

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 629 of 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

PRALAY KR. BHATTACHARJEE

VS

UNION OF INDIA & ORS

For the petitioner : Mr. S.K.Ghose, counsel

For the respondents : Mr. T.N.Bandopadhyay, Sr. counsel
Ms. B.Banerjee, counsel

Heard On : 31.5.96 : Order on : 13.6.96

O R D E R

M.S.Mukherjee, A.M.:

This is an application under section 19 of the Administrative Tribunals Act, 1985 in which the petitioner is aggrieved by the order dated 16.5.96 issued by the office of the Directorate General of Shipping, New Delhi, by which the petitioner, who is an Engineering Officer, currently posted in the Marine Engineering & Research Institute, Calcutta (MERI for short) has been transferred and posted to MERI, Mumbai in the same capacity(vide Annexure-A4 to the petition).

2. The petitioner had originally been appointed as Engineer Officer through UPSC by appointment order of the Director General of Shipping dated 14.5.93 (Annexure-A to the petition) and through the said appointment order, he was posted to Lal Bahadur Sahtri Nautical & Engineering College, Bombay. The petitioner, however, expressed his difficulty to join at Bombay immediately and submitted a representation on 17.5.93 and in response to his representation, the office of the DG, Shipping by their order dated 22/23-6-93 changed his place of posting to MERI Calcutta as a special case.

3. The petitioner submits that in the office of MERI, Calcutta he detected certain defects in the newly purchased machines and laboratory equipments and he submitted a written note to the authorities on 22.2.96. It is the allegation of the petitioner, this annoyed the Director of MERI, Calcutta (respondent No.4) and ^{at that} at his instance with mala fide intention, the Dy. DG of Shipping has passed the impugned order dated 16.5.96 transferring him to Mumbai along with his another colleague, Shri A.K.Sarkar, Lecturer, MERI, Calcutta.

4. Being aggrieved, the petitioner has filed this petition praying for cancellation of his transfer order and for a direction on the official respondents to allow him to continue in MERI, Calcutta as before.

5. The official respondents have contested the case by filing a written reply. Their contention is that the transfer has been made in public interest in accordance with the conditions of ^{at that} service and the same has been issued by the competent authority and there is no mala fide involved in the matter. They have, therefore, urged for rejection of this petition.

6. We have heard the learned counsel for the parties and have gone through the documents produced. In view of urgency of the matter, we propose to dispose of the case at the admission stage itself.

7. The first ground on which the petitioner has assailed the impugned transfer order is that it has been issued by the Deputy Director General of shipping, who is not the competent authority. He contends that there is no regular Director General of Shipping functioning at the moment and without any order from the regular Director General, his subordinate i.e. Dy. Director General cannot issue such order.

8. We are afraid, we cannot agree with this contention. The respondents through their reply have annexed a copy of the letter dated 16.5.96 written by the Dy. DG to the Director, MERI conveying that the Director General of Shipping has approved the transfer of the petitioner from MERI, Calcutta to Bombay. It is immaterial whether the said transfer order has been issued by the regular Director General of Shipping or an officer who is

authorised to perform the functions of DG, Shipping, a post which carries various statutory/administrative/financial functions. So, there is nothing to show that the impugned transfer order has not been issued by an authority without the jurisdiction or competence. In such circumstances, we reject this contention of the petitioner.

9. The petitioner's next contention is that the grounds for which he had earlier been posted to Calcutta still prevail and due to his family circumstances he cannot move out of Calcutta to join at the new station at Bombay. He has stated that he has to look after his aged father and handicapped brother, who live in Calcutta. The petitioner submits that in view of the aforesaid family circumstances, he had earlier prayed for his posting at Calcutta and the respondents had accepted his prayer and he was resultantly posted to Calcutta. Since the same situation still prevails, according to the petitioner, he cannot be transferred out of Calcutta.

10. The respondents have, however, countered this by stating that the petitioner cannot claim to remain in Calcutta always as a matter of right. The said transfer has been made in public interest. We have seen the representation made by the petitioner earlier on 17.5.93 when the petitioner had originally been posted to Bombay on first appointment. In the said representation, the petitioner had specifically mentioned that because of his domestic circumstances, he may be posted at MERI, for the time being. Moreoever, in the appointment order, it is specifically prescribed that he is required to serve in any part of India. So, if after allowing the petitioner to stay at Calcutta for 3 years, the respondents have transferred him to Bombay in public interest, we cannot find any fault with the said action on this score.

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ll. The petitioner has then argued that the transfer is mala fide and that it has been done at the instance of the Director, MERI, Calcutta, who has turned hostile to him because he (the petitioner) reported certain defects in the newly purchased laboratory equipments. The petitioner has further submitted that the impugned transfer order has been issued from the office of DG Shipping at the instance of the respondent No. 4 i.e. Director, MERI, whose latter dated 23.4.96 has been quoted in the impugned transfer order.

12. The respondents have contested this. They have produced a copy of the said letter of respondent No. 4 dated 23.4.96 at Annexure-R1 to the reply. From the said letter it is clear that respondent No. 4 had recommended transfer of the petitioner to Bombay on overall administrative ground without casting any aspersion on him; ^{whether} there are compliments regarding the academic acumen of the petitioner in the said letter while recommending his transfer. The petitioner has not been able to produce any iota of evidence that the respondent No. 4 had turned hostile against him because of his (petitioner's) alleged submission of report regarding defects in the machines purchased.

