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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::GUWAHATI-5.

O.A.No. 157 of 1997.

DATE OF DECISION.....27.1.1999.

!! Shri Tarini Charan Deka (PETITIONER(S))

Mr M. Chanda ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors. RESPONDENT(S)

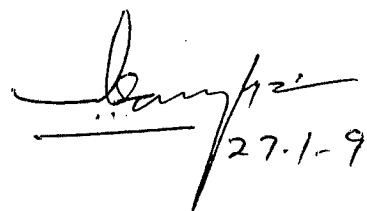
Shri A.K.Choudhury, Addl.C.G.S.C ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member


27.1-9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.157 of 1997.

Date of Order : This the 27th Day of January, 1999.

Shri G.L.Sanglyine, Administrative Member.

Shri Tarini Charan Deka,
Son of late Priyanath Deka,
Village Rukminigaon,
P.O. Khanapara,
Guwahati-781022.

. . . Applicant.

By Advocate Shri M.Chanda.

- Versus -

1. Union of India
through the Secretary to the
Government of India,
Ministry of Labour,
New Delhi.
2. Director General,
Headquarter office,
Employees State Insurance Corporation,
Kotla Road, New Delhi.
3. Shri Davananda Pegu,
Regional Director,
Regional office of the Employees
State Insurance Corporation,
Bamunimaidan,
Guwahati-781021.

. . . Respondents.

By Advocate Shri A.K.Choudhury, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

The applicant was an Upper Division Clerk-Cashier in the office of the Employees' State Insurance Corporation, Regional Office, N.E.Region, Guwahati and he was transferred by the order No.43-A.22/15/96-Estt. dated 16.5.1997, Annexure -5, from Local Office Guwahati to Local Office Bongaigaon in the same capacity. Against this order of transfer he submitted O.A.No.114/97. That application was disposed of on 30.5.1997 with a direction to the effect that the applicant

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may submit representation to the authority concerned and, further, that if such representation was submitted the authority shall consider the same and dispose of by a reasoned order within 2 weeks thereafter. The applicant submitted a representation dated 12.6.1997 accordingly. The representation of the applicant was considered and disposed of by the Regional Director on 8.7.1997 vide Memo No.43-A.22/15/96-Estt. dated 8.7.1997, Annexure-10 rejecting the prayer of the applicant and directing him to proceed to Bongaigaon. Hence the present application.

2. In the present application the applicant prays for setting aside the order of transfer No.43-A.22/15/96-Estt. dated 16.5.1997, Annexure-5, Order No.43-A.22/15/114-411 dated 26.5.1997, Annexure-8 and Order No.43-A.22/15/96-Estt. dated 8.7.1997, Annexure-10. The applicant has alleged mala file against Shri D.N.Pegoo, Regional Director, Respondents No.1 and 2 as well as Shri D.N.Pegoo, respondent No.3 have submitted their written statements. Official records have also been produced on behalf of the respondents. Heard counsel of both sides.

3. In the representation dated 12.6.1997 the applicant has requested for review of transfer order dated 16.5.1997 considering his personal difficulties, mainly medical grounds of himself and his wife. He submitted that he had undergone a serious back bone operation at Guwahati due to Lumber disc problem on 15.10.95. Further, he submitted that the vision of both of his eyes was adversely affected due to early cataract and practically there was no vision in his left eye and for the reason he was finding it extremely difficult to perform duties of Cashier. He also submitted that his wife was suffering from cervical spondylitis and neurologic pain

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accompanied with regular internal haemorrhage and under constant Medical treatment at Guwahati. The Regional Director rejected the prayer of the applicant on the ground that he had not submitted any medical certificate to prove his contention. Further that the applicant never complained in September 1996 when he was posted as Cashier in Local Office, Guwahati regarding his difficulties in discharging the duties of Cashier. In the representation the applicant has also alleged discrimination against him because he was earlier transferred to some other places whereas his colleagues Shri Sabda Ram Kalita and Shri Phanindra Dutta Patgiri were never transferred from Guwahati since their appointment in 1982. The Regional Director rejected this contention of the applicant on the ground that those officials were required to be retained for some specific works in the public interest which cannot be entrusted to others. He also stated that the transfer of the applicant to Bongaigaon was in public interest and could not wait for completion of academic year of the children of the applicant.

4. In Union of India & Ors. vs. S.L. Abbas, (1993) 25 A.T.C 844, the Hon'ble Supreme Court has laid down that unless the order of transfer is vitiated by mala fide that is made in violation of any statutory provisions the Court cannot interfere with the order. In the present case under consideration there is no allegation of violation of any statutory provision. The contention of learned counsel, Mr M.Chanda, is that the order of transfer as well as the order of rejection of the representation of the applicant were issued with mala fide on the part of respondent No.3 with a view to giving undue favour to Sri Sabdaram Kalita and Sri Phanindra Dutta Patgiri who were never transferred out of Guwahati. In particular, he pointed out to the

following passage of the impugned order dated 8.7.1997 rejecting the representation of the applicant which, according to him, establishes the mala fide.

"Sri Deka is informed that the Regional Directors have retained a few officials at Regional Office as they were required for some specific works at Regional Office in the public interest which could not be entrusted to other. It is a small Region and due to administration difficulties/urgency, official specially in the cadre of U.D.C has to be posted to perform the duties of Cashier in Local Offices. Since Sri Deka is a senior U.D.C to the officials mentioned in his representation, he was posted as U.D.C-Cashier which carries an additional allowance of Rs.50/- as special pay."

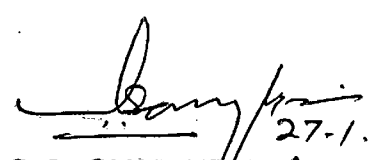
In Rajendra Roy vs. Union of India and another (1993) 23 ATC 426 the Hon'ble Supreme Court had held :-

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

In the present case, in my view, there is neither any direct evidence nor any material from which an inference can reasonably be drawn to establish mala fide of respondent No.3 against the applicant. The applicant alongwith 7 other employees were transferred by the order dated 16.5.1997. He was transferred from Local Office Guwahati to a vacant post of UDC-Cashier in the Local Office, Bongaigaon. The mere fact that those who were senior to him in the station in terms of period of stay in the particular station were not transferred does not establish mala fide. In S.L.Abbas (supra) the Hon'ble Supreme Court had held : "An order of transfer is an incident of Government service." Further, "Who should be transferred

where, is a matter for the appropriate authority to decide." At the relevant time, the competent authority had considered and decided that the applicant was to be transferred to Bongaigaon against a vacant post. The fact that Kalita and Patgiri had not been affected by the order and thereby they are benefited by staying in the same place does not establish that respondent No.3 purportedly had not transferred them for their or his personal gains or for any other oblique motive. Mr Chanda submitted that the transfer order was issued at the instigation of Shri Kalita and Shri Patgiri and the respondent No.3 had approved the transfer order of the applicant for oblique purpose to grant undue favour to the aforesaid two persons. I am of the view that such contentions are vague and cannot be sufficient grounds to establish mala fide. I have also perused the records and I cannot come to the conclusion that the transfer order was issued at the instigation of the two persons. The learned counsel for the applicant had also referred to the impugned rejection order dated 8.7.1997 and submitted that it is unthinkable that some employees are indispensable in a particular station. I am afraid it is the competent authority of the respondents only who can judge best about the suitability of a particular employee of his organisation and how to deploy him.

In the light of the above, the application is dismissed. No order as to costs.


(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER