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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH. NEW DELHI.

OA-1176/98

New Delhi this the 22nd day of January, 1999.

Hon'ble Shri S.P. Biswas. Member(A)

Shri Attar Singh.
S/o Sh. Mangtu Ram.
R/o H.No.33. Kapashera Modh,
New Colony.
New Delhi-37. Applicant

(through Shri B.B. Raval, advocate)

versus

1. Union of India,
through the Secretary(Agriculture).
Deptt. of Animal Husbandry and Dairying.
Ministry of Agriculture.
Krishi Bhawan.
New Delhi-1.
2. The Quarantine Officer.
Animal Quarantine and Certification
Service, Deptt. of Animal Husbandry
& Dairying, Ministry of Agriculture,
Kapashera, New Delhi-37. Respondents

(through Sh. R.P. Aggarwal, advocate)

ORDER

The applicant who is a driver with the Animal Quarantine and Certification Service (Department of Animal Husbandry & Dairying). Ministry of Agriculture is aggrieved by the order dated 27.3.98 and 20.5.98 as at Annexures A and B respectively. By Annexure-A, the applicant has been transferred to Animal Quarantine and Certification Service. Mumbai with immediate effect. And by Annexure-B, the respondent No.2 has certified that Truck No.2742 is not a commercial vehicle and there is no need for procuring a "fitness" certificate for the aforesaid truck before it

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could be moved out to Mumbai. Consequently, the applicant has sought relief in terms of quashing of the aforesaid orders, and allow him to continue in service with the respondents office at Delhi as at present.

2' Essentially, the issue involved herein is legality or otherwise of applicant's transfer from Delhi to Mumbai. As per applicant, the order of transfer has been camouflaged under the plea that the services of the truck are not required at Delhi. Whereas the respondents are really determined to curb applicant's activities as a union leader. Shri B.B. Raval, learned counsel for the applicant has assailed Annexures A & B orders on the following grounds:-

(a) That in respondents department no inter-station transfer of drivers has ever been ordered earlier and that the applicant has been picked up to be transferred to Mumbai alongwith the truck only to victimize him for highlighting irregularities as regards repairing works pertaining to the aforesaid truck.

(b) That the applicant's trouble surfaced only after he has been elected as Secretary of the Animal Quarantine and Certification Service.

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Employees (NG) Association.
registered in 1997. The aforesaid
order has been preempted on grounds
of mala fides/motives to ease out
the applicant on considerations
other than job requirements.

(c) That the National Airport Authority
of India (NAAI for short) had
certified the body of the truck as
condemned and that the Regional
Transport Authority had refused to
give "fitness" certificate for moving
out the truck to Mumbai and yet the
respondents are insisting for
transferring the applicant from
Delhi to Mumbai with mala fide
intentions.

(d) That the truck under reference
stands officially transferred to
Mumbai alongwith the applicant but
the truck is of 18 years old and
after its trips to Jammu and Kashmir
as well as the last trip to Mizoram
in December 1997, almost all the
parts have broken. It is not road
worthy as is evident from the
certificate of NAAI.

4

(e) That the applicant was sent to the Regional Transport Authority to have entry made in the registration book of the vehicle regarding replacement of the engine but the Regional Transport Authority refused to make any entry whatsoever since the truck was not fit after the body of the same was condemned by the NAAI and in the absence of any fitness certificate to that effect, the Transport Authority refused to make any entry in the Registration Book whatsoever. Under these circumstances, the insistence of the respondents that the applicant must carry out the transfer order alongwith the truck is nothing but an act of mala fides on the part of respondents against the applicant and deserves to be considered accordingly.

(f) The applicant had given in writing on 28.5.98 that some more repairs are required to be carried out and 5 tyres needed immediate replacement. The respondents in their haste to do away with the applicant and the truck, by fair means of foul.

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207
rejected his representation dated 28.5.98 by a back dated order of 20.5.98 which establishes mala fides on the part of the respondents. On this ground alone, the order of applicant's transfer deserves to be quashed, the learned counsel for the applicant argued.

