

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO. 1308 OF 96

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

PRALAY KUMAR BHATTACHARJEE
VS

1. Union of India through
Secretary, Ministry of Surface Transport,
New Delhi
2. Director General of Shipping,
Jahaz Bhawan, Walchand Hirachand Marg,
Mumbai-400 038
3. Dy. Director General of Shipping,
Jahaz Bhawan, Walchand Hirachand Marg,
Mumbai-400 038
4. Director, Marine Engineering &
Research Institute,
P-19, Taratala Road,
Calcutta-700 088

..... Respondents

For the petitioner : Mr. S.K.Ghosh, Counsel

For the respondents : Mr. S.K.Dutta, Counsel
Ms. B.Banerjee, Counsel

Heard on : 12.6.97 : Order on : 2.7.97

O R D E R

M.S.Mukherjee, A.M.

SThis is a petition U/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved by the order dated 17.9.96 of the Secretary, Ministry of Surface Transport, New Delhi, rejecting the petitioner's representation against his transfer from Calcutta to Mumbai.

2. The petitioner was recruited through the UPSC to the Group A post of Engineer Officer in the Marine Engineering & Research Institute (MERI for short). The post is in General Central Services (Technical) under the Director General of Shipping in Lal Bahadur Shastri Nautical & Engineering College, Bombay (Now Mumbai). Initially he was posted at Mumbai. But on his representation for a posting in Calcutta, the respondents appointed him in MERI, Calcutta and he joined

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service at Calcutta on 14.5.93. The petitioner submits that thereafter he became elected as Secretary of MERI Officers' Association, Calcutta and he also allegedly ventilated grievance of the Association. He also drew notice of the higher authorities to certain alleged procurement of wrong or defective materials. The petitioner's grievance is that as a result, at the instance of the Director, MERI, the Director General of Shipping transferred him from Calcutta to Mumbai by the impugned order dt. 16.5.96. He challenged the said transfer order before this Tribunal through OA 629 of 1996 which had been disposed of by this Tribunal on 13.6.96 with the following observations :

"19. In such circumstances, we are unable to interfere with the impugned transfer order. However, the fact remains that he (the petitioner) submitted certain report purporting to be defective procurement of equipments 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.:

3. The petitioner submits that subsequently on 18.6.96 he made a detailed representation to the Secretary, Ministry of Surface Transport, a copy of which has been added as Annexure-C to this petition. The petitioner's contention is that he heard nothing officially about the fate of the said representation. On the other hand, when he went to MERI office at Calcutta, he noticed in the office notice board certain order dt. 14.10.96 issued by respondent No. 4 i.e. Director, MERI, Calcutta, mentioning that the Secretary, Ministry of

[Signature]

Surface Transport, New Delhi, had rejecting the petitioner's representation through a letter dt. 17.9.96.

4. It is the further contention of the petitioner that so far he has not been served with the impugned memo dt. 17.9.96. He only copied the respondent No. 4's impugned communication dt. 14.10.96 from the office notice board. His further contention is that since the Secretary, Ministry of Transport has not communicated his order dt. 17.9.96 to him (the petitioner) direct, the said order cannot be communicated to him by anybody else and therefore the impugned rejection by the Secretary, Ministry of Surface Transport, of his representation against his transfer is not valid.

5. The petitioner has, therefore, prayed for cancellation of the impugned memo dt. 14.10.96 (Annexure-D to the petition) as well as the impugned letter dt. 17.9.96 from the Secretary, Ministry of Surface Transport. He has consequentially prayed for cancellation of the impugned transfer order dt. 16.5.96 transferring him from Calcutta to Mumbai and also for a direction on the respondents not to release him from Calcutta office in terms of the respondent No. 4's impugned memo dt. 14.10.96.

6. The respondents have contested the case by filing a written reply. Their contention is that on receipt of the petitioner's representation dt. 18.6.96, the Secretary, Ministry of Surface Transport, New Delhi, has duly considered the same and has rejected it through his impugned Memo dt. 17.9.96. A copy of the communication dt. 17.9.96 has been added to the reply as Annexure-R3. The respondents further add that this was communicated by the office of the Secretary, Ministry of Surface Transport to the Director General of Shipping, Mumbai and the latter by a letter dt. 30.9.96 (Annexure-R4 to the reply) asked the Director, MERI, Calcutta (respondent No. 4) to communicate the same to the petitioner

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with a further direction to direct the petitioner to report for duty at MERI, Mumbai after availing the usual joining time. Respondent No. 4 then tried to communicate this impugned order dt. 14.9.96 of the Secretary, Surface Transport Ministry (Annexure-R3 to the reply) to the petitioner. But, according to the respondents, the petitioner refused to accept the said communication which was attempted to be served on him by the office Peon. Subsequently, it was sent by the postal deptt. by speed post as well as registered post. Yet such postal delivery has not been accepted by the petitioner. So, eventually, the respondent No. 4 was left with no other alternative than to notify the impugned posting order of the petitioner by pasting it on the office notice board to which the petitioner has alluded in the petition.