Besides, Even if the local authority (i.e. respondent No. 4) is slightly inimical to the petitioner, the impugned transfer order has not been issued by him but by his higher authority in Delhi. There is nothing to show that the authority which issued the transfer order has also been annoyed with the petitioner. We, therefore, reject this contention.

13. Mr. Samir Ghose, the learned counsel for the petitioner has argued that the petitioner could not be transferred from Calcutta to Bombay because he is the office bearer of Gr.I Officers' Union of MERI, Calcutta. The respondents have countered this by stating that the petitioner cannot be treated as an office beaer of any service association or Union since the same is not recognised one.

14. Mr. T.N.Bandopadhyay, the 1d. counsel for the respondents has drawn our attention to DOPT O.M. dated 11.10.91 under which it is provided that one of the conditions for recognition is that the Association should furnish to the Govt. annually, before the last day of July each year, a list of members and office-bearers and updated copy of the Rules and Audited statement of accounts. If the Associations fail to comply with any of the conditions of recognitions, or the Rules in its constitution, they would lose the facilities given to the recognised Associations. It is contended by Mr. Bandopadhyay that these requirements have not been complied with by the petitioner as such he cannot claim to be the office bearer of a recognised union/association.

15. This contention has not been rebutted by the petitioner. Even otherwise, there is no mandatory rule that the office bearers of any association/trade union must be kept posted only at the station of their choice. The relevant instructions as contained in the Ministry of Home Affairs' OM dated 8.4.69, a copy of which has been annexed as Annexure-R3 to the reply, prescribe that the Chief Executive of the Association or trade union may be brought on transfer to the headquarters of the administrative head as far as possible, and that if the transfer to the headquarters involves exception from field duty, such transfer facility should be restricted to the chief executive/general secretary and one other executive member of each of the recognised association. It is, therefore, clear that the above guidelines should be complied with as far as possible and in relation to the office bearers of recognised association only. These conditions are not involved in this present case.

16. The petitioner has also urged that one Shri A.K.Sarkar, another office bearer of the association has also been transferred by the respondents with similar mala fide intention. The respondents have denied this and any way, since Shri Sarkar has not been impleaded as a party in the present case, we refrain

from making any observation on suchs transfer. It is immaterial for determination of the present case.

17. The relevant case laws regarding transfer/posting has undergone sea change through ^{at a} series of important pronouncements ^{1 made} by the Hon'ble Supreme Court in the recent past and it will be useful to quote some hereinbelow :

i) In the case of Union of India & Ors -vs- S.L.Abbas as reported in AIR 1993 SC 2444, the Hon'ble Supreme Court has held that guidelines issued by Govt. do not confer upon employee any legally enforceable right and that order of transfer made without following the guidelines, cannot be interfered with by the Court unless it is vitiated by mala fides or is made in violation of statutory rules.

ii) It has also been held by the Hon'ble Supreme Court in the case of State of Punjab -vs- Joginder Singh Dhatt as reported in AIR 1993 SC 2486 that it is entirely for the employer to decide when, where and at what point of time a public servant is to be transferred and that the court ordinarily should not interfere.

iii) In the case of Rajendra Roy -vs- UOI as reported in (1993) 1 SCC 148, it has been held by the apex court that by mere allegation of mala fide on the basis of insinuation and vague suggestion, no inference can be drawn, there must by firm foundation of facts pleaded and established.

iv) Further in the case of State of Madhya Pradesh -vs- S.S.Kourav as reported in AIR 1995 SC 1056, the Hon'ble Supreme Court has observed that the courts or transfers are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system, 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 consideration without any factual background foundation. Moreoever, even if there is case for extreme hardship, the court cannot go into the question of relative hardship. It would be for the administration to consider the

facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it is for the Govt. to consider and take appropriate decision in that behalf.

v) So far as the question of personal difficulty as stated by the petitioner, is concerned, the Hon'ble apex court in Rajendra Roy's case (supra) has observed that "the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down." In the instant case, even though the petitioner has submitted that he has difficulty in moving out of Calcutta, he has not made any representation to the appropriate authority in this regard.

18. As already discussed from the evidence produced on record, the petitioner has not been able to establish beyond doubt that the transfer has been made out of mala fide intention and that the same has been made in violation of statutory rules.

19. In such circumstances, we are unable to interfere with the impugned transfer order. However, the fact remains that he submitted certain report purporting to be defective procurement of equipment and the petitioner has a feeling that due inter alia to this, his local controlling authority, viz. respondent No. 4, has prevailed upon the Dy. Director General of Shipping, exercising the power of Director General to transfer the petitioner from the scene of Calcutta. Under the circumstances, while dismissing this petition, we would also order that the petitioner may within a week make a self-contained representation, along with a copy of this order, to respondent No. 1. i.e. Secretary, Ministry of Surface Transport, seeking modification of the impugned transfer order and the respondent No. 1 shall thereafter appropriately dispose of the said representation. Copies of the representation along with copies of

this order shall also simultaneously be sent to the other respondents by the petitioner. Further, it is ordered that till the disposal of such representation, the impugned transfer order dt. 16.5.96 shall remain in abeyance, if not already implemented.

20. There will be no order as to costs.

M.S. Mukherjee
13/6/96

(M.S. MUKHERJEE)
MEMBER (A)
13.6.96

A.K. Chatterjee
~~(A.K. CHATTERJEE)~~
VICE CHAIRMAN
13.6.96