3. The respondents in their counter have denied of there being any mala fides behind the order of transfer. It has been submitted that the Quarantine Station at Mumbai was functioning in the premises of Airport earlier but has since been shifted to a newly constructed building at New Bombay which is located at the distance of 40-45 Km. from Sahara International Airport. Imported animals are to be transported from Airport to Quarantine Station. Since there is no transport arrangement owned by the department, the work is being done by hiring private transport which is not only costly but also inconvenient. Compared to this position, the work load of Animal Quarantine and Certification Service at Delhi is comparatively much less, and that too over a shorter distance from I.G.I./New Delhi Airport to Animal Quarantine Station. The distance involved in Delhi is only 3 kms. The functional requirements of the truck has been reviewed and it has been found that there is no requirement of

1

the said truck at Delhi. In support of thier stand that the truck is in a condition to move outside Delhi. the respondents have come out with the following details.

That a new engine of TATA Company has been replaced in the truck through an authorised dealer (M/s TELCO Delhi) incurring an expenditure of Rs. 1.44,963 (Annexure R-1). Repairs to body of the truck and other repair works costing Rs. 1.67 lakhs were undertaken by M's Ford Service Station, Smalkha (authorised dealer of TELCO) to the satisfaction of the applicant, who had signed all the bills of repairs in the month of March 1998. A new engine of TATA Company has been purchased and replaced through authorised TELCO dealer under the supervision of the applicant. He was attending the workshop regularly and has also claimed his travelling allowances for conducting supervision on repair works in the workshop. Moreover, the applicant has bought the truck from the workshop only after assessing the quality of work and signed all the bills of repairs.

4. Based on the claims and counter-claims of the contesting parties. this Tribunal is required to

3

adjudicate the following:-

(i) Whether the actions of the respondents in transferring the applicant to Mumbai is vitiated by mala fides, that is, if the order of transfer has been actuated by considerations other than job requirements? and

(ii) Whether the applicant is taking a false plea of "road ~~w~~orthiness" of the truck with an ulterior motive to avoid the permanent order of transfer dated 27.3.98?

5. As is evident in Annexure A-3, the truck/vehicle has been condemned only in respect of its body. Those defects appears to have been taken care of when the body of the truck and other repairs were undertaken through M/s Ford Service Station/Smalkha. All the repairs were done by keeping the applicant in the picture.

6. Records also reveal that the said truck had to undergo repairs on a large variety of items as late as March 1998 as per details at pages 47 to 51 of the paperbook. Obviously these were undertaken after the truck had come back after completing its last trip from Mizoram in December 1997. If the applicant had

2

any doubt about the "fitness" of the truck to move out to Bombay, empty or loaded, he could have raised that issue very well when extensive repairs were carried out in March 1998. I find all the repair works in March 1998 have been countersigned by the applicant. The applicant did not raise this particular issue of road worthiness in March 1998. Nor did he press for the fitness of the truck specifically in January 1998 when he had taken the truck to Mizoram.

7. It is not in doubt that the post (Truck Driver) applicant is holding carries all India transfer liability and that the transfer order has been issued by the competent authority. Applicant has not challenged any one of these. The applicant has alleged mala fides but without attributing the same to a particular respondent. This legal requirement has not been fulfilled. It is well settled in law that mala fides cannot be established but has to be only inferred with reference to antecedent facts. The applicant has not brought out any unquestionable fact or facts where from inference of ulterior motives on the part of respondents could be drawn. When the temporary transfer order (A-2) was issued, the applicant represented against the order on grounds of personal and family difficulties. If he was willing to carry out the regular order of transfer, he could have come out openly by expressing his intention accordingly without linking the order of transfer with "fitness" of the truck. He did not do so.

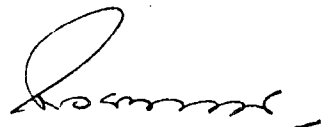
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8. In his representation dated 28.5.98 (not annexed), the applicant appears to have indicated that the following works are required to be carried out before the truck could be taken to Mumbai:-

- (i) Fitness
- (ii) Replacement of five tyres and
- (iii) Vapour blade with machine.

Applicant does not appear to have a clean mind and clear hands when it is seen that the truck has already been sent to Mumbai in June 1998 and that too without change of ~~those~~ five tyres as advised by appropriate experts. Such an attitude of the applicant needs to be deprecated. The facts and circumstances of the case as well as perusal of the records indicate that decisions to transfer the sanction of the post of truck driver alongwith the truck and the applicant as a driver were taken on the basis of job requirements of the department. I find no ground, much less convincing ones, to interfere in the matter.

9. The O.A. is accordingly dismissed, but in the circumstances, without any order as to costs.


(S.P. Biswas)
Member(A)