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BEFORE THE CENTRAL ADMINISTRATION TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 763/87.

Shri Waman Balaji Fegade,
29/6, Vidarbha Housing Board Colony,
Near R.T.O. Office,
Priya Darshani Nagar,
Nagpur.

... Applicant

V/s.

1. Accountant General (A&E)II,
Maharashtra,
Nagpur.

2. Executive Engineer,
Hydro Electrical Dn.III,
Vainganga Nagar,
Ajni,
Nagpur

... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha.

Appearances:

Shri Marpakwar, advocate and
Shri Mohan Sudame, advocate
for the applicant and
Shri S.R.Atre(for Mr.P.M.Pradhan)
for Respondent No.1. Respondent
No.2 in person.

JUDGMENT:

(Per Shri J.G.Rajadhyaksha, Member(A)) Dated: 10.3.1988.

This is an application filed by the applicant on 24th November, 1987 against an order transferring him from Nagpur to Aurangabad. This order is dt. 18.11.1987. On 25.11.1987, the implementation of this order was stayed upto 8th December, 1987 by way of adinterim relief. On 7.12.1987 i.e. the date ~~of~~ next fixed for hearing the applicant's advocate Shri Sudame made a statement that the applicant had not yet been relieved from the post which he was holding. The Tribunal, therefore, decided that the interim order could not be continued but the status quo as of that date was ordered to be continued.

2. On 6.1.1988 the applicant's advocate had requested for expediting hearing stating that the

applicant had already been relieved and, therefore, the status quo order which was passed on 7.12.1987 had been vacated.

3. On 9.1.1988, the applicant filed another Miscellaneous Petition No.18/88 requesting that the status quo order should be restored because on 6.1.1988 when the status quo order was vacated he was actually working as a Divisional Accountant in the office of the Executive Engineer. The Tribunal heard this application on 14.1.1988 and after considering the submissions made by Shri Sudame, advocate for applicant and Shri S.R.Atre ^{advocate} for Respondent No.1 held on that question that the statement made by the applicant's advocate on 6.1.1988 was not correct and it was based perhaps on the earlier position dt. 20.11.1987 that applicant had been relieved before approaching the Tribunal. The facts later, however, revealed that the applicant was ordered to join duties with Respondent No.2 on 2.12.1987 and was working as Divisional Accountant. Therefore, the order dt. 6.1.1988 was modified and status quo ordered to be continued until the 17th February, 1988.

4. On 17.2.1988 the matter was finally heard. The status quo/stay granted to the Transfer of the applicant upto 17.2.1988 was further continued upto 11.3.1988 pending judgment and the matter adjourned to 10.3.1988 for that purpose.

5. The relevant facts briefly are that the applicant belongs to the organisation of the Accountant General.II, Maharashtra, Nagpur, was posted as Divisional Accountant in the office of the Executive Engineer Hydro Electrical Division No.III, Vainganganagar, Ajani,

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Nagpur (Annexure -I). His grievance now was that he has been transferred from that office to an Irrigation Project Investigation Division, Aurangabad by an order passed by the Respondent No.1, the Accountant General (vide Annexure-VI). It was applicant's averment in the application that applicant had been transferred to Nagpur at his own request on 14.1.1987 because ^{of} his mother's serious illness with cancer and had continued in that organisation, ~~while~~ respondent No.2 being interested in bringing somebody as Divisional Accountant started harrassing applicant, complained that he was not looking after his work satisfactorily, reported him to the Accountant General and the Accountant General ordered his transfer. He also pointed out that he had written back to the Respondent No.2 alleging that Respondent No.2 was given to sleeping in the office during office hours and was himself not attending to his legitimate duties, and that any allegation that applicant was not doing his job properly were disproved by the fact that there was no pendency of any cases with the subordinates of the applicant. He, therefore, wanted the order dt. 18.11.1987 to be struck down as being mala fide and punitive in nature and not one in the interest of administration.

6. The reply on behalf of the Respondent No.1 was filed just before the hearing of the application on 17.2.1988. The respondent No.1 resisted the application pointed out that the quality of work put in by the applicant was irrelevant, so also was the circumstance leading to his re-transfer to Nagpur from Nanded and the facts about the illness and subsequent demise of his mother. The Respondent No.1 denied all knowledge of various averments made in the application and also

denied that the transfer was mala fide, arbitrary or illegal as alleged, in any circumstances. They maintain that applicant was working directly under Respondent No.2 and Respondent No.1 started receiving reports revealing that the applicant was not pulling on well with his immediate superior and the administration was likely to suffer adversely. Respondent No.1 thought it fit to move the applicant from that office to another office without attaching any blame to the applicant. They also denied that applicant had been singled out for a transfer in violation of Article 14 and 16 of the Constitution of India as alleged. The transfer was not punitive, but was in the interest of administration.

