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**Central Administrative Tribunal  
Jabalpur Bench**

OA No.621/06

Jabalpur, this the 17<sup>th</sup> day of ~~October~~ <sup>November</sup> 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman  
Hon'ble Mr.A.K.Gaur, Judicial Member

Himansu Shekhar Biswas  
S/o Shri B.L.Biswas  
Regional Controller of Mines  
IBM Colony, Scheme No.11  
Kamla Nehru Nagar  
Jabalpur (M.P.)

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India  
Through its Secretary  
Ministry of Mines  
(Indian Bureau of Mines)  
New Delhi.
2. The Controller General of Mines  
Indian Bureau of Mines  
Indira Bhawan, Civil Lines  
Nagpur.
3. Shri C.P.Ambesh  
Acting Controller General  
Indian Bureau of Mines  
Indira Bhawan, Civil Lines  
Nagpur.
4. Shri Arun Prasad  
Deputy Controller of Mines  
IBM Colony, Scheme No.11  
Kamla Nehru Nagar  
Jabalpur.

Respondents

(By advocate Shri R.S.Siddiqui)

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ORDER

By A.K.Gaur, Judicial Member

Applicant is aggrieved by the order of transfer dated 31.8.2006 (A-1) transferring him from Jabalpur to South Zonal office, Indian Bureau of Mines, Bangalore in public interest.

2. The capsulated facts are that the applicant <sup>was</sup> ~~is~~ working as Regional Controller of Mines, which is a statutory post. He was exercising the statutory powers given under the provisions of Mines & Minerals (Development & Regulations) Act, 1957, with a clean service record. While so, suddenly the applicant's statutory powers including administrative and financial powers were withdrawn by respondent No.3 vide order dated 9.5.2006. The applicant challenged the action of respondent No.3 by filing OA No.310/06 before this Tribunal, alleging arbitrariness and malafide. The said OA No.310/06 was partly allowed thereby restoring the statutory powers to the applicant. Not satisfied with the relief, the applicant approached the High Court by filing W.P.No.11542/06 for redressing his grievance in full. In the meantime, vide order dated 4.8.2006 (A-8) the applicant was directed by the department to undertake a tour to South Zone, Bangalore region to inquire into illegal mining activities there. The applicant enquired into the matter and submitted his report to respondents on 30.8.2006 and on the next day the impugned transfer order was served on the applicant.

3. The learned counsel for the applicant submitted that in the earlier round of litigation, the respondents in their reply leveled various allegations against the applicant as a reason for withdrawing the administrative, financial and statutory powers vested with the applicant. The counsel further pointed out, citing para 36 of the reply filed by the respondents in the earlier OA, that the respondent No.3 divested the applicant of all the administrative, financial and statutory powers on the ground of alleged in-subordination and deliberate non-compliance of instructions of higher authorities. The learned counsel

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has referred to para 4 (3) of the OA in extensio and the same is being reproduced hereunder:

"The applicant feeling aggrieved with the said order dated 9.5.2006 and others filed OA no.310/06 before this Hon'ble Court. The applicant challenged the action of the respondents on various grounds including arbitrariness, without competence and jurisdiction and it is malicious in nature. In reply, the respondent made allegations against the applicant which reads as under:-

"Keeping in view of continued insubordination, leveling false and baseless charges against respondent No.2 and respondent No.3, there was no alternative with the respondents but to withdraw all the administrative, financial and statutory powers vested with the applicant (para 32 of the reply)"

Again in para 36, following allegations are made:

"The respondent No.3 has rightly withdrawn all the administrative, financial and statutory powers vested with the applicant keeping in view of his continued insubordination and deliberate non-compliance of instructions of higher authorities."

The copy of the reply filed in the earlier round of litigation is Annexure A-4.

In additional reply Annexure A-5 the following averment is made:

"As stated earlier, the conduct of the applicant is under cloud and the matter relating to irregularities committed by him is under investigation. A fact finding inquiry was conducted by the Controller of Mines and large number of irregularities were noticed during the fact finding inquiry on the basis of which it was prima facie found that the applicant committed financial irregularities and hence the matter has been forwarded for holding a detailed fact finding inquiry. The matter is under investigation."

