
(1999) 08 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 8593 of 1998

Union of India

APPELLANT

Vs

Central Administrative Tribunal, Allahabad and another

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Citation : (1999) 4 AWC 2937 : (1999) AWC 2937

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Satish Chaturvedi Addl., Govt. of India, for the Appellant; Rajendra Dobhal, K.C. Singh and K.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The respondent No. 2 herein, who has been serving as a Chowkidar in Military at Dehradun (Central Command) right from September 2, 1991, successfully assailed an order of his transfer passed on 16.11.1995 transferring him from Dehradun to Lansdown before the Central Administrative Tribunal. Allahabad Bench. The petitioner has come up before this Court assailing the validity of the Order dated 24.9.1997 passed by the CAT appending its copy as Annexure-7.

2. While admitting this writ petition on 10.3.1998. the Division Bench had passed the following order :

"Heard Sri Satish Chaturvedi for the petitioner and Sri K. P. Singh for the respondents.

Admit.

Issue notice. Operation of the impugned order dated 24.9.97 passed by respondent No. 1 in Original Application No. 1101 of 1996 shall remain stayed until further orders of this Court. Hearing of the writ petition is expedited."

3. We find on record an application filed by respondent No. 2 for vacating the

order of stay for the reasons mentioned in the counter-affidavit which was listed once on 6.6.98 and thereafter it remained undisposed of. Now this writ petition has been listed before us.

4. Firstly the facts.

4.1. The order of transfer of respondent No. 2 passed on 16.11.1995 has been appended as Annexure-1. Its perusal shows that he was transferred from Dehradun C.W.E. No. 1 to A.G.E. (1) Lansdown C.W.E. No. 11 Dehradun on account of administrative requirement at the expense of the State, which has approval of the appropriate authority of the Head Quarters. Annexure-3 is his representation dated 16.3.1996. From a perusal of this document, it appears that he alleged that his posting order was Issued suddenly probably under some misunderstanding or some wrong information and thus requires immediate review. A comment was called for and submitted on 8.4.1996 vide Annexure-4 stating that his posting has been ordered by higher authorities and his movement has not taken place as he is on sick leave. Respondent No. 2 made yet another representation dated 19.7.1996. Again a comment was called for. Again a comment was submitted copy of which is Annexure-5. Thereafter yet another order for transfer was passed on July 18, 1996 (copy appended as Annexure 2), in substance reiterating earlier posting. Respondent No. 2 moved the CAT assailing the Order dated 16.11.1995 (Annexure-1) and the consequential Movement Order dated 18.7.1996. He alleged to this effect, inter alia, that although the order was purportedly issued on administrative ground, no such ground is known to the office in which he is working and thus it is arbitrary, uncalled for and liable to be set aside.

4.2. Annexure-C. A. 2 shows that by order dated 18.10.1996 the CAT directed to maintain status-quo.

4.3. A counter-affidavit was filed by the petitioner before the CAT stating, inter alia, therein that he was transferred purely on administrative grounds because his stay in the office of the Garrison Engineer was not in the public interest ; that he was creating administrative problems and indiscipline amongst other employees ; that the competent authority had passed order of transfer after reviewing the situation prevailing in the office ; that he was served with the Movement Order and even then he did not join his place of posting : that he had been transferred within zone without any mala fide intention and on administrative ground ; that he has failed to make out any case ; that on 27.1.1995 he had abused and manhandled Sri C. P. Bhatt, Senior Auditor of AAO-GE Dehradun and on complaint matter was investigated and he was held responsible and found guilty ; that as laid down by the Hon'ble Supreme Court in *Shilpi Base v. State of Bihar* 1992 1 SCC 127 even if transfer order was passed in violation of executive Instructions, the Court ordinarily should not interfere with the order ; that the aforesaid order was not passed on the advice of Sri S. S. Mishra as alleged by him ; and that the petition deserves to be dismissed.

4.4. Respondent No. 2 filed rejoinder stating, inter alia, that in the investigating report the dispute with Sri Bhatt was purely personal in which both had abused each other and in the absence of evidence of the witnesses, it could not be decided. This report has been appended as Annexure-C.A. 1.

5. Even though the learned Additional Member, CAT noted that transfer is an incidence of service, yet he proceeded to quash the order of transfer on the ground that from the counter-affidavit it appears that it was passed on the ground that he was creating indiscipline amongst employees and administrative problems and the incident of misconduct with Sri Bhatt in the investigation has been found that both had abused each other and as there was no evidence, no decision could be arrived at as stated in the rejoinder-affidavit which was not controverted by the respondents. Even assuming that he was guilty of misconduct, the proper course was to proceed departmentally. The learned member also noted that the office in which he was working was not aware of the reasons for his transfer on administrative grounds.

6. Sri Satish Chaturvedi, learned counsel appearing in support of the writ petition, contended that no other reason of transfer of respondent 2 was not correctly mentioned in the order except that he was being transferred on administrative grounds. The transfer being an incidence of service, the respondent No. 2 had no right to stay at Dghradun for more than normal period of three years, whereas he had remained there by then for about five years. On the investigating report Respondent 2 had used abusive words to Mr Bhatt. Non-awareness of the office of the reasons of transfer by the higher authority was no ground to record a finding against the order of transfer passed by the competent higher authority and this was completely lost sight of the CAT. There was neither any case nor was any material on the record that the transfer order was passed at instance of Mr. Bhatt or on the advice of Sri S. S. Mishra as alleged in his application before the CAT by respondent No. 2 nor such a finding has been recorded by the CAT. The finding that the proper course was to proceed departmentally and thus the transfer was punitive was not correct. In any view of the matter, the CAT which should not have exercised its discretionary Jurisdiction. Accordingly, the impugned order of the CAT be set aside.

7. Sri Rajendra Dobhal, learned counsel appearing on behalf of respondent No. 2, on the other hand, contended that the findings of fact recorded by the CAT being valid, are binding on the High Court and this writ petition deserves to be dismissed with cost.

8. Having heard learned counsel for the parties and given our anxious thoughts, we find substance in the contentions of Mr. Chaturvedi and accept them. We are of the view that the findings recorded by the learned Additional Member, CAT are unsustainable or In any event he has erred in exercising his discretion in favour of respondent No. 2. CAT has failed to consider that the competent authority has passed the order of transfer on administrative grounds non-knowledge of which in the subordinate office was Irrelevant. On the report of the I.O. respondent No.

2 had used abusive words to his superior. This was an act of breach of indiscipline which must be of the highest order in the army. CAT has also failed to appreciate that respondent No. 2 has no legal right to continue at Dehradun beyond the normal tenure of three years and in fact he had stayed there for more than 6 years on the day on which he proceeded to pass the order. The finding that only disciplinary proceeding should have been initiated is wholly untenable. We hold that In the peculiar facts and circumstances, the transfer of respondent No. 2, without making any adverse comment was wholly proper. CAT wrongly exercised its discretionary jurisdiction in favour of respondent No. 2.

9. For the reasons aforementioned, we allow this writ petition and set aside the impugned order of the CAT. but without cost.

10. If respondent No. 2 even now within two weeks fails to join his transferred place In that event, it will be open for the authority concerned to take appropriate disciplinary action against him in accordance with law taking in account that after the interim order of this Court staying the operation of the order of the CAT dated 24.9.1997. he was obliged to Join.

11. Before parting, it is clarified that after respondent No. 2 remains at Lansdown for the normal period, he may make his representation for transfer to any other place, which if made shall be considered as per the rules by the authority concerned.