

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A.No. 644 of 1996

Date of order : 29.8.1996

Present: Hon'ble Dr. B.C. Sarma. Administrative Member

ASIM KUMAR SARKAR

VS

UNION OF INDIA & ORS.

For the Applicant : Mr. Samir Ghosh, counsel

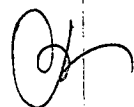
For the Respondents: Mrs. Kanika Banerjee, counsel

Heard on 28.8.1996 & 29.8.1996

O R D E R

The dispute raised in this application is about the impugned order of transfer passed by the respondents on the applicant on 16.5.1996 whereby he has been transferred from the Marine Engineering and Research Institute (MERI), Calcutta to Marine Engineering and Research Institute, Bombay. The material averment made by the applicant is as follows:

2. The applicant is a B.Sc. and he obtained A.M.I.E. Degree in Engineering in 1963 which is equivalent to a B.E. Degree. Pursuant to an advertisement issued by the Union Public Service Commission, the applicant applied for the post of Lecturer in Applied Science and, thereafter, he was appointed as Lecturer in Applied Science in 1969. The applicant has been teaching the under-graduate level marine cadets and also Applied Mathematics. The said under-graduate regular course, which was also in Mumbai, was discontinued in the year 1992 and that course is now available in Calcutta. It is the specific contention of the applicant that because of certain trade union activities in which he had participated along with one Shri P. K. Bhattacharjee, the said Shri Bhattacharjee as well as he was transferred to Mumbai by the impugned order. The said Shri Bhattacharjee filed an OA, bearing No.629/96, which was disposed of by a judgment by this Tribunal on 13.6.96 with the order that the petitioner may, within a week make



a self-contained representation, along with a copy of the order passed by the Tribunal, 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. The applicant contends that he had also filed a representation after he had received the order of transfer on 22.5.96 which is annexed as Annexure-A/2 to the application. The said representation is yet to be disposed of. The applicant contends that since the under-graduate course in Mumbai has been discontinued since 1992, the service of the applicant as Lecturer in Applied Science is not at all required there; but, for the purpose of harrassing the applicant, the said order of transfer was issued. Thus, the transfer order has been issued on extraneous consideration. He also contends that the said transfer order was issued solely at the instance and instigation of respondent No.4 who is very much inimical and hostile against the applicant because of his trade union activities. Being aggrieved thereby, the instant application has been filed with the prayer that the impugned order of transfer be quashed and set aside and he be allowed to continue in the present post.

3. The case has been resisted by the respondents by filing a reply. The respondents contend that the Marine Engineering and Research Institute has two establishments, one in Calcutta and the other in Mumbai and as per the latest Recruitment Rules, Training Institutions under the administrative control of Director General of Shipping, Mumbai are - (1) Marine Engineering and Research Institute, Calcutta; (2) Marine Engineering Research Institute, Mumbai; (3) Lalbahadur Shastri College of Advance Maritime Studies, Mumbai and (4) Trainingship Chanakya, Mumbai. It is the specific contention of the respondents that there is an acute shortage of Lecturer in MERI, Mumbai and, therefore, the applicant



had been transferred in public interest. The respondents in their reply in para 6 have stated, ~~that~~ with regard to statements contained in paragraph Nos. 4(a), 4(b), 4(c) and 4(d) of the application, as "I say that save and except what are matters of records, I do not admit anything contrary thereto and/or inconsistent therewith." The respondents in their reply have also stated that the applicant is quite qualified since he is an AMIE degree holder to teach in the Institute ~~at~~ Mumbai. They have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit. The applicant has also filed a rejoinder which I have perused.

4. During the hearing Mr. Ghosh, learned counsel for the applicant, produced before me a copy of the order passed by this Tribunal in OA 629/96 on 13.6.96, which I have perused. I note that the applicant therein, Shri P.K. Bhattacharjee was also transferred along with the applicant to Mumbai. During hearing Mr. Ghosh made certain contentions which are worth mentioning in the judgment. Mr. Ghosh submitted that as per the advertisement issued by the UPSC, a copy of which has been annexed with the application as Annexure-A, the duties of the post for which the applicant applied and was subsequently appointed <sup>involve</sup> ~~imply~~ imparting instructions in basic Mechanical Engineering subject, Machine Drawing and Applied Mathematics to participate in other curricular and extra-curricular activities of the Marine Engineering Cadets. Mr. Ghosh submits that the applicant was, therefore, appointed by the Government only to impart training to the under-graduate level students and not to the post-graduate students. By transferring the applicant from Calcutta to Mumbai, the Government have now sought to make him impart training to the students of post-graduate level. Mrs. Banerjee, however, clarifies that the applicants <sup>service may be</sup> profitably utilised in engaging him in the work in the Mechanical Drawing Department and also in the Mechanical



Laboratory, apart from the extra-curricular activities like Drawing and Disbursing Officer, Security Officer etc. Mrs. Banerjee also submitted that some other officer who was also a Lecturer in MERI, Calcutta used to perform extra-curricular activities like performing the duties as Drawing and Disbursing Officer. I have considered this aspect of submission of Mrs. Banerjee, but I would like to observe that performance of the extra-curricular activities <sup>alone</sup> like Drawing and Disbursing Officer, Store Officer and also Security Officer cannot, in my view, justify the stand of the respondents in transferring the applicant as the functions of the Drawing and Disbursing Officer, Security Officer are not whole time duties; specially at the higher level and in a Government organisation, these duties can be performed by the employees and officers who are substantially employed in other posts. It is, therefore, essential that the applicant's service is gainfully <sup>utilized</sup> in the teaching line and that can be done only when he is qualified to impart training at the post-graduate level. I would like to observe that this is a matter which is to be decided by the administration and not by the Tribunal since the basic requirements in respect of the teachers for teaching at post-graduate level are better known to the administration.

5. I note that in this application the applicant has made certain contentions to the effect that the transfer order has been issued in a mala fide manner because of his involvement in trade union activities and also that the respondent No.4 has not yet disposed of his representation. Mrs. Banerjee argued that the Union in MERI, Calcutta is not a recognised one and, therefore, he cannot take the plea of getting engaged in the union activities, so far as the alleged displeasure of the respondent No.4 is concerned. Whatever that may be, I, however, note that the applicant has not been able to cite specific instances which may lead to the <sup>conclusion</sup> ~~contention~~ that the transfer order has been issued in



(5)

a malafide manner, but I find that there <sup>may be</sup> ~~is~~ some force in his argument that he may not be qualified to teach gainfully to the students at the post-graduate level in Mumbai. I also find that a representation was filed by the applicant after the receipt of the order of transfer on 22.5.96 and the representation is yet to be disposed of by the respondents. In view of this and in view of the decision given in respect of P. K. Bhattacharjee's case, I am of the view that the appropriate order to be passed in this case is to issue a suitable direction on the respondents.

6. In view of the above, the application is disposed of with the direction that respondent No.1, who is the Secretary, Ministry of Surface Transport, Government of India, shall consider the application along with the rejoinder filed by the applicant as a representation and shall dispose it of within a period of two months from the date of communication of this order in the light of the grounds taken by the applicant in the application as well as in the rejoinder and keeping in view the discussion made in this judgment. The result of such representation shall be conveyed to the applicant within a period of one month thereafter. I further order that the respondents shall not give effect to the impugned order of transfer till the said consideration is given to his representation and communication made. No order is passed as regards costs.



(S. C. Sarma)

MEMBER (A)

29.8.1996