An application for vacation of stay was filed wherein it is averred as under:-

"It is neither in the interest of justice nor in administrative interest to allow the applicant to continue to exercise statutory powers". (para 7 of the said application.

4. It has been stated by the learned counsel for the applicant that a perusal of the transfer order itself would show that the applicant has been shown to be a very competent officer whose services are highly required to inquire into illegal mining activities, a matter of national

importance. This is exactly opposite to the picture painted by the respondents earlier. The applicant alone has been picked up for transfer to Bangalore despite the fact that there are a large number of RCOMs available with the department, who are much senior and experienced than the applicant. It is impossible to understand as to how an officer (applicant) who was held to be incompetent, indulging in insubordination and indiscipline, suddenly became such an efficient officer, because of which out of many RCOMs, he alone was chosen for doing a job of national importance. According to the applicant, the transfer order is a modus operandi to give entire charge to an incompetent and ineligible officer Shri Arun Prasad, Deputy Controller of Mines, a blue eyed person of respondent No.3. Learned counsel for the applicant finally argued that the transfer order is arbitrary, unjust, unfair and malicious in nature. It is an example of colorable exercise of power and is bad in law.

5. Contesting the case, the respondents have stated in their reply that the respondents had nowhere stated about the incompetence of the applicant, which is his own imagination. The writ petition No.11542/06 filed by the applicant before the High Court is no way connected with the present transfer order. It was filed before the issuance of the transfer order. The applicant has been transferred from Jabalpur to Bangalore by a detailed speaking order in administrative exigencies and in public interest. It has been urged on behalf of the respondents that considering the experience of the applicant, he was deputed to inquire into the illegal mining activities. This was done under reference of Prime Minister's office letter dated 4.8.2006. The respondents have further submitted that there is only one RCOM in the Bangalore Regional office <sup>17</sup> and one RCOM in Bangalore zonal office looking after the work of next higher post of Controller of Mines lying vacant. The applicant has been transferred against this post specifically for the purpose of inquiring into the illegal mining activities in Karnataka State. It has been further contended by the respondents that the present OA is premature as the representation filed by the applicant against his transfer is pending for disposal.

6. We have heard the learned counsel appearing on both sides.

7. The law relating to scope of judicial review in transfer orders of Government servants has been fairly settled by the Apex Court in a catena of judgments and some of them are 1994 SCC (L&S) 230 – **Union of India Vs. S.L.Abbas**; 1993 SCC (L&S) 138=(1993)1 SCC 148 **Rajendra Roy Vs. Union of India**, AIR 1974 SC 555 **E.P.Royappa Vs. State of Tamil Nadu**, AIR 2004 SCC 2165 **State of U.P and others Vs. Gobardhan Lal**, AIR 2004 SCC 4121 **State of Uttar Pradesh & others Vs. Siya Ram and another**. It is also settled principle of law that an order of transfer can be interfered only in 3 situations as under:

(i) If the order of transfer is malafide

(ii) If the transfer order has been passed by an incompetent authority and punitive.

(iii) If the transfer order has been passed in violation of statutory rules

8. In the present case, the applicant has alleged the order to be "malicious in nature" and has impleaded Shri <sup>V.C.Pu</sup> J.B.Ambesh acting Controller General of IBM as respondent no.3 without making any specific allegation against him. The Hon'ble Supreme Court has held in **Medley Chemicals Limited Vs. State of Orissa**, [2004 (12) SCC 390] that the plea of malafide must be specific and the person against whom malafide has been alleged must be made a party to the proceedings. In the present case, despite having been made a party, respondent no.3 has not filed any separate reply. Instead, a reply on behalf of all the respondents has been filed by the Senior Mining Geologist of IBM, Jabalpur. In the reply, the respondents have not denied the basic facts but have justified the transfer order on various grounds. Hence, the only issue that is

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required to be decided is whether the transfer order has been issued in malafide exercise of the powers by the respondents in general and not in particular by respondent no.3.

9. In his pleadings, the applicant has alleged that the "transfer order is arbitrary, unjust, unfair and malicious in nature". It has further been alleged that "since the applicant partly succeeded in OA No.310/06, the impugned order is passed to get rid of applicant by adopting a different methodology of transfer". The applicant has also submitted that the fact that immediately within 45 minutes of service of transfer order, the applicant's chamber was sealed shows that "the transfer is not a normal transfer but is because of favoritism shown to Shri Arun Prasad and malice against the applicant". The applicant has also questioned the justification of posting the applicant "for the exclusive work of inquiry regarding the illegal mining etc", as he had already submitted a detailed report on these activities on 30.8.2006 and because there are "sufficient number of competent officers in south zone to whom this work could have been entrusted".