7. It is the case of the respondents that since the representation of the petitioner has been rejected by the Secretary, Ministry of Surface Transport, the instant application is without merit and it should be rejected.

8. The petitioner has submitted a rejoinder to this reply of the respondents.

9. 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.

10. Regarding the impugned original transfer order dt. 16.5.96 on merit we have already decided the issue while disposing of the petitioner's earlier petition being OA 629/96 on 13.6.96. We had held that "we are unable to interfere with the impugned transfer order". However, because of certain facts stated in the said petition, we directed that the petitioner may within a week make a self contained representation for consideration of the Secretary, Ministry of



Surface Transport, seeking modification of the impugned transfer order and till disposal of such representation, the impugned transfer order should remain in abeyance.

11. The petitioner has admittedly made a representation on 18.6.96 and therefore, we have to see whether the said representation has been duly considered and disposed of by the Secretary, Ministry of Surface Transport or not.

12. The petitioner's case is that this representation has not been disposed of since the result of the same has not been communicated to him by the Secretary, Ministry of Surface Transport himself. We do not, however, find any merit in this contention. The respondents have produced as Annexure-R3 to the reply a copy of the letter issued by the Ministry on 17.9.1196 which clearly states that the Secretary, Ministry of Surface Transport after due consideration has rejected the representation of the petitioner for cancelling the order of his transfer from Calcutta to Mumbai. This has been communicated by a Director of the Ministry to the Director General of Shipping, Mumbai for onward communication to the petitioner. The petitioner's objection that since there is no communication from the Secretary himself, this order is bad, is not tenable. This quite in order if an authorised officer subordinate to the Secretary to the Ministry has communicated the decision of the Secretary. It is ^{not} ~~not~~ necessary for the Secretary of the Ministry to personally communicate to the petitioner.

13. Secondly, the Ministry does not actually correspond with the petitioner direct. It asked the head of the department viz. Director General of Shipping at his headquarters at Mumbai to communicate to the petitioner through proper hierarchy and the DG, Shipping, Mumbai through his letter dt. 30.9.96 (Annexure-A4 to the reply) asked the Director, MERI, Calcutta (respondent No. 4) to communicate the

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same to the petitioner as the petitioner was working under respondent No.4. This is also following the hierachial procedure and is perfectly in order.

14. Now the question of service of the order crops up. The petitioner's objection is that the order has not been communicated to him personally. But again respondent No. 4 i.e. Director, MERI, Calcutta has submitted that he tried to communicate the order of the Secretary dt. 14.9.96 (Annexure-D to reply) to the petitioner but he refused to accept it from the Peon of the office. In support of this contention, the respondents have produced as Annexure-R5 to the reply photocopy of the Peon Book showing the endorsement of the office Peon that the petitioner refused to accept it and that he would not accept any letter unless it was from the Secretary himself.

15. Respondent No. 4 has also submitted that he then tried to send the communication through the postal deptt. through speed post as well as registered post. Even then the petitioner has refused to accept such postal delivery. Thereafter, the impugned order was pasted on the office notice board as alternative service. The petitioner cannot deny this service as he himself recorded on the copy of the office order dt. 16.10.96 (Annexure-A6 to reply) to the following effect: .

" Director to note :

Memorandum made by yourself was returned because it was not in compliance with the Court verdict by which only Secretary Ministry of Surface transport can dispose appropriately my petition forwarded to him by the order of the Hon'ble Court. I consider that such memo as violation of Court verdict. Please note that without original letter from Secretary Ministry of Surface Transport no action can be taken on my part as directed in the Court order of Hon'ble CAT Calcutta

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Bench vide their order of OA No. 644 of 1996 dated 20th August, 1996.

Sd~

P.K.BHATTACHARYA

Engineer Officer

16.10.96"

16. We find the stand taken by the petitioner was very unreasonable in the context of his refusal to accept the communication through due hierachial channel. The respondents had no other alternative than to effect substituted service which, in our view, is quite in order as the respondents have fully complied with the direction of this Tribunal as given in the earlier OA 629/96 on 13.6.96.

17. In the circumstances, we find no merit in this petition. Accordingly it is rejected. There will be no order as to costs.


(M.S. MUKHERJEE)

MEMBER(A)


(A.K. CHATTERJEE)

VICE CHAIRMAN