

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 883 of 2004

Indore, this the 19th day of October, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Avinash Kumar Nigam, S/o. Shri
Purushottam Das Nigam, Age 45 yrs.,
Occupation : Service, Presently posted
as Store Keeper Cum Accounts Clerk in
the officer of the Development Commissioner,
Ministry of Textile, Handicrafts Marketing
and Service Extension Center, 38, Ravi Nagar,
Gwalior.

.... Applicant

(By Advocate – Shri Jitendra Sharma)

V e r s u s

1. Union of India, through Secretary,
Ministry of Textile, Udyog Bhawan,
New Delhi.
2. Development Commissioner, (Handicrafts),
Ministry of Textile, West Block No. VII,
R.K. Puram, New Delhi-66.
3. Deputy Director (Admn.III),
Office of the Development Commissioner,
(Handicrafts), Ministry of Textile, West
Block No. VII, R.K. Puram, New Delhi.
4. Assistant Director (H),
Ministry of Textile, Handicrafts Marketing
and Service Extension Center,
38, Ravi Nagar, Gwalior.
5. Shri K. Ram, Assistant Director (H),
Ministry of Textile, Handicrafts Marketing
and Service Extension Center, 63/4,
Sanjay Place, New Agra U.P.

.... Respondents

(By Advocate – None) Sh. V.K. Sharma

order corrected
as per order
dated 23.11.05

in M.A. 969/05

15/12/05

DR

ORDERBy Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"i) the order of transfer contained in Annexure A-1 may kindly be quashed alongwith all consequential benefits,

ii) the cost of the litigation may also be awarded to the petitioner in the interest of justice."

2. The brief facts of the case are that the applicant is holding the post of Store Keeper cum Accounts Clerk and is presently posted in the office of the respondent No. 4. The applicant was posted in the training centers, where the ITOs were not available and he was compelled to discharge the duties of higher responsibilities of ITO. The applicant had discharged the duties of ITO efficiently in the relevant time. He submitted representations to the authorities claiming benefits of pay and allowances at par with the ITO for officiating period. But the respondents did not act upon his representations. The benefit of pay scale of ITO and CTO for the officiating period was extended to the similarly situated employees. He filed OA No. 474/2002 before the Tribunal and vide order dated 28.11.2002 the Tribunal directed the respondents to decide the representation of the applicant. The representation of the applicant could not be decided by the authorities within the stipulated time but finally they rejected the same on 22.7.2003 (Annexure A-3). The applicant again filed OA No. 654/2003 challenging the aforesaid rejection order. The said OA is still pending in the Tribunal. At the time of deciding the aforesaid representation of the applicant the respondent No. 5 was the immediate superior officer of the applicant and he wrongly briefed the respondent No. 2 about the case of the applicant and on account of such wrong briefing the representation of the applicant was rejected. His legal dues like TA, conveyance allowance and honorarium for extra duties taken in shilp Bazar haven not been settled and are withheld by the respondents.



The respondent No. 5 who was the then drawing and disbursing officer of the applicant, himself withdrawn Rs. 1,500/- by preparing forge voucher and misappropriated the fund of the applicant infact committed fraud with the applicant. The applicant made a complaint of the respondent No. 5 to the higher authorities and sent several reminders thereafter for taking action against him. But nothing came out. Ultimately the applicant decided to launch the prosecution against the respondent No. 5 individually. The applicant sent an application to the higher authorities for grating sanction of prosecution against the respondent No. 5 and made a complaint to the local police for taking cognizance in the matter. The local police started investigating the matter. The applicant was called for investigation. After starting investigation by police, the applicant was called by the authorities at head office Delhi alongwith relevant papers. The applicant and concerned accountant submitted the relevant record before the authorities. No effective action was taken against the respondent No. 5. The higher authorities instead of taking action on the complaint made by the applicant were trying to drop the proceeding against the respondent No. 5 by illegal favour. During the said proceeding the applicant was advised to withdraw the said complaint. The applicant refused the same. Hence, the applicant and the concerned accountant both are subjected to the present transfer due to unwarranted favouring of the respondent No. 5. The applicant who is a low paid employee and holding clerical post has been transferred at a long distance and the children of the applicant are getting education either in Gwalior or nearby Gwalior. Hence, this Original Application is filed.

3. No is present for the respondents. Since it is an old case of 2004, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicant.



