

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.323/96

Date of order: 4-9-1996

Bijender Singh

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.U.D.Sharma

: Counsel for applicant

Mr.S.S.Hasan

: Counsel for respondents.

CORAM:

Hon'ble Mr.O.F.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Bijender Singh has prayed that the order dated 14.5.1996 (Annx.A1) transferring the applicant, a Hamal at the Weavers Service Centre, Jaipur, to the Weavers' Service Centre, Varanasi along with the post may be quashed and the respondents may be directed to retain the applicant as Hamal in the office of respondent No.3, Shri Daulat Ram Gupta, Deputy Director, Weavers Service Centre, Jaipur.

2. The facts of the case, as stated by the applicant, are that he was appointed as a Hamal in a temporary capacity at Weavers Service Centre, Jaipur w.e.f. 5.2.1982, scale Rs.196-232 vide order Annx.A2 dated 18/19.2.1982. He completed the period of probation of two years to the satisfaction of the competent authority and was made permanent in 1988. From 20.8.1984 to 5.6.1985 the applicant remained posted at Chamoli and from 28.8.1987 to 28.7.1988 he remained posted at Delhi. Barring the aforesaid periods he has remained posted at Jaipur. He received a memorandum dated 13.11.1995 (Annx.A3) by which it was alleged that while performing duties as Chowhikar in the office at Jaipur from 8.00 AM to 8.00 PM on 12.11.1995, he had locked the main gate of the office with the result that employees who had been called to the office on that day, which

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was a holiday, to perform their duties could <sup>not</sup> enter the office. It was, therefore, alleged that the applicant had not intimated his absence from the office. He was asked to explain his conduct in this regard. He sent his reply on 15.11.1995 (Annx.A4) denying the allegation and stating that he had locked the office from outside but he was inside the office. The reason for locking the office from outside was stated to be the disorderly conduct ~~exhibited~~ <sup>exhibited</sup> by some persons after drinking liquor from a shop located opposite the office. The applicant sent a further communication dated 22.11.95 (Annx.A5) alleging that certain employees had marked their presence in the Attendance Register as on 12.11.1995 although it had been earlier alleged in the memorandum dated 13.11.1995 that they could not enter the office on 12.11.1995 because the office was locked from outside. The applicant, therefore, alleged that certain acts of irregularities and indiscipline were being committed by the officials who had marked their presence in the Attendance Register without doing any work, with a view to availing themselves of overtime allowance. On receipt of the communication dated 22.11.1995, respondent No.3 became angry with the applicant and started harassing him. He asked the applicant to withdraw the complaint or to face consequences. The applicant refused to withdraw the complaint. Vide memorandum dated 10/11.4.1996 (Annx.A7) the applicant was cautioned to improve his performance so that there was no obstruction in office work. In this memorandum certain lapses on the part of the applicant during earlier days in April were noted. The applicant submitted a representation on 11.4.1996 denying the allegations against him and also sought to explain that the allegations has been made just to harass him. The respondent No.3, however, refused to entertain this communication from the applicant. Also one Shri Om Prakash, a

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Peon, working in the office was also similarly being harassed by respondent No.3 without any justification. A driver of the office had also gone to the residence of the applicant in a drunken state at the instance of respondent No.3 to threaten him. The applicant's complaint in this regard to respondent No.3 evoked a hostile response. Shortly after receipt of the memorandum dated 10/11.4.1996, the applicant received order dated 14.5.1996 (Annx.A1) issued by the Director, Weavers Service Centre, Delhi, transferring him to Weavers Service Centre, Varanasi, alongwith the post.

3. It is the further case of the applicant that he has four children, three of whom are studying in Schools at Jaipur. His old mother, four unmarried sisters and two younger brothers who are also studying are staying with him. His transfer to Varanasi where he will have to take all the aforesaid members of his family will cause him tremendous hardship, in view of the meagre emoluments that is he getting. Although the order Annx.A1 states that the transfer is in public interest yet no public interest is involved in the said transfer and it was ordered on account of the malafide intention on the part of respondent No. 3. There is no material to show that one post of Hamal only has become surplus at Jaipur and therefore, he was required to <sup>be</sup> transferred to Varanasi. Varanasi is far away from Jaipur and the transfer of the applicant there without any public interest being involved is a clear case of punishment. The applicant is not the juniormost Hamal at Jaipur and in case any public interest was involved in his transfer, the juniormost person namely Shri Ashok Kumar should have been transferred out.

4. The respondents in their reply have denied that the order transferring the applicant is malafide. As per the memorandum dated 2.2.1982 offering appointment to the

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applicant, Annx.E1, the applicant is liable to be transferred to any part of India. They have given details of the complaints received and memoranda issued to the applicant calling for his explanations for his various acts of omissions and commissions from June 1983 to August 1987. These documents, according to him show that the applicant lacked sincerity, loyalty and devotion to duty. Further, according to the respondents the incidents set out in memorandum dated 13.11.95 (Annx.A3) showed that the conduct of the applicant in not attending the office properly at the requisite time was an act of indiscipline for which he had furnished no satisfactory explanation. Subsequently on 15.11.95, the applicant had expressed his regret before the Officer-in-charge in his chamber. The three officials who were supposed to attend office on 12.11.95 but could not do so because the office was locked from outside by the applicant were allowed to mark their attendance for that date, by the officer in charge, for half-day. It was not their fault that they could not enter the office premises on 12.11.95 when they had gone there. Moreover, these officials had put extra hours on subsequent days. Also the fact that the applicant has placed on record the photo copy of the office attendance register proved that he must have taken the attendance register outside the office without permission of the officer in charge which is an act unbecoming of a government servant. The applicant is not justified in dragging the name of Shri Om Prakash in the matter, which has been done just to gain sympathy of the Tribunal. They have also denied other allegations against respondent No.3 and also the allegation against the driver that he had gone to harass the applicant in a drunken state, etc. They have added that the transfer order has been issued in public interest and to check deterioration in office discipline. The place to which the

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applicant has been transferred is one for which he had once opted vide Annx.F45 dated 11.8.1987. The averments relating to hardship to the applicant on account of the size of the family of the applicant and nonavailability of official accommodation at Varanasi have been denied. It is not for the applicant to suggest who should be transferred and who should not be, in the public interest.

5. The applicant has filed a rejoinder to the reply filed by the respondents alongwith which he has annexed Schedule-A, containing comments on each of the Annxs.F2 to F47 supposed to be containing material reflecting on the conduct of the applicant. It has been stated by the applicant that some of these documents do not even remotely suggest any misconduct on the part of the applicant. The respondents have not spelt out any administrative interest or exigency due to which the applicant has been transferred to Varanasi. He has reiterated that the transfer was malafide and penal in nature and also ordered without application of mind, solely at the behest of respondent No.3.

6. During the arguments, the learned counsel for the applicant has cited the following judgments to support in his case:

(1) N.K.Suparna Vs. Union of India & Ors, 1990(3) SLJ (CAT) 590, wherein the Bangalore Bench of the Tribunal noted that the applicant had pointed out some irregularities on the part of some officials thereby incurring displeasure of his superior authorities resulting in his transfer to another distant state. The transfer was also alleged to be malafide. The Tribunal held that the transfer order had not been made in the exigency of service or public interest and it was malafide and penal in nature. According to the learned counsel for the applicant, in the instant case also the transfer order had been passed for

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the reason that the applicant had pointed out irregularities on the part of certain officials in marking their presence in the attendance register when they had not attended office and thereby intending to claim overtime allowance unjustifiably. It was because of the annoyance of respondent No.3 due to the complaint made by the applicant that his transfer was ordered.

(2) S.V.Singh Vs. Union of India & Ors, 1988(2) SLR 545 decided by the Calcutta High Court wherein it was held that the High Court is competent to investigate whether any order of transfer is tainted with malice or it is for administrative exigencies. The High Court further held that transfer is a powerful weapon in the hands of the administration but that does not authorise the administration to use it at random and to suit its convenience.