10. Admittedly, the respondents had earlier tried to divest the applicant of statutory, administrative and financial powers which were vested in him as the Regional Controller of Mines, Jabalpur by issuing an office order (annexure A-3). As per the respondents this was done because they found "several instances of insubordination and deliberate non-compliance of instructions of higher authorities" by the applicant as Regional Controller of Mines. This order had led to the first round of litigation between the parties when the applicant had filed OA 310/06 challenging this order. The Tribunal, while disposing of the aforesaid OA,

quashed the impugned order to the extent it sought to withdraw the statutory powers vested in the applicant as Regional Controller of Mines. The contention of the applicant is that since the applicant partly succeeded in the aforesaid OA, the respondents have passed the impugned order to "get rid" of the applicant by adopting a different methodology of transfer. The applicant has neither challenged the authority of the respondents to transfer him nor has alleged violation of any of the statutory rules, but has merely mentioned that "it is impossible to swallow and understand as to how an officer (applicant) who was held to be incompetent doing insubordination indiscipline, suddenly became such an efficient officer because of which out of many RCOM, he alone was selected for doing a job of national importance". In making this averment in his pleadings, the applicant has gone slightly overboard inasmuch as the respondents have denied that they ever considered the applicant to be an incompetent officer. On perusal of the documents on record, we do find that the applicant was divested of the administrative, financial and statutory powers vested in him as Regional Controller of Mines considering several instances of insubordination and deliberate non-compliance of instructions of higher authorities by him (annexure A-3) but not on the ground of being incompetent.

11. There is no doubt that the applicant is an experienced officer and there is nothing on record to show that his competence had ever been doubted by the respondents. At the same time, it is also a fact that the respondents were not happy, for whatever reasons, with the way the applicant was exercising his administrative, financial and statutory powers as Regional Controller of Mines, IBM, Jabalpur. That being the case, it is not

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surprising that, as the impugned order shows, the applicant has been transferred to a post where he will not be required to be vested with any administrative, financial or statutory powers, as his job will be to look into the illegal mining activities in the State of Karnataka and submit a report to Chief Controller of Mines through the officer-in-charge of the south zone officer of IBM Bangalore. The applicant has not submitted any material to show that the respondents have transferred him out of Jabalpur because of certain ulterior motives. The only allegation of the applicant is that since the respondents failed to divest the applicant of statutory powers through an office order, they transferred him out of Jabalpur. This appears to be correct also inasmuch as the transfer order has closely followed the decision in OA No.310/2006, as a result of which statutory powers were restored to the applicant. However, since the applicant has not been able to submit any material or documentary evidence to show that the closeness between the two events is for any reason other than public interest, as has been asserted by the respondents in their counter reply, we are not inclined to accept the contention of the applicant that the transfer order is malicious in nature or is in malafide exercise of powers.

12. We notice that the respondents have incorporated detailed justification in the impugned order and have also filed documents in support thereof. It is a fact that the Chairman of the Administrative Reforms Commission wrote a letter to the Prime Minister on 11.7.2006 (annexure R-1-1) informing him of illegal mining activities in the State of Karnataka and requesting him to order an appropriate inquiry and constitute a task force of the representatives from various Ministries including Mines.

