

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION No.426/2019

Dated this ~~Friday~~ the 5th day of February, 2021

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Vivekanand Dattatraya Abhyankar
Assistant Director (Official Language)
Trade Marks Registry, New Delhi
R/at. Vedant Society, Flat No.E-503,
Kalyan West, Pin - 421 301. ... **Applicant**

(By Advocate Ms. Swapna V. Gokhale)

Versus

1. Union of India,
Through the Secretary of
Govt. of India,
Ministry of Commerce & Industry
Department of Industrial Policy
& Promotion, Udyog Bhawan,
New Delhi - 110 011.
2. Controller General of Patents
Designs & Trade Marks
Office of Controller General of
Patents Designs & Trade Marks
Boudhik Sampada Bhawan,
Antop Hill, S.M. Road,
Mumbai - 400 037.
3. Registrar of Trade Marks,
Trade Marks Registry
Boudhik Sampada Bhawan,
Antop Hill, S.M. Road,
Mumbai - 400 037.
4. Registrar of Trade Marks
Trade Marks Registry
Plot No.32, Sector 14,
Dwaraka, New Delhi-110 078... **Respondents**

(By Advocates Shri A.M. Sethna alongwith Shri P. Khosla)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs:-

"8 (a) That this Honourable Tribunal be graciously pleased to quash and set aside Orders dated 23.03.2018, 26.03.2018 and 15.03.2019 passed by respondent whereby the applicant was transferred from Mumbai to New Delhi.

(b) That this Hon'ble Tribunal may please be give an appropriate direction to the respondent in order to transfer the applicant to Mumbai along with his original post which he was holding before transfer to New Delhi.

(c) That such other and further order or orders be passed in the facts and circumstances of the case may require.

(d) That cost of the application be provided for."

2. The facts of the case are that the applicant was working as Assistant Director (Official Language) under Controller General of Patent, Design and Trade Marks (CGPDTM), Mumbai w.e.f. 05.08.2013. He was transferred alongwith the post of Trade Mark Registry, New Delhi vide order dated 23.03.2018 and relieved vide order dated 26.03.2018. Since he was not aware of why the impugned order of transfer was issued, he sought information under RTI and came to know

that the same was issued on account of recommendations of the Inquiry Committee in inquiry proceedings held against him. It is stated that in January, 2018, hot words were exchanged between the applicant and another employee Mr. S.A. Khandare working with him in the same department. The applicant had lodged complaint with the respondents against Mr. S.A. Khandare which led to the constitution of one member Inquiry Committee on 25.01.2018 to enquire into the aforesaid incident. The said inquiry was conducted by Shri S.B. Palo, Assistant Registrar of Trade Marks. On conclusion of the enquiry, the Inquiry Committee found that there was tussle and quarrel between the applicant and the other employee. Vide inquiry report dated 13.02.2018, the Inquiry Committee recommended that both the employees should be given warning and may be separated from the present place of posting for the time being to avoid any such situation. The applicant made representation dated 18.05.2018 and thereafter on 03.07.2018 against the impugned transfer order on the ground that he has 76 years old ailing mother living alongwith him in Mumbai and needs constant care since she has undergone

Angioplasty. Further, his 72 years mother-in-law also lives alongwith him. There being two senior most family members, he requested to be transferred back to Mumbai. The respondents did not provide any reply to the said representation, consequently, he approached the Higher Authority vide letters dated 31.07.2018, 08.08.2018 and 14.10.2018 respectively. Thereafter, under Secretary of DIPP vide letter dated 11.12.2018 directed the respondent No.3 to take appropriate action on the representations of the applicant. Vide letter dated 15.03.2019, the representations of the applicant were rejected.

2.1 The applicant has termed the impugned orders of transfer/relieving and rejection of his representations as ultra vires and against the principles of natural justice. The transfer order is in the nature of punishment transfer as it has been made on the recommendation of the Inquiry Committee. Further, the transfer is not made in public interest or administrative interest. It is also agitated that there is no similar post existing in Delhi office of the respondents. As per the guidelines laid down vide OM dated 22.07.2004 (Annex A-10), the post of Assistant

Director (O.L) can be formed in each Ministry or Department having 100 or more ministerial employees or which has 4 or more attached / subordinate offices or undertakings, each having 100 or more ministerial employees. The applicant has been transferred to Delhi without observing these guidelines. The post of Assistant Director (O.L) on which the applicant was working at Mumbai only existed in head office i.e. at Mumbai and nowhere else. Further, vide office order dated 11.05.2018, the applicant was assigned the same duties to be performed by him on transfer to Delhi, which he was performing at Mumbai as Assistant Director (O.L).

