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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
~~XXXXXXXXXXXX~~

O.A. No.378/87 & 379/87 198
T.A. No. xxx xxx

DATE OF DECISION - 9-9-1987

Shri V.T.Pednekar Petitioner in O.A.378/87

Shri F.P.D'Cruz Petitioner in O.A.379/87

Shri J.M.Chodankar Advocate for the Petitioner(s)

Versus

Union of India and Two Others Respondent 1 to 3
Mr.N.A.Asolkar Respondent-4 in O.A.378/87
Mr.P.K.Pednekar Mr.J.D.Desai(for Respondent-4 in O.A.379/87
Advocate for the Respondent(s)
Mr.M.I.Sethna) 1 to 3
Mr.G.K.Masand Advocate for Respondent No.4
in both the above cases.

CORAM :

The Hon'ble Mr. P.Srinivasan, Member(A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

16-11-87

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.378/87 and O.A. 379/87

Shri V.T.Pednekar,
Upper Division Clerk,
Asstt.Chief Controller of
Imports & Exports.
Panaji - GOA.

... Applicant in
O.A.378/87

Shri F.P.D'Cruz,
Licensing Asstt.,
Asstt.Chief Controller of
Imports & Exports,
Panaji - GOA.

... Applicant in
O.A.379/87

vs.

1. The Joint Chief Controller of
Imports and Exports,
New C.G.O.Building,
New Marine Lines,
Churchgate,
Bombay - 400 020.

2. The Asstt.Chief Controller of
Imports & Exports,
Panaji - Goa.

3. Union of India,
New Delhi.

... Respondents in
all the above cases.

4. Shri N.A.Asolkar,
Office of the Joint Chief
Controller of Imports &
Exports,
New C.G.O.Building,
Marine Lines,
Bombay - 400 020.

... Respondent No.4
in O.A.378/87

5. Shri P.K.Pednekar,
Office of the Joint Chief
Controller of Imports &
Exports,
New C.G.O.Building,
Marine Lines,
Bombay - 400 020.

... Respondent No.4
in O.A. 379/87

Coram: Hon'ble Member(A)P.Srinivasan

Appearances:

1. Shri J.M.Chodankar,
Advocate for the
applicants.
2. Mr.J.D.Desai(for Mr.
M.I.Sethna)for Respon-
dent Nos.1 to 3.

P. J. Desai

...2/-

3. Mr.G.K.Masand,
Advocate for
Respondent No.4
in both the cases.

ORAL JUDGMENT

Date: 9-9-1987

(Per P.Srinivasan, Member(A))

Both these applications involve common issues and are therefore disposed of by this common order.

2. The applicant in O.A.378/87 is an Upper Division Clerk in the establishment of the Joint Chief Controller of Imports & Exports, Bombay(R.1) currently working in the office of the R.2 i.e. Asstt.Chief Controller of Imports and Exports, Panaji, Goa. He joined the organisation of R.2 at Panaji in 1964 as a Lower Division Clerk and thereafter earned promotion to the post of Upper Division Clerk. He has been working at Panaji since 1964. By order dtd. 12-5-1987, R.1 transferred the applicant from Panaji to the Office of R.1 at Bombay in the same grade i.e. as UDC. By the same order a certain N.A. Asolkar, R.4, who was working as UDC in the office of the R.1 was transferred to Panaji. The applicant's grievance is that he has been disturbed from Panaji only to accommodate R.4. He contends that the transfer was not a bonafide transfer because the whole idea was to show favour to R.4 in preference to him.

3. The applicant in O.A.No.379/87 is working as a Licensing Asstt. in the office of the R.2 at Panaji. He joined as a LDC in the office of R.1 Bombay in 1961 and earned promotions to reach the post of Licensing Asstt. While at Bombay, ^{by} he represented to the authorities from time to time that his wife was working in Goa and his parents and other close relatives were also living in Goa and that therefore he should be posted to the office of the R.2 at Panaji. In 1982, he was transferred from Bombay to Goa where he has been working as Licensing ...3/-

P. Srinivasan

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Asstt. till now. By order dtd. 12-5-1987 passed by R.1 the applicant was transferred in the same grade of Licensing Asstt. to the office of the R.1 in Bombay and in his place a certain Shri P.K.Pednekar ^(R-4 in his application) was transferred from Bombay to Goa. The applicant's grievance is, like that of the applicant in the earlier application, that the authorities have shown favour to R.4 in preference to him and therefore the order of transfer is bad in law.