4. It is argued on behalf of the applicant that the applicant is being harassed by the respondents from time to time on various grounds. He had filed several OAs and representations but inspite of providing him due relief, the respondents have transferred him vide letter dated 8.10.2004 (Annexure A-1) from Gwalior to Port Blair situating at a very long distance place. His children are getting education in Gwalior and nearby places and this transfer is done on malafides as the applicant had made complaint against the private respondent No. 5 who was the immediate superior officer of the applicant. The respondent No. 5 being the drawing and disbursing officer of the applicant himself withdrawn Rs. 1,500/- by preparing forge voucher and misappropriated the fund of the applicant. The applicant made complaint of the respondent No. 5 to the higher authorities and he was also called by the head officer with the concerned documents. But instead of taking action against the respondent No. 5 he was advised to withdraw the said complaint against the respondent No. 5. But he refused the same. Hence, the applicant is subjected to the present transfer alongwith the concerned Accountant. The action of the respondents is apparently malafide and hence, this Original Application deserves to be allowed.

5. The respondents have contented in their reply that when the applicant did not work on the post of ITO then there was no question to grant him the benefit of the pay scale of ITO. All allegations made against respondent No. 5 are wrong. The respondent No. 5 never briefed wrongly to the higher authorities against the applicant. With regard to the alleged complaint against the respondent No. 5 by the applicant, it is submitted by the respondents in their reply that the applicant was heard personally but could not produce any evidence or could not give any satisfactory reply to substantiate his complaint. The respondents had not admitted that the higher authorities instead of taking action on the complaint made by the applicant were trying to drop the proceeding against the respondent No. 5 by illegal favour. It is also not admitted by the respondents that the



applicant was advised to withdraw the complaint and the applicant and the concerned Accountant both are subjected to the present transfer due to unwarranted favouring the respondent No. 5. The transfer of an employee is regular course of instance of service. The applicant cannot agitate his transfer before the Tribunal on the ground of education of his children. Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the applicant and on careful perusal of the pleadings and records we find that the contention of the applicant that he had performed the work of the ITO and he was not paid for the same is denied by the respondents in paragraph 4.3 of their return, which is not controverted by the applicant by filing any rejoinder. The applicant had made allegation against the private respondent No. 5 that at the time when he was drawing and disbursing officer of the applicant he himself withdrawn Rs. 1,500/- by preparing forge voucher and misappropriated the fund of the applicant. The applicant made complaint against it and when no action was taken against respondent No. 5 he sent an application to the higher authorities seeking permission for prosecuting respondent No. 5 himself. As per direction of the respondents he went to the head office with the relevant records to prove the complaint against the respondent No. 5. But he alleged that the respondents also defended the case of the respondent No. 5 and he was asked to withdraw the complaint which he had refused. The respondents have mentioned in their return that the applicant could not produce any evidence and also could not give any satisfactory reply to substantiate his complaint against this point. This submission of the respondents is also not controverted by the applicant by filing any rejoinder. The applicant has particularly made allegations against the higher authorities that they are trying to defend the wrong action of the respondent No. 5 which is not supported by any cogent reason and documents. The argument of the applicant is that he is holding a clerical post which is a Group-C category and he has been transferred at a very long distance i.e. from Gwalior to Port Blair, whereas



another UDC Shri K.K. Rathore is transferred from Gwalior to Indore only vide the same impugned order. Indore is nearer from Gwalior but Port Blair is very far from Gwalior

7. Considering all the facts and circumstances of the case we are of the considered view that the impugned order of transfer dated 8.10.2004 (Annexure A-1) cannot be said to be passed in violation of the rules, or with malafide intention or passed by an incompetent authority. Hence, the same is not liable to be quashed and set aside.

8. Before we may part we may observe that the applicant is a Group-C employee and he has been transferred to a farer place i.e. from Gwalior to Port Blair. Therefore, the respondents may consider the case of the applicant sympathetically for his posting to a nearby place.

9. In the result, the Original Application is dismissed with the above observation. No costs.

(Madam Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन संख्या..... जललपुर, दि.....
प्रतिनिधि कर्तव्य वित्त:-
(1) सहित, उत्तर व्यापार एवं व्यावसायिक, जललपुर
के काउंसल
(2) सहित, उत्तर व्यापार एवं व्यावसायिक, जललपुर
के काउंसल
(3) सहित, उत्तर व्यापार एवं व्यावसायिक, जललपुर
सूचना एवं आवश्यक प्रक्रिया
उपराजिकार

D. Jitendra Rathore
Dr. S. K. Singh
V. K. Rathore
D. K. Singh

Recd
8/11/05

पृष्ठांकन संख्या..... जललपुर, दि.....
प्रतिनिधि कर्तव्य वित्त:-
(1) सहित, उत्तर व्यापार एवं व्यावसायिक, जललपुर
(2) आवासीय वित्तीय, जललपुर
(3) प्रत्यक्षीय वित्तीय, जललपुर
(4) काउंसल, उत्तर व्यापार एवं व्यावसायिक, जललपुर
सूचना एवं आवश्यक प्रक्रिया
उपराजिकार

D. Jitendra Rathore B.A. B.Ed
V. K. Rathore B.A.
D. K. Singh, Vice Chairman of
H.C. B.Ed.

17/11/05