(3) Harjinder Kumar Kalia Vs. Union of India, 1994(6) SLR 425 decided by the Chandigarh Bench of the Tribunal. In this case, transfer was ordered from Chandigarh to Dehradun. The post against which the transfer was made was not available at Dehradun. The Tribunal held that the transfer was not made in public interest but was in colourable exercise of power by the authorities concerned. The learned counsel for the applicant added that the applicant has been transferred to Varanasi alongwith the post because no post of Hamal existed at Varanasi against which the applicant could be accommodated. Therefore, the ratio of this judgment is clearly applicable to the facts of the case.

(4) M.E.Rajaram Vs. Union of India & Ors, 1994(7) SLR 84 decided by the Madras Bench of the Tribunal. In this case a transfer had been ordered on receipt of complaints. The Tribunal held that the reason for transfer is allegations of misconduct and the concerned employee's version with regard to the allegations made against them has not been recorded. Such a

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transfer would be penal in nature. The learned counsel for the applicant added that if the transfer of the applicant is based on the complaints against him, his version/explanation had not been obtained before assuming the allegations to be true for the purpose of ordering the applicant's transfer. Therefore, the order of transfer was liable to be quashed on this ground also.

(5) Tarkeshwar Pandey and others Vs. The General Manager, U.P.State Mineral Development Corporation Ltd, Lucknow & Ors, 1995(6) SLP 673 decided by the Allahabad High Court. In this judgment, the High Court observed that the respondents could not be justified <sup>in</sup> their action of transferring the petitioners to distant places when work was available at Allahabad and persons both senior and junior to the applicants have been retained at Allahabad in various projects. The learned counsel for the applicant argued that since persons junior to the applicant had not been disturbed from Jaipur, there was no justification for transferring the applicant from Jaipur to Varanasi.

(6) State of M.P Vs. Shankar Lal & Ors, 1980(1) SLP 461, decided by the Hon'ble Supreme Court. In this judgment it was held by the Hon'ble Supreme Court that in case of employees getting small emoluments the power to transfer should be sparingly exercised under some compelling exigencies of a particular situation and not in a routine manner. The learned counsel for the applicant stated that the applicant is a Group-D employee getting petty emoluments and has a large family to support and therefore, his transfer to a distant place like Varanasi would cause considerable hardship to him. Hence ratio of judgment of Hon'ble Supreme Court would be clearly applicable to this case.

(7) Paritosh Kumar Kanjilal Vs. Union of India & Ors, (1996)

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33 ATC 69, wherein the Calcutta Bench of the Tribunal interpreted the expression "public interest" and held that it is not a magic word which can do service for anything in any situation. The Tribunal further held that because the local administrators were unable to handle the situation arising out of labour/staff agitation, etc, the transfer of the labour leader, even if it be a solution, cannot be said to be in the public interest. According to the learned counsel for the applicant, in the instant case also transferring the applicant on the ground that he was an indisciplined worker and had indulged in misconduct was therefore not in the public interest.

7. The learned counsel for the applicant concluded by stating that in view of the ratio of the various judgments cited by him, the order of transfer of the applicant could not be said to be justified and therefore, it deserves to be quashed.

8. The learned counsel for the respondents cited before us the judgment of the Hon'ble Supreme Court in State of M.P and Anr. Vs. S.S.Kaurav & Ors, (1995) 3 SCC 270. The facts of this case were that the Tribunal had quashed the order of transfer of the first respondent. There was a ban on transfer of officers during the period of President's Rule and before such transfers could be effected the Governor's approval was required. However, since the Governor's approval had not been taken before transferring the respondents, the Tribunal held the transfer to be bad in law. The Hon'ble Supreme Court held that the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The Hon'ble Supreme Court further held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative

