

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.241/2000

Date of order: 31/8/2000

D.K.Singh, S/o late Shri Ram Narayan Singh, R/o D-130, Shanti Nagar, Hatwara Road, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Mini. of Textile, Udyog Bhawan, New Delhi/
2. Development Commissioner Handlooms, Udyog Bhawan, New Delhi.
3. Officer In-charge, Weavers Service Center, Kamdhenu Complex, Civil Lines, Jaipur.
4. Joint Development Commissioner (Handlooms), Udyog Bhawan, New Delhi.
5. Shri B.B.Paul, Assistant Director, Weavers Service Center, Kamdhenu Complex, Civil Lines, Jaipur.

...Respondents.

Mr.P.V.Calla - Proxy of Mr.Bharat Vyas Counsel for applicant.

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

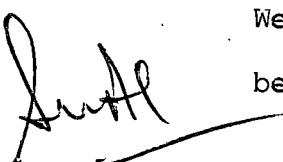
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 19085, the applicant makes a prayer to quash and set aside the impugned order of transfer dated 23.3.2000 and relieving order dated 24.3.2000.

2. By the impugned order dated 23.3.2000, the applicant was transferred from Weavers Service Center Jaipur to Weavers Service Center Agartala and he has been relieved vide order dated 24.3.2000.
3. In brief the case of the applicant is that he was transferred to Weavers Service Centre, Agartala malafidely and he was relieved without being any transfer order on record which itself indicates the malafides



on the part of the respondents. It is stated that the applicant is a low paid employee and he was transferred from one zone to another, therefore transferring the low paid employee from one zone to the another is punitive. It is further stated that the impugned order of transfer is ab initio illegal as it has not been issued by the competent authority. Therefore, the applicant filed the O.A for the relief as mentioned above.

4. Reply was filed. In the reply it is stated that the applicant was transferred temporarily from Jaipur to Agartala in view of the administrative exigencies i.e. for ensuing planned dyeing cum design exhibitions. It is further stated in the reply that Shri S.C.Jain, Zonal Director, Eastern Zone, made a demand for a Dyer for exhibition and after a great deal of discussion, the Officer In-charge, WSC, Jaipur had agreed to spare the service of the applicant with the understanding that this transfer will not involve any loss of seniority/promotion to the applicant and the applicant was transferred accordingly. The allegations of malafides against respondents have also been denied. The respondents have further denied that this transfer is penal in nature in any way and it has been stated specifically that the applicant has been transferred temporarily and due course of time he will be retransferred.

5. Rejoinder has also been filed by the applicant and reply to rejoinder has also been filed by the respondents which are on record. Additional Affidavit has also been filed by respondent No.5, denying the allegations of malafides, which is on record.

6. Heard the learned counsel for the parties and also perused the whole record.

7. Transfer is an incidence of service, it is the employer who decides where and when an employee is transferred and this is also well settled law that Courts/Tribunal will interfere only in matters of transfer when there is violation of the statutory norms or the transfer is based on malafides.

8. The learned counsel for the applicant has argued that the



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applicant has been transferred malafidesly and the applicant has imputed malafides against respondent No.5 and respondent No.5 has also been impleaded as party in this case. But the applicant failed to establish any direct malafides against respondent No.5 and no inference can be drawn from the averments of the parties that there was any kind of malafides on the part of respondent No.5 in transferring the applicant from Jaipur to Agartala. In the reply the respondents have made it very specific that in the discussion held for appointing a person in the exhibition at Agartala, respondent No.5 has agreed ~~to spare~~ the services of the applicant for this purpose and accordingly the applicant was transferred.

9. In E.P.Royappa Vs. State of Tamil Nadu, AIR 1974 SC 55, it was held by the Hon'ble Supreme Court that:

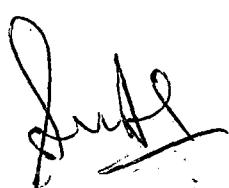
"We must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved and the very seriousness of such allegations demands proof of a higher order of credibility."

10. In Shivajirao Nilangerkar Patil Vs. Dr.Mahesh Madhav Gosavi, AIR 1987 SC 294, it was held by Hon'ble Supreme Court that:

"It was somewhat unfortunate that allegations of malafides which could have no foundation in fact were made and several cases which had come up before this Court and other Courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick."

11. In Rajinder Roy Vs. UOI & Anr, AIR 1993 SC 1236, it was held by the Hon'ble Supreme Court that:

"It may not be always possible to establish malice in the fact in a straight-cut manner. In an appropriate case it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances. But for such interference



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there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of malafide action in transferring the appellant from the facts pleaded before the Tribunal."

12. In M.Shankarnarayana Vs. State of Karnataka, AIR, 1993 SC 763, it was held by Hon'ble Supreme Court that:

"It may be permissible in an appropriate case to draw a reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise of conjecture."

13. On the basis of above legal proposition and facts and circumstances of this case, we are of the considered opinion that the applicant failed to establish malafide on the part of respondent No.5 and ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ no case has been made out by the applicant for interference by this Tribunal.

14. As regards competency of issuing order of transfer, we are not convinced with the arguments of the learned counsel for the applicant that the order of transfer was not issued by the competent authority, therefore, the ground taken in this O.A for challenging the impugned order of transfer is not sustainable in law.

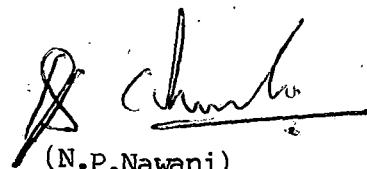
14. The learned counsel for the applicant has also argued that the impugned order of transfer has been admitted by the respondents as temporary transfer but in the order of transfer it has not mentioned the period of transfer, therefore, the impugned order of transfer is illegal. It is not disputed but rather admitted in the reply by the respondents that the applicant has been transferred temporarily and he will be re-transferred to Jaipur in due course. But merely not writing down the period does not make the order of transfer ^{most} illegal. If no period is mentioned, ~~at the~~ ^{most} can be said that it is not a temporary transfer order but the respondents have admitted this fact in the reply.

Shyam

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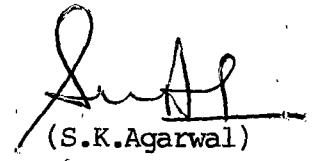
that the applicant has been transferred temporarily and he will be re-transferred in due course of time. This being so, it is expected from the respondents that they will be true to their averments made in the reply and transfer back the applicant to Jaipur after the period of temporary transfer is over.

15. In view of the above all, we do not find any basis to interfere in the impugned order of transfer. Therefore, this O.A is disposed of accordingly with no order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).