

DR. RAMESH CHANDRA TYAGI

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v.

UNION OF INDIA AND ORS.

FEBRUARY 11, 1994

[R.M. SAHAI AND DR. A.S. ANAND, JJ.]

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*Service Law: Transfer—Appellant, a man of high achievement and distinction in Science—Transferred to a place neither suitable nor proper for him—Transfer order passed by authority not competent to do so—Appellant's refusal to comply with transfer order—Disciplinary proceedings initiated—Ex parte order of dismissal of appellant passed—Held, transfer order being not passed by competent authority and being contrary to rules was non est in the eye of law—Consequently order of dismissal falls automatically.*

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**The appellant, a man of high achievement and distinction in science, was offered a supernumerary post in 1971 by Government of India and was appointed Temporary Principal Scientific Officer (Gazetted Class-I) subject to approval of Union Public Service Commission. He was regularised in 1972 on the said post. In 1978 he was awarded S.S. Bhatnagar Award.**

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**On 29th February, 1977 the appellant was directed to hand over charge of his activities at Delhi and to join at Institute of Armament Technology, Pune on a post carrying same salary but which, according to Director of the Pune Institute, was neither suitable nor proper for the appellant. The appellant approached the civil court but as a result of a meeting with the Secretary of the Department he was permitted to remain at Delhi and was put on deputation for one year and at IIT, Delhi and the suit was withdrawn. Later he approached the civil court again seeking declaration that the transfer order was malicious and bad as it was not only motivated but was not passed by the Secretary who alone was competent to transfer him. In February, 1980 when appellant's deputation at IIT came to an end, he was directed to join at Pune.**

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**The respondents in their written statement pleaded that the order passed by Director General was approved by the competent authority, but failed to produce the same and ultimately they relied on delegation of power. In the meantime, the department started disciplinary proceedings**

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**A** against the appellant for not complying with the order passed in 1980 directing the appellant to join at Pune. These proceedings came to an end ex-parte in 1981 and the appellant was dismissed from service. The litigation between the parties ultimately led to the instant appeal by special leave.

**B** **Allowing the appeals, this Court**

**C** **HELD: 1.1.** The transfer order being not passed by the person competent to do so, and being contrary to rules was *non est* in the eye of law. The competent authority to transfer the appellant was the Secretary of the Department whereas the order was passed by the Director General. No order delegating the authority has been produced, and it was ultimately conceded that no order of delegation was on record. It is not possible to infer delegation because there was orders on the record which indicated that subsequently the Secretary had delegated the powers. It is not delegation earlier or later which is material but whether any delegation existed **D** on the date when the transfer order was passed. Further the respondents took a definite stand in the written statement that the transfer order was approved but did not produce the record in the trial court nor they could substantiate it even in this Court. [920-E-H]

**E** **1.2.** The second order of transfer directing the appellant to join after he returned from his deputation came to an end in 1980 was not a fresh order either by the Secretary or even the Director General and the appellant was directed to join at Pune in pursuance of the earlier order passed in 1977. From the records it is beyond doubt that the appellant was again directed to be transferred to Pune not on a fresh order of transfer but on the same order as the noting in the file reads, 'that orders of transfers to **F** IAT still stand and have not been cancelled.' It was this note which was approved by the authority concerned and it was directed that, 'he should be posted to IAT'. Since the earlier order being invalid, obviously did not exist in eye of law, the second order of transfer founded on it, too, could not stand. [921-A-C] **G**

**1.3.** The transfer order being invalid or *non est*, the order of dismissal of the appellant for not complying with the same falls automatically.

[922-C]

**H** **2.1.** Although the terms and conditions of appointment provide that

the appellant could be transferred any where in the country, yet the action must be fair and order legal. It is unfortunate that he did not join. The service discipline does not permit such adamant attitude. The conduct of the appellant cannot be approved. At the same time the authorities did not adopt any reasonable or rationale attitude. They were out to squeeze the appellant and were not willing to budge and consider even when the Director of the Pune Institute requested them not to post him there as sending such a person was waste for a man of such high caliber. Such attitude of the administrative set up is neither healthy nor conducive.

[921D, E]

2.2. The entire proceedings do not leave very happy and satisfactory impression. Procedural irregularity is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with enforcements 'left without address' or 'on repeated visits people in the house told that he has gone out and they do not disclose where he has gone'. May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex-parte unless it was conclusively established that he deliberately and knowingly did not accept it. No effort was made to serve in other manners provided under Postal Act and Rules or even Service Rules. In absence of any charge-sheet or any material supplied to the appellant it cannot be said that the enquiry did not suffer from any procedural infirmity. [921-G, H; 922-A, B]

2.3. The appellant's behaviour with his superiors was not of a responsible Government servant. It is unfortunate that he did not join. The service discipline does not permit such adamant attitude. His conduct cannot be approved. The language used by him in his representation to the President of India and in various petitions filed in different courts including this Court smacks gross indiscipline, and lack of maturity. In fact it made the Court to deliberate whether this Court in exercise of its powers under Article 136 of the Constitution should interfere in favour of such a person whose conduct was highly objectionable. But on dispassionate consideration and in view of what has happened to this officer, may be mainly because of his own conduct, the unwarranted out-burts have appeared in the two representations made in 1989 and some petitions out of sheer frustration and desperation for which it would be too hard to deny him the relief. [922-D, E]

**A** **CRIMINAL APPELLATE JURISDICTION:** Criminal Appeal No. 581 of 1993.

From the Judgment and Order dated 28.9.90 of the Central Administrative Tribunal Principal Bench, New Delhi in T.A. 117/87 & 915/86.