4. Shri J.M.Chodankar, the learned Counsel for both the applicants, developed the case for his clients on the following lines: Group 'C' officials, to which category both the applicants belong, are not generally transferred from one station to another unless exceptional circumstances like reduction in staff strength make it necessary to do so. It was owing to reduction in the staff strength at Goa that Respondents 4 in both the applications i.e. Shri N.A.Asolkar(O.A.378/87) and Shri P.K.Pednekar(O.A.379/87) were transferred out of Goa in 1979. Even when Group 'C' officials are promoted to higher posts they are not transferred out of the station in which they are working unless they express their willingness to be so transferred. In support of this contention Shri Chodankar drew my attention to circulars dtd. 1-7-1978(issued by the Joint Controller of Imports and Exports, Calcutta), 16-9-1978, 1-8-1981, 12-10-1981, 9-11-1982, 9-1-1984 and 11-6-1987 all issued by the Joint Controller of Imports and Exports, Bombay, calling for willingness of persons to be transferred on promotion to higher posts, out of the stations in which they were working. At the meeting of the JCM held by R.1 on 22-9-1981, the staff side had objected to transfer of employees against their wishes and the JCCI had informed them that no transfer of Class III employees had been made against their wishes except on

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vigilance grounds. In the case of both the applicants, their willingness had not been obtained and this went against the consistent policy of the respondents. In fact, the Deputy JCI & E, Bombay, in a letter dtd. 17-7-1984 addressed to the Asstt. Chief Controller of Imports and Exports, Goa, referred to the representation of Shri Asolkar, R.4, in application No.O.A.378/87 for a transfer to Goa and stated that unless an UDC from Goa was willing to go to Bombay, Asolkar's case could not be considered. However, disregarding the prevailing practice, the office of the Chief Controller of Imports and Exports, Delhi, in a letter dtd. 13-8-1984, asked the Asstt. Chief Controller of Imports and Exports at Goa to "try to accommodate" Asolkar at Goa. This, according to Shri Chodankar, amounted to a flagrant act of favouritism. The order of transfer clearly indicates that it was a result of representations made by Asolkar and P.K. Pednekar in order to give relief to them, again showing undue favour to them. In their reply R.1 to 3 had referred to a policy decision which led to the transfer. No such policy decision had been referred to in the impugned order of transfer. On the other hand, Shri D'Cruz who has been displaced by Shri P.K. Pednekar was very much senior to the latter in the grade of Licensing Asstt. and should not have been disturbed to accommodate Pednekar. Similarly V.T. Pednekar, the applicant in the application No.O.A.378/87 was very much senior to N.A. Asolkar, R.4 in that application, and therefore the authorities were not justified in displacing him in favour of Asolkar. Considerable hardship would be caused to the applicants because both of them had lived in Goa since their birth. The applicant in Application No.O.A.379/87 had to be away from Goa when he was working away in Bombay during 1961 to 1982. His wife is working in Goa in a Govt. aided school and she cannot be transferred outside Goa. So far as5/-

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V.T.Pednekar, applicant in O.A.378/87 is concerned, his children were in school and college in Goa. He has an old mother who has been operated for Cancer and it was necessary that he should be in Goa to look after her. If both the applicants had to go out of Goa they would be put to the unnecessary expenditure of maintaining two establishments. The so called policy decision, which has not been circulated or announced to all the employees, operated to the disadvantage of the applicants and in favour of the respondents, and was therefore bad. Both the applicants had forgone promotions for just remaining in Goa and it was unkind to transfer them out of Goa now. They are not likely to get any advantage of the policy decision because within three years they will be promoted to higher posts in which they cannot be transferred back to Goa. D'Cruz is a patient of Hypertension. While D'Cruz's repeated representations to be transferred from Bombay to Goa in the past were not considered and he was transferred to Goa only when there was a clear vacancy in Goa, the respondents were being transferred to Goa displacing the applicants. Moreover unlike D'Cruz, P.K.Pednekar does not have a problem of a wife being employed in Goa. In view of this Shri Chodankar submitted that this Tribunal should quash the transfer order dtd. 12-5-1987 by which both the applicants have been transferred from Goa to Bombay.