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Thereupon, the Ministry of Mines requested the Controller General of Indian Bureau of Mines on 24<sup>th</sup> July, 2006 (annexure R-1) to furnish a detailed report. Consequently, the Chief Controller of Mines asked the applicant to visit the area and prepare a comprehensive report under the guidance of RCOM, SZ (annexure R-2). From the letter written by the Chairman of the Administrative Reforms Commission, it is amply clear that this was not a matter which could be settled by a short visit to the area. In the said letter, the Chairman Administrative Reforms Commission has requested Government of India "to intervene in the matter" and "take necessary steps to halt denudation of forest wealth and also the indiscriminate exploitation of the mineral wealth". The respondents have rightly stated in their counter reply that it needed "a permanent arrangement". The respondents have also denied the allegation of the applicant that a battalion of Regional Controller of Mines was available in South Zone office to whom this work could be assigned. They have clarified that "there is only one RCOM in the Bangalore Regional office and one RCOM in Bangalore Zonal Office looking after the work of next post of Controller of Mines (SZ) as the post of Controller of Mines is still vacant". The respondents have also clearly elaborated that "the work of inspection of illegal mining in the Bellary - Hospet area of Karnataka State is a continuous work which needs a permanent arrangement to look after/ monitor the illegal mining in Karnataka State". In view of these facts, we cannot find any fault with the respondents for deputing a senior officer from outside the south zone to look into the illegal mining activities in that area. This is an issue which is better left to the department to decide and if the department feels that a senior officer is required to handle this issue, the Tribunal can not direct the department otherwise.

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13. Another contention of the applicant is that "many RCOMs who are much senior and experienced than the applicant are available with the department", but "out of many RCOMs he alone was selected for doing a job of national importance". There is no doubt that the applicant is an experienced officer and it is for the department to decide about the suitability of an officer for a particular work. We agree with the submission of the respondents that "the applicant is not at all competent to decide the posting of an officer in a particular zone and work to be allotted to him". The impugned order is a detailed one giving full justification for the transfer and we do not find that it has been issued in colourable exercise of powers.

14. The applicant has also alleged that "the transfer order, is in fact, a modus operandi to give entire charge to an incompetent and ineligible officer i.e. Shri Arun Prasad Deputy Controller of Mines at the cost of the applicant". The case of the respondents is that there is nothing unusual in such an arrangement, as the Regional Offices at Chennai, Kolkata and Bhubneshwar are also headed by officers of equivalent rank and status of Shri Arun Prasad, an officer of the level of a Deputy Secretary to the Govt. of India. It has also been averred that Dehradun Regional Office is being headed by a senior Assistant Controller of Mines, who is below the rank of Shri Arun Prasad. It has also been submitted that "the applicant is not the authority to decide about the competence and eligibility" of Shri Arun Prasad. We find these arguments convincing enough to indicate that no special favour has been shown to respondent no.4 by asking the applicant to hand over charge to him. We also notice that respondent no.4 had been working under the applicant while he was posted as the Regional

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Controller of Mines at Jabalpur, but there is nothing on record to show that at any time the applicant complained against the competence of respondent no.4. Therefore, the allegation that respondent no.4 is an incompetent officer remained <sup>ed</sup> ~~ed~~ *unsubstantiated.*

15. Another submission made by the applicant is that he was served with the transfer order immediately on his return from the tour of Bangalore and his chamber was sealed within 45 minutes of the service of transfer order. The respondents have not denied these facts, but have stated that the impugned order has clearly mentioned that the joining time, transfer TA etc. will be allowed to the applicant as per rules. We do find that unseemly haste has been shown by the respondents while dealing with a senior officer. This is something which could have been and, in fact, should have been avoided. But this act itself is not sufficient to establish the allegation of malafide on the part of the respondents.

16. Lastly, the applicant has assailed the transfer order also on the ground that it has been passed during the pendency of writ petition no.11542/2006 which has been filed by the applicant to get further relief consequent to the decision pronounced in OA No.310/2006. The respondents have clarified that this writ petition is in no way connected with the present transfer order. The applicant himself has also admitted that the writ petition has been filed against the order of this Tribunal in the aforesaid OA to the extent that complete relief has not been granted to the applicant and also against the orders of the department. In view of this, we are of the view that the impugned order can not be assailed on the


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ground that it has been passed during the pendency of the said writ petition.

17. In view of the facts and circumstances enumerated above, we are of the view that no case has been made out by the applicant warranting our interference with the impugned order. The OA is accordingly dismissed. No order as to costs.

  
(A.K. Gaur)  
Judicial Member

  
(Dr. G.C. Srivastava)  
Vice chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अपने अति:-


(1) शक्ति, उच्च न्यायालय कार प्रयोगशाला, जबलपुर

(2) आवेदन के निवेदन/पु.....के काउंसल

(3) सत्यजीव शर्मा, जिला.....के काउंसल

(4) कंधपाल, एम.ए. जबलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही हेतु

  
22/11/86

Done  
on 23/11/86  
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