2.2 The applicant has prayed that all the impugned orders are liable to be quashed and set aside and a direction to be issued to the respondents to transfer him back to Mumbai alongwith his original post.

3. At the outset, the respondents have taken preliminary objection that the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and is therefore liable to be dismissed. It is stated that representations were made belatedly by the applicant to buy time so

that he does not face the rigors of limitation in filing the OA. The letter dated 15.03.2019 of the respondents is a mere response to such belated representations which have been justifiably disposed of.

3.1 On merits, the respondents further state that the applicant is a General Central Services Group 'A' Gazetted Non-Ministerial Officer and being in transferable job is liable to serve anywhere with country wide Service Liability at various places in the country. The transfer of a Government servant in a transferable service is necessary incidence of his service career. Therefore, he is liable to be transferred to any place as per administrative requirement / administrative exigency and/or over all interest of the organisation / public interest. Referring to the incident of quarrel between the applicant and the other employee Mr. S.A. Khandare in January, 2018, it is submitted that the single member committee was constituted to conduct enquiry and to give clear recommendation for smooth functioning of the office. The Committee after completion of enquiry submitted its report recommending that both these employees may be separated from the present place of posting for

smooth functioning of the office. Therefore, on the basis of the recommendation, both the applicant as well as Mr. S.A. Khandare were transferred alongwith the post in public interest and in the organisational interest, to foster healthy work environment and work ethics. It is also stated that the transfer of applicant from Mumbai to Delhi has no adverse effect upon his service career. Further, the applicant has not imputed any bias, malice in issuance of the transfer order. The respondents further state that it is settled law that in the absence of malafides demonstrated with supporting material and in absence of violation of any statutory provision, such transfer cannot be challenged. In response to the contention of the applicant that in Delhi no similar post exists and has placed reliance on the OM dated 22.07.2004, it is stated that it is misleading with ulterior motive. The respondents state that the Trade Marks Registry has only one sanctioned post of Assistant Director (Official Language) for All India and this post is held by the applicant. Therefore, he was transferred alongwith the post to Trade Mark Registry, Delhi. The respondents have highlighted

that the main function of the post of Assistant Director (O.L) is to call reports related to Rajbhasha from all the offices under the office of Controller General Patents, Designs and Trade Marks, to compile the reports and forward the same to the concerned office as well as the Ministry as per the requirement to prepare annual report in respect of Rajbhasha, organising Hindi Pakhawada and other related functions and to carry out translation work from Hindi to English and vice versa. All these functions can be discharged easily from the Trade Marks Registry, Delhi. The transfer is not in violation of any statutory provision. The applicant and the other employee who were transferred were given all the facilities which clearly show that it was made in public interest and is not punitive in nature. The respondents have submitted that the OA is liable to be dismissed.

4. The applicant filed rejoinder to the respondents' reply and reaffirmed his assertions as per the OA. He has denied that the OA is barred by limitation.

5. We have heard Ms. S.V. Gokhale, learned counsel for the applicant and Shri A.M. Sethna

learned counsel for the respondents and have given thoughtful consideration to their submissions of both the parties and have also perused the relevant record.

6. The respondents have taken preliminary objection that the OA is barred by limitation. However, on carefully perusing the record, we do not find any delay in filing the present OA. The applicant was transferred vide order dated 23.03.2018. He filed representation dated 18.05.2018 with the respondents to recall the transfer order. The representation was decided vide order dated 15.03.2019 that too with the intervention of the Higher Authority. The present OA has been filed on 02.05.2019, as such, practically there is no delay in filing the present OA.

7. The issue of transfer and posting has been considered time and again by the Hon'ble Supreme Court and the entire law has been settled by a catena of decisions. It is the prerogative of the competent authority to decide when, where and at what point of time, a Govt servant is to be transferred from his/her present place of posting. It is settled proposition of law that

transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. An employee does not have any vested right to remain posted at a particular place of his choice.

The Hon'ble Apex Court in the case of Gujarat Electricity Board & Anr vs Atmaram Sungomal Poshani reported in 1989 SCR (2) 357 observed as under:

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public Administration."