5. Replying on behalf of the Respondents No.4 in both the applications, Shri Masand, learned Counsel submits that the case of D'Cruz cannot be compared with those of the respondents in both the cases. Both the respondents had entered in service in Goa and were working there when they were transferred out of Goa in 1979 because of the reduction in establishment and for no fault of theirs. The administration naturally had to give special consideration, especially, because their juniors were retained at Goa when they were transferred ..6/-

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because the juniors were ladies. The policy decision taken by the Respondent No.1 had been arrived at after considering the problem of employees hailing from Goa and it applied to all such employees no special favour was shown to anyone. If the respondents had benefitted by the policy decision it was an incidental result. For that matter, after three years the applicants could also seek transfer back to Goa under the same policy. If the applicants had the problem of their families living in Goa so have the respondents. Asolkar's wife, like D'Cruz's wife is working in Goa. P.K.Pednekar's mother like V.T.Pednekar's mother is also a sick old lady confined to bed. Thus everybody had his own problems and the administration had to see that each one of them gets a fair chance to work in Goa since all of them could not be accommodated there at one time.

6. Shri J.D.De'sai, learned Counsel, for R.No.1 to 3 in both the applications supported the arguments of Masand and asserted that the policy decision was not designed to favour any particular person but had been arrived at to solve the peculiar problem of employees who hailed from Goa. Since there was no question of malafides or favour, this Tribunal should not interfere with the order of transfer.

7. I have considered the rival contentions carefully. I have also perused the policy decision produced by Shri Desai on behalf of R.No.1 to 3. I ^{may} straightway mention that heart-rending accounts of the hardships to which the applicants and respondents No.4 in both applications would be put by having to live outside Goa were narrated before me by their respective Counsel. It is plain that all of them would like to remain in Goa. However, there are not enough vacancies in Goa to accommodate all of them at a time. The ideal situation would be if respondents 1 to 3 in both the

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applications could accommodate both the applicants and the respondents No.4 in both the applications in Goa, but that is not possible, due to lack of vacancies. Now, when more people are clamouring for posts which are lesser in number Government has to take some decision which is fair to all parties. The policy decision taken here amounts to this viz. that an officer who hails from Goa may be given a posting in Goa for atleast three years at a time and such officials posted outside Goa should be given posting in Goa by rotation. As it happens both the applicants have been working in Goa for atleast 5 years now; V.T.Pednekar, the applicant in application No.378/87 has been in Goa for over 10 years. Both the respondents have been working outside Goa for atleast four years prior to 1987. As ^a ^M result of the policy decision to rotate postings of such officials in Goa once in three years, P.K.Pednekar and Asolkar ^M ^{to be} had posted in Goa for the next 3 years and both the applicants had to be displaced from Goa for the same duration. I see nothing in the policy decision indicating any special favour to anybody in particular, much less to respondents No.4 in both the applications. No personal malice against the applicants can be read into the policy either. It was because of this policy decision that the transfer order itself refers to the representations of Asolkar and P.K.Pednekar. It further narrates that the resultant transfer of the applicants is in the public interest to enable them to draw travelling allowance, while the transfer of respondents No.4 in both the applications was not in the public interest and they could not draw Travelling allowance. There is nothing wrong in this, and certainly nothing to indicate special favour or disfavour being shown to anybody. As stated earlier, everybody cannot be accommodated in Goa and if a fair distribution of the opportunities of being posted in Goa is made between the aspirants it cannot be said that such a decision suffers from any legal infirmity.

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The role of this Tribunal is to see that a decision taken by the authorities is not arbitrary or illegal; if no illegality or arbitrariness is found, this Tribunal will not interfere with routine administrative decisions. In the light of what I have stated above I find no illegality or arbitrations in the impugned order of transfer by which both the applicants have been posted to Bombay. I, therefore, decline to interfere with the said order.

8. In the result, both the applications are dismissed but in the circumstances of the case, parties will bear their own costs.

9. After the above order was dictated, Shri Chodankar prayed for a stay of operation of this order, to enable his clients to decide upon their further course of action. I am unable to accede to this request which is therefore rejected.



(P. SRINIVASAN)
Member (A)