieved by order dated 23.6.93 (Annx.A-1) by which he was transferred from Jaipur to ~~Raurkela~~ (Orissa).

2. The learned counsel for the applicant has raised a preliminary objection to the reply of the respondents being considered. According to him this reply has not been signed and verified by any of the officers who have been notified as authorised officers. The learned counsel for the respondents has pointed out that the officers notified, to which attention has been drawn by the learned counsel for the applicant, are those who are expected to sign and verify the pleadings of the Union of India. In this case, reply has been signed and verified by an officer who has been duly authorised by the respondents Nos.2 & 3. In support of this averment, he has produced a copy of a letter showing the said authorisation. We, therefore, over rule this objection raised by the learned counsel for the applicant.

3. The learned counsel for the respondents refused to accept the rejoinder filed on behalf of the applicant on the ground that it has been filed after expiry of a long time given for filing the same. We have however accepted the rejoinder and taken <sup>it</sup> on record in the interest of justice.

4. The facts as stated by the applicant are that he had been working as Regional Director, Workers Education Centre, Jaipur since 14.10.1991. By order dated 23.6.93 (Annx.A-1) he was transferred to ~~Raurkela~~ in "Public <sup>about</sup> Interest". According to him, he came to know/certain irregularities being committed by his predecessor Shri B.A.Chavan (respondent No.3) while working on the post of Additional Director at the relevant time ~~who later~~ was also holding the charge as Director. The irregularities pertained to an agreement entered into between the land lord of the premises in which the office of the applicant at Jaipur was housed and the authorities of the Workers Educational Centre at Jaipur. By this agreement, the rent being Rs.1,026/- per month was enhanced to Rs.7,830/- per month i.e. about 7 times. A series of irregularities were pointed out by the two standing counsel of the Govt. by virtue of this agreement and <sup>by</sup> payment of the enhanced rent a loss of Rs.2,24,532/- was caused to the department. Applicant brought this irregularity to the notice of ~~the~~ respondent No.2 namely the Director, Central Board for Workers Education, Nagpur. Respondent No.3, Shri B.A. Chavan, <sup>Addl.</sup> Director, Central Board for Workers Education, Nagpur, against whom the allegations of malafidies have also been raised by the applicant, got annoyed with the applicant because of his bringing out the aforesaid irregularities. The applicant had been functioning as a very competent and efficient officer, with unblemished record of service and he had taken action against an employee working under him for certain irregularities on

the latter part. According to him, the transfer of the applicant was effected at the instance of Shri Chavan, who was annoyed with the applicant <sup>on his</sup> exposing the irregularities which had taken place in connection with the matter relating to payment of rent and other related issues.

5. The applicant has also stated that he is due to retire on superannuation on 31.7.94, <sup>and that</sup> there are guidelines of the Government that ordinarily officials at the fag end of their service career should not be transferred from the place where they are posted. The applicant had also stated ~~some~~ <sup>personal</sup> certain grounds on which the transfer should not be effected at this stage, as it would cause him considerable harassment.

Q L 6. The learned counsel for the applicant has during the arguments stated that Shri Chavan, against whom malafidies have been alleged by the applicant, and who has been made <sup>a</sup> respondent by name, has not even cared to file a reply, leave alone rebut the allegations against him. The learned counsel for the applicant has further stated that in view of the stay of the order of transfer given by the Tribunal, the applicant is continuing on his post at Jaipur. Therefore, according to the learned counsel for the applicant, the order of transfer should be quashed and the applicant should be allowed to continue at Jaipur till his retirement on 31.7.1994.

7. The respondents in their reply have stated that the enhancement of rent was approved by Shri K.K.Sethi, I.A.S, the then Director, Central Board for Workers Education, Nagpur. The assessment of the enhanced rent was made by the CPWD authorities at Jaipur. The rent was assessed by the CPWD

authorities was paid to the landlord on the basis of the approval granted by the then Director, Shri K.K. Sethi. Therefore, the question of imputing any malafides to Shri Chavan, in the matter of assessment and sanction of enhanced rent, did not arise. Further, Shri Chavan was not the predecessor of the applicant at Jaipur. (In response to a query from the Bench, the applicant himself clarified that Shri Chavan had never worked at Jaipur).