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system by transferring the officers to proper places. Decisions to transfer should stand unless they are vitiated either by mala fides or by extraneous consideration. On the ground of personal hardship also, the Hon'ble Supreme Court declined to directly interfere in this case. He, therefore, urged that in view of this judgment of the Hon'ble Supreme Court, there is no scope for the Tribunal to interfere in the order of transfer. He added that the ground of mala fides against respondent No.3 is wholly untenable because there is objective material on record to show that the applicant is lacking in devotion to duty and is also an indisciplined worker. He particularly drew attention to Annx.E47, which is a complaint dated 12.1.96 addressed to the Regional Director, Weavers Service Centre, Delhi by respondent No.3 in which serious allegations of misbehaviour and misconduct against the applicant have been made and in which it is stated that if this state of affairs is allowed to continue the position in Jaipur Centre will deteriorate. In view of the attitude and behaviour of the applicant, it was considered necessary in the interest of administration to transfer the applicant away from Jaipur. He had been transferred to a neighbouring State, i.e. Uttar Pradesh, where he had worked earlier also. It is true that the applicant is a comparatively low paid employee but the interests of administration override those of the individual and therefore, the administration had considered it necessary to transfer the applicant from Jaipur. Since no post was available at Varanasi, where the applicant could be accommodated, the post had also been transferred alongwith the applicant. According to him, there was nothing irregular or improper in the order of transfer.

9. We have heard the learned counsel for the parties and have gone through the material on record as also the judgments

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cited before us.

10. It has been accepted by the respondents that the transfer has been effected mainly on the ground that the applicant's conduct and behaviour at Jaipur was not conducive to proper functioning of the office and the office discipline. Undoubtedly the complaints, etc, upto 1987, though numerous, are by now stale. However, there are incidents of 1995 and 1996 which reveal that the applicant is an indisciplined worker. The complaint of 1995 relates to omission to perform duty properly. The incidents referred to in the communication dated 12.1.96 relate to his misbehaviour with a superior officer. It is true that with regard to the latter complaint, the applicant's explanation was not called for. But it is not that any disciplinary proceedings are being initiated or any penalty is sought to be imposed on the applicant. The Deputy Director at Jaipur had communicated the complaint to the Regional Director of Weavers Centre, Delhi. The Regional Director then chose to pass an order of transfer of the applicant to Varanasi. We have carefully considered the judgments cited by the learned counsel for the applicant and are of the view that these have been rendered more or less on their own facts. As far as the applicant's case is concerned, there are no doubt allegations of mala fides against respondent No.3 but we do not find that there is any worthwhile material to sustain these allegations. We are not impressed by the averment that the transfer of the applicant was ordered on the ground that he had exposed the irregular activities of some officials in claiming overtime allowance, without attending the office. On the other hand it appears to us that the officials who were allowed to mark their presence in the Attendance Register subsequently were those who could not attend the office on an earlier day, on which they had been called to attend the office but had to go back when

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the office was found locked. Incidentally, the applicant's conduct in keeping the office locked is intriguing. If he wanted to keep the office closed so that outsiders could not create nuisance in front of the office, he would have bolted it from inside when he was inside the office. If he put a lock outside the office, the natural presumption was that he had locked it and gone away although he was supposed to be on duty in the office. Therefore, it appears that the applicant has tried to blame other officials for wrongly marking their attendance in the Attendance Register when in fact it was he who was responsible for creating a situation in which they could not attend the office.

11. The Hon'ble Supreme Court in Shankerlal case cited supra has observed that generally lowpaid employees should not be transferred but no total embargo on transfer of such employees. has been placed. The applicant is a comparatively lowpaid employee and he may have a large family to support but the interests of administration override those of the individuals. As observed by the Hon'ble Supreme Court in S.S.Faurav case, this Tribunal cannot sit as an appellate authority on the day to day decisions of the administration. The allegations of mala fides against respondent No.3 appear to us unsustainable and there was no violation of any statutory rules in so far as the transfer of the applicant is concerned. After a careful consideration of all the facts and circumstances of the case and averments and the arguments of the applicant, we are of the view that the order of transfer calls for no interference. The O.A. is dismissed with no order as to costs. The interim directions issued on 5.6.96 stand vacated. The applicant may however be given 15 days time from the date of this order to handover charge at Jaipur and thereafter be given the usual

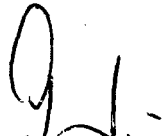
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joining time to enable him to join duty at Varanasi.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member.