**B** **WITH**

Civil Appeal No. 4898 of 1993.

K.R. Nagaraja for the Appellant.

**C** Mrs. K. Amreshwari, A.K. Srivastava and Ms. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

**D** **R.M. SAHAI, J.** 1. Dr. Tyagi, a man of high achievement and distinction in physics who worked as a Research Assistant in the University of Hull, England, was awarded Ph.D. in Solid State Physics, was appointed as Assistant Professor of Physics in 1967 in I.I.T., Delhi, offered Research Associateship in Solid State Physics by NASA, USA and was awarded for research work in developing solid state device technology particularly

**E** infra-red detectors and epitaxial growth of state semi conductors whose works were patented by (USA) NASA was offered a supernumerary post in 1971 by Government of India and was appointed Temporary Principal Scientific Officer (Gazetted Class-I) subject to approval of Union Public Service Commission. He was regularised in 1972 on the post of Principal

**F** Scientific Officer Solid Physics. Between 1972 to 1976 Dr. Tyagi claims to have invented flash evaporation attachment, developed infra red detectors and anti craft missiles and solar concentrator. In 1978 he was awarded S.S. Bhatnagar Award.

**G** 2. Success with self assessment of superiority of learning is not only self harming but is susceptible of creating unknown irritants. And that probably appears to have happened when the appellant on 29th February 1977 was directed to hand over charge of his activities pertaining to PBS Detectors Development to Dr. V.V. Ahashe and those relating to Polymer Project to Dr. Prem Swarup and join at Institute of Armament Technology,

**H** Pune on a post which presumably carried same salary but which according

to Director of the Pune Institute was neither suitable nor proper for the appellant. A researcher, a scholarly man of learning whose scientific acumen could have been utilised in the discipline for which he was decorated by various awards by different institutions and whose need in public interest was greater at Delhi than Pune was directed to work as Instructor. No sooner the order was passed the appellant approached the High Court under Article 226 but withdrew the same due to 42nd amendment of the Constitution and approached the civil court but when no injunction order was granted and a meeting with the Secretary of the Department brightened chances of amicable solution he withdrew the suit and was permitted to remain at Delhi and he was put on deputation for one year and directed to join at IIT, Delhi. Although he joined but was not satisfied and consequently approached the civil court again by way of Suit No. 264/78 seeking declaration that the transfer order was malicious and bad as it was not only motivated but was not passed by the Secretary who alone was competent to transfer him. In February 1980 when the appellant's deputation at IIT came to an end, and probably because he once again had approached the court, he was directed to join at Pune consequent on expiry of his assignment as Visiting Scientist at I.I.T., Delhi, Dr. R.C. Tyagi, PSCO may please be directed to report for duty to the Dean and Director, I.A.T. Girinagar, Pune, under intimation to this HQ.

3. From here on started spate of litigation between the department and the appellant. The one determined to fight for his right and justice and not to succumb to an order passed by a person not authorised in law and the other not willing to continue the appellant in the Research Wing presumably because of the attitude of the appellant. Be that as it may, what is necessary to be mentioned and is relevant, that the respondents in their written statement in the suit attempted to defend the transfer order by taking up the plea that the order passed by Director General was approved by the competent authority. But when the appellant challenged it and moved application for summoning the record and the court passed the order as well, the respondents failed to produce it. And the stand during arguments was also not consistent. At one stage it was claimed that all postings and transfers in respect of all gazetted officers (including scientists) used to be ordered by the Chief Controller, Administration and in case of the appellant it was ordered by the Chief Controller and issued by

A the then Director. Later on the learned counsel relied on delegation of  
power which shall be adverted later. Such inconsistent stands unsubstan-  
tiated by record cannot be appreciated. However in the meantime the  
department started disciplinary proceedings against the appellant for not  
B complying with the order passed in 1980 directing the appellant to join at  
Pune. These proceedings came to an end ex-parte in 1981 and the appellant  
was dismissed from service.

4. Although it appears unnecessary to narrate the tortuous course of  
litigation and the series of applications, claim petitions, writ petitions, even  
C special leave petitions in this Court as most of them were ill advised but  
after hearing learned counsel for parties and with their consent it appeared  
just and proper to decide the main issue instead of confining it to Section  
340 Criminal Procedure Code considering that the appellant is due to  
retire within short time and it would be in public interest to bring to an  
D end this unfortunate state of affairs.