8. Further, according to the respondents, the attitude and behaviour of the applicant was not conducive to the smooth functioning of the office at Jaipur. In support of this averment, they have produced letter dated 28.7.92 (Annx.R-10), which is addressed by Shri B.A.Chavan, then Regional Director to the applicant. In this letter, Shri Chavan has mentioned that there was some tension and conflict at the Jaipur Centre and that the applicant should conduct himself more tactfully to avoid this sort of situation taking place. There were some complaints against the applicant which were enquired into by an officer deputed from Delhi. By letter dated 12.5.93 (Annx.R-15) Shri Chavan, respondent No.3 had recommended to the Chairman, Central Board for Workers Education, Head quarters at Madras, to transfer the applicant from Jaipur to Rahulkela, where the post of Regional Director was vacant and post another officer in his place at Jaipur. In this letter, there is a reference to the complaints against the applicant and his performance not being satisfactory. It was as a result of this recommendation of Shri Chavan, that the applicant was transferred from Jaipur to Rahulkela. During the arguments, the learned counsel for the respondents has stated that the transfer was effected in public interest after the recommendation

of respondent No.3 was approved by the Chairman. As regards the allegation of malafides against the respondent No.3, he has stated that these allegations must be pleaded and established and should have a firm foundation. In this connection, he has cited before us the judgment of Hon'ble Supreme Court in the case of Rajendra Roy Vs. Union of India and Anr. 1993(1) SLR 126. He has, therefore, pleaded that there is no case for granting any relief to the applicant in the matter of his transfer to Raikela.

9. The learned counsel for the applicant has stated that the recommendations made by Shri Chavan, regarding transfer of the applicant <sup>were</sup> by letter dated 12.5.93 whereas the report of the Officer deputed from Delhi to enquire into the allegations against the applicant is dated 14.6.93. Therefore, before the receipt of the report of the officer deputed from Delhi, Shri Chavan could not have come to know that there was anything lacking in the performance or conduct of the applicant at Jaipur. Therefore, according to him the reliance on the report of the officer deputed from Delhi is an after thought. He has cited before us the judgement of the Hon'ble Supreme Court in the case of Ramadhar Pandey Vs. State of U.P. & Ors. JT 1993(4) SC 72 in which the Hon'ble Supreme Court have held that if a transfer could be effected only on certain conditions, it is necessary to ad-here <sup>to</sup> those conditions. In the case before their Lordships of the Hon'ble Supreme Court, since public interest was absent the order of transfer was not upheld by them. The learned counsel for the applicant states that the applicant's case is very much similar to that decided by the Hon'ble Supreme Court and therefore the applicant is also entitled to relief in view of the ratio of the judgment cited above.

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10. We have gone through the application, reply of the respondents and the rejoinder filed on behalf of the applicant. We have also heard the learned counsel for the parties. The assessment of higher rent for the premises taken on rent by the office at Jaipur was made by the CPWD authorities, who being technically qualified in this regard, have been assigned by the Govt. the task of making assessment of the rent payable for the premises hired by the offices of the Govt. of India. If an assessment of rent has been made by the CPWD authorities and the authorities in the department have paid rent on the basis of that assessment without examining the merit on that assessment, their approach cannot be faulted. Departmental authorities are not technically qualified to assess what ~~the~~ rent should be payable for a particular premises. If a department in the Govt. has simply agreed to pay enhanced rent on the ~~basis of the~~ basis of the assessment or reassessment by the CPWD authorities it cannot be said that any of the authorities sanctioning the rent has acted in a mala fide manner unless there are other grounds which show that the conduct of any of the authorities involved in payment of higher rent <sup>is contumacious.</sup> Certain allegations have been made regarding a sort of collusive transaction having been taken place between the officers of the department and the landlord. Not only <sup>are</sup> the allegations vague but the learned counsel for the respondents has <sup>also</sup> pointed out that the landlord had filed a suit in the Court for enhancement of rent and also for vacation of the premises. It was on account of these acts of the landlord <sup>that</sup> further action had been taken by the respondents in consultation with the then Government Advocate.

