

(1997) 09 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 22456 of 1997

Vinod Shankar Shukla

APPELLANT

Vs

Conservator of Forest, Social Forestry Circle, Allahabad and
others

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 7

Citation : (1998) 1 AWC 346 : (1997) 3 UPLBEC 1974

Hon'ble Judges : R.A. Sharma, J; J.C. Mishra, J

Bench : Division Bench

Advocate : R.K. Ojha, for the Appellant; S.C. and K.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Being aggrieved by order of his transfer/posting, the petitioner, who claims to be Forest Ranger, has filed this writ petition. Two counter-affidavits have been filed by the respondents. The petitioner has filed rejoinder-affidavits in reply thereto.

2. Learned counsel for the petitioner has made two submissions in support of the writ petition, viz., (i) the transfer order is in violation of the guidelines issued by the Government ; and (ii) the transfer order contains a stigma and. therefore, amounts to punishment. Learned standing counsel and learned counsel for the respondent No. 3 have disputed the above contentions.

3. In June, 1996, the petitioner was transferred from Mirzapur Forest Division to Allahabad and by order dated 8.8.1996 he was posted at Handia by the Divisional Forest Officer. Allahabad. The petitioner made a representation against the said order dated 8.8.1996 on the basis of which he was transferred from Handia and was posted at Meja in the same district of Allahabad. After about a year by order dated 12.6.1997, the petitioner was transferred from Meja to Pratappur in the same district, but this order was subsequently cancelled and

was, therefore, not implemented. On 3.7.1997 another order was passed attaching him to the office of the Sub-Divisional Officer, Meja. It is this order which is under challenge in this petition.

4. It is well-settled that if a transfer order has been passed in violation of guidelines laid down by the Government, this Court cannot interfere with such an order under Article 226 of the Constitution of India. Proper forum for redressal of the grievances against such an order is the Government itself before which the person aggrieved should make representation. In this connection, reference may be made to *Union of India and Others Vs. S.L. Abbas*, ; *Shilpi Bose v. State of Bihar*, AIR 1991 SC 532 and *Union of India and another Vs. N.P. Thomas*, . A Division Bench of this Court in *Mahabir Shah v. Conservator of Forests*, 1997 (1) LB and ESR 736 (All), after considering the relevant case law has reiterated the same view holding that breach of the guidelines/policy laid down by the Government regarding transfer of its servants, is not a ground to interfere under Article 226 of the Constitution with the order of transfer. That apart, the impugned order cannot be said to be an order of transfer in real sense of term, because the petitioner has merely been attached to the office of the Sub-Divisional Officer, Meja and according to paragraphs 3 and 7 of the counter-affidavit filed by the Forest Ranger, Social Forestry Division, Allahabad the petitioner will continue to work in the same building in which he was working earlier while posted as Forest Ranger. By the impugned order local adjustment/arrangement has been made. Although the petitioner in his rejoinder-affidavit has denied the fact that he will continue to work in the same building at Meja in which he was working earlier as Forest Ranger, but the fact that he has been attached to the office of Sub-Divisional Officer, Meja has not been disputed. Whether the petitioner remains in the same building or not is not relevant. The fact remains that he remains in the same Sub-Division. The first submission is accordingly rejected.

5. As regards the second submission, it may be mentioned that in the impugned order, it has been stated that as the work in the Meja Range is not being done properly/satisfactorily by the petitioner, he is being attached to the office of the Sub-Divisional Officer, Meja. Whether such a mention in the transfer order would amount to stigma. Stigma is an aspersion cast on the work and conduct of a Government servant and constitutes a penal consequence. Therefore, it amounts to punishment. Transfer by way of punishment is not permissible in law. In *State of U.P. and Others Vs. Jagdeo Singh*, , the Supreme Court has laid down that the police officer cannot be transferred by way of punishment, because in such a case the provisions of Section 7 of the Police Act would come into play. But mention of "unsatisfactory work" in the order does not constitute a stigma. In *The State of Orissa and Another Vs. Ram Narayan Das*, , the Supreme Court held that the discharge of a probationary Government servant for "unsatisfactory work and conduct" does not amount to stigma. In *State of Gujarat Vs. Akhilesh C. Bhargav and Others*, , the case of *State of Orissa v. Ram Narayana Das* (supra) was referred to with approval.

6. For the reasons given above, this writ petition is dismissed.