5. Two basic questions arise, one, whether the basic transfer order  
passed against the appellant was valid and in accordance with law and the  
other if the dismissal order suffers from any infirmity. Taking up the  
E transfer order it is undisputed that the competent authority to transfer the  
appellant was the Secretary of the department whereas the order was  
passed by the Director General. It was attempted to be defended by  
claiming that the power of transfer was delegated. But despite grant of time  
no order delegating the authority could be produced. The learned counsel  
F appearing for Union of India had to concede that no order of delegation  
was on record. We are not prepared to infer delegation because there were  
orders on the record which indicated that subsequently the Secretary had  
delegated the powers. It is not delegation earlier or later which is material  
but whether any delegation existed on the date when the transfer order was  
G passed. Further it is necessary to mention that the respondents having  
taken definite stand in the written statement that the transfer order was  
approved but did not produce the record in the trial court nor they could  
substantiate it even in this Court, there is no option but to hold that the  
order was not passed by the person who alone was competent to do so.  
The transfer order issued by the Director General, thus, being contrary to  
H rules was *non est* in the eye of law.

6. Coming to the second order of transfer directing the appellants to join after he returned from his deputation came to an end in 1980 it was not a fresh order either by the Secretary or even the Director General and the appellants were directed to join at Pune in pursuance of the earlier order passed in 1977. Although the learned counsel was not willing to accept it but when the file was perused it appeared beyond doubt that the appellants were again directed to be transferred to Pune not on a fresh order of transfer but on the same order as the noting in the file reads, 'that orders of transfers to IAT still stand and have not been cancelled. Submitted for orders.' It was this note which was approved by the authority concerned and it was directed that, 'he should be posted to IAT'. Since the earlier order was invalid it obviously did not exist in eye of law and the second order of transfer founded on it, too, could not stand.

7. As regards the dismissal of the appellants it is unfortunate that he did not join. The service discipline does not permit such adamant attitude. We do not approve of the conduct of the appellants. At the same time the authorities too did not adopt any reasonable or rationale attitude. They were out to squeeze the appellants and were not willing to budge and consider even when the Director of the Pune Institute requested them not to post him there as sending such a person was waste for a man of such high calibre. True the terms and conditions of appointment provide that he could be transferred anywhere in the country. Yet the action must be fair and order legal. We have avoided entering into fairness but on legality there is no doubt. Such attitude of the administrative set up is neither healthy nor conducive. In service culture devotion to work and duty is more important than clash of false ego. We are pained to observe that entire proceedings do not leave very happy and satisfactory impression. It was vehemently argued that there was no procedural irregularity. But that is writ large on the face of it. No charge-sheet was served on the appellants. The Enquiry Officer himself stated that the notices sent were returned with endorsement 'left without address' and on other occasion, 'on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned'. May be that the appellants were avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorse-

A ment on the envelope that it was refused, was not even proved by examining  
the postman or any other material to show that it was refusal by the  
appellant who denied on oath such a refusal. No effort was made to serve  
in any other manner known in law. Under Postal Act and Rules the manner  
of service is provided. Even service rules take care of it. Not one was  
B resorted to. And from the endorsement it is clear that the envelope  
containing charge-sheet was returned. In absence of any charge-sheet or  
any material supplied to the appellant it is difficult to agree that the enquiry  
did not suffer from any procedural infirmity. No further need be said as  
the appellant having been removed for not complying with the transfer  
C order and it having been held that it was invalid and *non est* the order of  
dismissal falls automatically.

8. Before parting with this appeal we are constrained to observe that  
the appellant's behaviour with his superiors as appears from record was  
not of a responsible Government servant. The language used by him in his  
D representation to the President of India and in various petitions filed in  
different courts including this Court smacks gross indiscipline, and lack of  
maturity. In fact it made us deliberate whether this Court in exercise of its  
powers under Article 136 of the Constitution interfere in favour of such a  
person whose conduct appears to us to be highly objectionable. But on  
E dispassionate consideration and in view of what has happened to this  
officer, may be mainly because of his own conduct, we felt that probably  
the unwarranted outbursts have appeared in the two representations made  
in 1989 and some petitions sheer out of frustration and desperation for  
which it would be too hard to deny him the relief.

F 9. In the result, these appeals succeed and are allowed. The order of  
dismissal and the transfer orders passed by the respondents are quashed.  
It is, further, directed that all proceedings pending in different courts and  
the Tribunal concerning or arising out of the transfer/dismissal order shall  
stand terminated.

G 10. The appellant shall be reinstated forthwith and shall be entitled  
to all benefits except that he shall be paid but only 1/3rd of the back wages  
calculated on as he was continuing in service with allowances etc. He shall  
further be entitled to be considered for promotion on reinstatement on its  
H own merits, when it falls due for such consideration.

11. We hope and trust that the department and the appellant shall adopt the attitude of forget and forgive. The department is expected to adopt more constructive approach and utilise the services of the appellant keeping in view his calibre. And the appellant must give up thinking that he is the last word on learning and self assessment of his competence and righteousness.

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12. The appellant shall be entitled to its costs which is assessed at Rs. 5,000.

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N.P.V.

Appeals allowed.