In Union Of India & Ors vs H.N. Kirtania reported in 1989 SCR (3) 397, the Hon'ble Apex Court observed as under:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

In Shilpi Bose (Mrs.) and others Vs. State of Bihar and others reported in (1991) 2 Supp. 659, the Hon'ble Apex Court observed that -

"In our opinion the Court should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the ground

of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

In case of State of M.P. and others Vs. S.S.

Kourav and others, reported in 1993(3) SCC 270, it was held:

"The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court."

In State Bank Of India vs Anjan Sanyal, CA

No. 226/1997, the Hon'ble Apex Court observed as under:

"An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

In State Of U. P. & Ors vs Gobardhan Lal,

CA No. 408/2004, the Hon'ble Apex Court observed

as under:

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In case of *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, reported in *AIR 2006 SC 2609*, it has been held:

“While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J.& K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.”

8. During the course of arguments, the applicant has made the following submissions:

i) The transfer is not in the public interest or administrative exigencies.

ii) The transfer is arbitrary, malafide and punitive in nature as it is based on the recommendations of the Inquiry Committee report dated 13.02.2018.

iii) There is no post of Assistant Director (OL) at Delhi as there is only one post that too at the Head Office, Mumbai.

iv) The respondents have flouted the guidelines in terms of OM No.13035/3/95-OL (P&C) dated 22.07.2004 (Annex A-10).

v) The applicant has been transferred to remote area.

9. In support of his contentions, the applicant has relied upon the following judgments:-

i) Somesh Tiwari Vs. Union of India, Civil Appeal No.7308/2008 delivered by the Hon'ble Apex Court on 16.12.2018.

ii) R. Mohanasundaram Vs. The Principal Chief Conservator of Forests & 2 Ors. delivered by the Hon'ble Madras High Court on 10.06.2009.

iii) S. Sevugan Vs. The Chief Educational Officer delivered by Hon'ble Madras High Court on 25.01.2006.

iv) OA No.215/2013 in the case of S. Bharathi Vs. Union of India & Anr. delivered by Mumbai Bench of this CAT on 15.10.2013.

v) OA No.3085/2014 (K. Mythili Rani Vs. Ministry of Finance) CAT Principal Bench, New Delhi delivered on 19.03.2019.

vi) OA No.267/2015 (Smt Babli Santosh Rai Vs. Union of India & Ors) Mumbai Bench CAT, delivered on 16.09.2015.

10. Regarding the first contention of the applicant that his transfer is neither in public interest nor in administrative exigency, learned

counsel for the respondents has submitted that the applicant was transferred to Delhi on the recommendations of the Inquiry Committee for the smooth functioning of the office as the atmosphere there was vitiated due to tussle between the applicant and his colleague Shri S.A. Khandare. It was in the public interest as well as in the interest of organisation to maintain healthy work environment and work ethics and was thus in the administrative interest. We fully agree with the submission of learned counsel for respondents. The applicant has admitted the factum of quarrel with his colleague Shri S.A. Khandare in January, 2018, regarding which he had lodged complaint with the respondents. It is also admitted that one Member Inquiry Committee was formed and conducted inquiry into the incident. On conclusion of the inquiry, the Committee made the following recommendations:

"... On overall assessment of complaints and statement I find that there was a tussle and quarrel between the two complainant near the office gate on the alleged date. Being the responsible officials of TMR, Mumbai, they should have maintained the decorum and act as per Conduct Rules. For the smooth functioning of the office and maintain decorum I recommend that both complainants should be given warning and may be separated from the present place of posting for the time being to avoid any such situation."

It is on the recommendation of the Inquiry Committee, the respondents transferred both the applicant as well as Shri S.A. Khandare out of Mumbai. Thus it is clear from the record that the impugned transfer order has been issued for the administrative reasons and in the interest of administration. Time and again it is held by the Hon'ble Apex Court in catena of judgments that the Courts should not interfere with the transfer order which is made in public interest and for administrative reasons. The only check required is that the transfer order is not made in violation of any statutory rule or on the ground of malafide. It is admitted by the applicant that his job is transferable, hence, transfer is an incident of a service. Therefore, it is for the administration to take appropriate decision on his transfer either in the interest of administration or administrative exigency or public interest. The applicant has failed to point out violation of any statutory rules or that any of his legal rights have been violated vide such transfer order. There is also no material placed on record by the applicant that the transfer order is vitiated by malafide or by

any extraneous consideration. There is not an iota of doubt that in the present case transfer has been made for the smooth running of administration on the recommendations of the Inquiry Committee.