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11. We have perused the opinion given by the two standing counsel of the Government. They have casted doubt on the propriety and correctness of the approach of the department in sanctioning higher rent but we could not discover anything specific to suggest that the enhanced rent was paid wrongly when the enhanced rent was paid on the basis of the assessment made by the CPWD. Therefore, there was nothing wrong on the part of the officers of the department in paying the enhanced rent. Even otherwise, it is a well known fact that it is <sup>the</sup> policy of the Govt. to revise rent of the premises taken on rent from time to time and the CPWD authorities are entrusted with the job of reassessment of the rent. In this case, the applicant's grievance is that the rent was increased seven times. This is not a material consideration in so far as the conduct of the officers who sanctioned the rent is concerned.

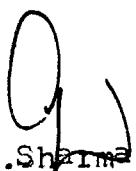
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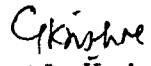
12. We are not here to discuss the question ~~whether~~ whether ~~regarding~~ the reassessment of the rent and payment of higher rent was in order or not. We are only concerned with the question whether Shri B.A. Chavan, against whom malafides have been alleged by the applicant was in any way responsible for the assessment and sanction of the higher rent. We are also concerned with the question whether any of the irregularities brought to Shri B.A.Chavan's notice by the applicant in connection with the premises taken on rent at Jaipur, were glossed over. As stated by the respondents, the higher rent payable to the landlord was assessed by the CPWD and sanction thereof was granted by Shri K.K.Sethi, I.A.S, the then Director Central Board for Workers Education, Nagapur with the approval of the Chairman. It has not been shown by

the applicant ~~that~~ how Shri Chavan, respondent No.3, came into the picture in so far as the assessment and payment of enhanced rent was concerned. One of the irregularities in connection with the premises taken by the office on rent was that the landlord had made some unauthorised construction thereon. By letter dated 28.7.92 (Annx.R-10) Shri Chavan had advised the applicant to file a complaint with the Police authorities regarding the unauthorised construction of a wall in the office premises. We have not been shown any document which would suggest that Shri Chavan was prejudiced against the applicant or he nursed any ill will against him. Therefore, the allegation of <sup>against</sup> malafides / Shri Chavan is unsustainable.

13. Now we are concerned with the question of transfer of the applicant from Jaipur to Raurkela. The applicant is to retire on superannuation on 31.7.94. The transfer order was passed in June '93, when he had about 13 months' service left. Ordinarily an officer should not be transferred from one place to another when he has only <sup>a</sup> small period of service left. In this case, the period of service left with the applicant is undoubtedly small. However, the respondents have transferred him to Raurkela stating that the transfer is in public interest. In support of this plea they have cited various documents to show that the functioning of the office at Jaipur was not a happy one. The Hon'ble Supreme Court have held in the case of Rajender Roy (supra) ~~the Hon'ble Supreme Court has held~~ that an order of transfer cannot be struck down unless it is based on malafides or violation of the rules of service and guidelines for transfer without any proper justification. The case cited by the learned counsel for the applicant is clearly distinguishable on facts.

14. After carefully considering the facts and circumstances of the case, we do not find any ground for interference with the order of transfer. The application is, therefore, dismissed with no order as to costs. Since the applicant is due to retire on 31.7.94, it is made clear that the applicant will be free to make representation to the concerned authority about the personal hardship if any which may be suffered by him in view of the impugned order of transfer and it is reasonably expected that if such representation is made, the same shall be considered by the department as expeditiously as possible.

  
(O.P.Sharma)  
Member(A).

  
(Gopal Krishna)  
Member(J).