

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No. 481/87.

Shri K.Balakrishnan.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant in person.
Respondents by Mr.A.K.Bhatkar,
holding the brief of
Mr.M.I.Sethna.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A)). Dated: 13.9.1991

This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 20.7.1987. In it the applicant who is working as an Upper Division Clerk in the office of the 3rd respondent prays that the transfer order dated 29.6.1987 by which he is transferred from Pune to Allahabad, be quashed.

2. In 1964 the applicant joined service as a Civilian School Master with an Artillery Regiment. In 1967 he was posted as Lower Division Clerk in the Public Relations Office of the Ministry of Defence at Shillong. He was thereafter transferred to Calcutta and in 1975 to the Pune Office of that organisation. From 14.5.1987 to 6.7.1987 he was sent on temporary duty to the New Delhi office of that organisation from where he was returned to his permanent duty station, viz. Pune, by movement order dated 29.6.1987. Immediately on return to Pune he was served with the impugned transfer order dt. 29.6.1987 (supra). He was also served with another order by which he is relieved of his duties w.e.f. 8.7.1987 (A.N.) and directed to report to Allahabad after availing joining time as per rules, if he so chooses. Being aggrieved by this order, the applicant filed the present application.

3. The respondents have opposed the application by filing the counter affidavit of the 3rd respondent. We have heard the applicant in person and Mr.A.I.Bhatkar, learned advocate who alone appears for the respondents and submits that he is instructing Mr.M.I.Sethna.

4. The impugned order is assailed on three grounds. The first is that there is a conflict between the movement order dt. 29.6.1987 (supra) and the impugned transfer order also dt. 29.6.1987 (supra). We must reject this straight away as being wholly mis-conceived. The movement order is to enable the applicant to return to his Head Quarters whereas the impugned order is an order of transfer. This position is not altered by the fact that they were issued at the same time - in fact, on the same day. So, we must reject this submission of the applicant.

5. The second ground on which the order is assailed is that it is mala fide. This allegation is sought to be sustained by the submission that the movement order dt. 8.7.1987 was served on the applicant only on 10.7.1987 and so is back dated. This argument too, must be rejected straight away. A movement order dt. 8.7.1987 or for that matter, 10.7.1987 cannot substantiate that an earlier order dt. 29.6.1987 was mala fide. Further the fact that an order dt. 8.7.1987 was served on 10.7.1987 does not make it back dated. So, we must reject this submission of the applicant.

6. The third ground on which the transfer order is assailed is that it was issued with ulterior motive, the motive being that the applicant had occasion to write a long complaint against the third respondent to the second respondent. We must reject this submission also

as the impugned order was not issued by the third respondent but was issued by the 4th respondent on behalf of the second respondent. Nothing was produced before us to show that the third respondent had influenced either the second or the 4th respondent to issue the impugned order. So, we must reject this submission also.

7. Over a decade ago in Shanti Kumari v. Regional Director, Health Services, Patna Division and others. AIR 1981 SC 1577, the Supreme Court held:

"Transfer of a government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters."

This was reiterated in Gujarat Electricity Board and another v. Atmaram Sungomal Poshani, AIR 1989 SC 1433 in which the Supreme Court has lucidly summarised the legal position regarding transfer of employees in the following words:

"4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the 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. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

Finally, in Union of India and others. v. H.N.Kirtania.

(1989) 11 ATC 269, the Supreme Court held:

"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."

From these decisions it is clear that the legal position is that interference is permissible only in the limited contingency that the order of transfer is violative of any rules or legal provisions or is otherwise mala fide.

8. There is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred and posted to any place within India. So, against the legal position discussed in detail, the only question which falls for determination in this case is whether the impugned order of transfer is violative of any legal provisions or statutory rules or mandatory instructions or is mala fide in any way whatsoever. The impugned order of transfer does not suffer from any of these fatal flaws. In this view of the matter we see no merit in this application and are of the opinion that it deserves to be dismissed.

9. We may pause here to mention that we were informed by the respondents' counsel that the applicant had been compulsorily retired by order dt. 23.7.1990 which had been received by him on 28.7.1990 and that in view of this position the application, in fact, no longer survives. We are not concerned with this in view of our earlier discussion and analysis.

10. We accordingly dismiss the application. In the

circumstances of the case there will be no order as to costs.

T. Chandrasekhar Reddy
(T.C.REDDY)
MEMBER(J)

(P.S.CHAUDHURI)
MEMBER(A).

13-9-1991