11. The applicant has nowhere denied that the incident dated 05.01.2018 did not take place or the conclusion of the Inquiry Committee was incorrect or manipulative. Thus, the transfer of the applicant on the basis of the recommendations of the Inquiry Committee was in the interest of the administration and there is no bias on the part of the competent authority against the applicant. Besides, it is also observed that the act of respondents in transferring the applicant out of Mumbai is absolutely fair as it is not only the applicant but his colleague Shri S.A. Khandare involved in the incident referred above was also transferred out of Mumbai on the basis of the recommendations of the Inquiry Committee. The contention of the applicant that the transfer order is in the form of punishment is thus baseless. From the facts and circumstances of the case, we have no hesitation to conclude that it is the interest of the administration which

weighed in the mind of Competent Authority while issuing the transfer order. The case law cited by learned counsel for the applicant on the subject is not applicable to the facts and circumstances of the case.

12. Regarding the contention of the applicant that there is no post of Assistant Director (OL) at Delhi as there is only one such post that too at the Head Office, Mumbai and also that respondents have flouted the guidelines of OM dated 22.07.2004 (Annex A-10), learned counsel for the respondents has brought to our notice that the Trademark Registry has only one sanctioned post of Assistant Director (OL) for All Over India and this post is held by the applicant only, therefore, the applicant was transferred alongwith the post to Trademark Registry, Delhi. Therefore, the contention of the applicant that there was no such post at Delhi is also no consequence. Learned counsel for the respondents has further drawn our attention that the main function of the post of Assistant Director (OL) is to call reports related to Rajbhasha from all the offices under the office of Controller General Patents, Designs and Trade

Marks, to compile the reports and forward the same to the concerned office as well as the Ministry as per the requirement, to prepare annual report in respect of Rajbhasha, organise Hindi Pakhawada and other related functions and to carry out the translation work from Hindi to English and vice versa. All these functions can be discharged easily from Trade Marks Registry, Delhi.

13. The argument of learned counsel for the applicant that he has been transferred to a remote place is totally baseless as the Delhi is the capital of India and heart of nation having all kinds of facilities in abundance. The other contention of the applicant that since he has old ailing mother and his mother in law is also staying with him at Mumbai, therefore, he should be transferred back to Mumbai, is again of no consequence. We do understand that the applicant has responsibilities towards his family also, however, it is for him to create balance between his responsibilities towards the family and his duties towards the office. The applicant can shift his family to Delhi where all kinds of facilities including the best of the medical

facilities are available.

14. The applicant has not denied that a General Central Services Group 'A' Gazetted Non-Ministerial Officer is liable to serve anywhere with All India Service Liability and can be transferred to any branch as per administrative requirement being in transferable job. It is for the applicant to create balance between his official responsibilities and his duties towards his family which is rightly observed by the authority in the impugned order dated 15.03.2019 (Annex A-1) while disposing of his representation against the transfer order.

15. In view of the settled preposition of law as laid down by the Hon'ble Apex Court in catena of judgments discussed above in para 6, transfer is a condition of service. He has no vested right to remain posted at a place of his choice, as it is between the exclusive domain of the employer to determine as to at what place and for how long the services are required. The scope of judicial review by the Tribunal in the matters relating to transfer is very limited. Judicial intervention is required only in the cases where there is violation of any statutory provision or in case

of malafide or where the career progression is affected or any prejudice is caused. The transfer orders passed in the public interest or administrative exigency or administrative reasons with justifications and without any extraneous consideration and victimization of the employee, do not require judicial intervention. In the present case, the applicant has failed to point out that the impugned orders are violative of any statutory provisions or are malafide or violated any of his legal right or even adversely affected his status, emoluments or seniority. These orders were issued in the interest of smooth running of the administration due to the conduct of the applicant and his colleague Shri S.A. Khandare displayed in the incident dated 05.10.2015. Consequently, on the recommendations of the Inquiry Committee, the applicant was transferred out of Mumbai.

16. In view of the above discussion, the Original Application is devoid of merits, hence dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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