7. In his application for restoration of the status quo, the applicant had stated that his wife was serving with Reserve Bank of India, Nagpur and in keeping with the policy of Government to keep husband and wife at the same station, he had pleaded that he should not be transferred out of Nagpur. The Respondent No.1 replies that applicant's is a transferable job and if in exigencies of administration he is transferred, he cannot make a grievance only because his wife is serving in the Reserve Bank of India at Nagpur. Respondent, therefore, urged that the application deserved to be dismissed. The applicant has submitted some additional points on 17.2.1988 itself enclosing certain documents in support of his allegation that Respondent No.2 was violating Government orders and because the applicant pointed out these shortcomings, Respondent No.2 was annoyed with him, had got him transferred. Also attached is a copy of the Government of India, Ministry of Personnel, Public Grievances and Pension (Dept. of Personnel and Training), New Delhi O.M. No. 28034/7/86-Estt(A) dt. 3.4.1986 about the postings of husband and wife at the same station which

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lays down the policy in general.

8. Shri Marpakwar the learned advocate for the applicant argues that the applicant has been in service since 1972 and was posted to Nagpur at his own request because of his mother's illness with cancer and his mother expired in September, 1987. He pointed out page No.10 of the compilation which is a letter pointing out the defaults, negligence etc. of the applicant. It was argued that if there were any shortcomings the Respondent No.2 should have reported the matter to the Accountant General and not taken applicant to task directly by a letter of that type. He argues further, that on the same day applicant obtained information from his subordinates to prove that there is no pendency of work in his section. Shri Atre states that applicant posted under Respondent No.2 was to all purposes his direct subordinate.

9. At page.12 is a reply given by the applicant to the Respondent No.2 accusing Respondent No.2 of misconduct on his own part. Thereafter follows the transfer of applicant on the orders of the Accountant General. Shri Marpakwar argues that the reply of Respondent No.1 which is on record today shows that this difference of opinion between Respondent No.2 and the applicant was the main cause why applicant was transferred. He argues that if applicant was remiss he could have been proceeded against departmentally. He of course, admitted in reply to a question that there was no rule that if the Respondent No.2 had sent a report to the Accountant General about applicant's work and behaviour a copy should have been given to the applicant. Shri Marpakwar argues that this is a punitive transfer and applicant has not yet joined there and the transfer deserves to be struck down. He also cites A.T.R. 1986 CAT 31 and A.T.R. 1986 CAT 314 in support of his case. Shri Atre for Respondent No.1 argues that the Accountant General as cadre controlling authority has full

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powers to transfer any of his cadre personnel from one place to another. He had received reports about applicant's behaviour which bordered on insubordination and, therefore, in order to safeguard applicant's interest as well as the interests of administration Respondent No.1 decided to transfer the applicant instead of proceeding against him. He reads out the relevant portion of the reply. Shri Atre adds that Respondent No.2 being the immediate superior of the applicant, it was proper for the applicant to follow the instructions of the Respondent No.2 and not behave in an insubordinate manner. He also argues that if mala fides are alleged against Respondent No.2 they would not be relevant as against Respondent No.1 who was the cadre controlling authority and had ordered the transfer. Respondent No.2 Mr. Rughwani who appeared in person stated that the transfer had been ordered by the Respondent No.1 and it was not mala fide. He stated that he was required to send a special report through his superiors to the Accountant General about the applicant's insubordinate behaviour and language used by him in his letter at page.12 of the compilation. He also added that his grievance against the applicant was his manner of behaviour which was rude and insubordinate rather than either the quality of work or the quantity of work put in by him. He had nothing further to add.

10. After considering all aspects, I feel that the applicant has not made out a case for striking down his transfer as being mala fide or punitive in nature. It is a fact, as seen from the records that Respondent No.2 who is the immediate superior of the applicant

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brought certain shortcomings, which he felt existed, to the notice of applicant. True that the applicant took action to collect information about the pendency, not with a view obviously to remedy the shortcomings if any, but for preparation of a reply to the Respondent No.2. Even, assuming that the applicant was entitled to submit an appropriate reply to Respondent No.2 the language used in his letter at page 12 of the compilation is not befitting one who is a subordinate when addressing his superior. It was open to the applicant also to point out to his cadre controlling authority that he was not feeling happy under Respondent No.2. He does not seem to have done that. By all standards I hold that applicant's behaviour as reflected in his reply to the Respondent No.2 at page. 12 was unbecoming of a Government servant who is subordinate in position to the Respondent No.2. If therefore, the Respondent No.2 brought this to the notice of the Accountant General and as stated in the reply of Respondent No.1 the Accountant General felt that in order to safeguard the interest of applicant himself and that there should be no further damage to his career, he has to be transferred from the office of Respondent No.2, the Accountant General cannot be blamed. Nor can the transfer be termed as being one which is mala fide, arbitrary or punitive in nature. I therefore, do not see any reason whatsoever why the transfer order issued by the Accountant General on 18.11.1987 should be struck down. In other words, I do not find any fault with the transfer order dt. 18.11.1987 and I uphold it and hold that the applicant has no case. The applicant must comply with that order of transfer, forthwith.

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11. The significant part of the proceedings is that whereas the applicant has never brought out in his main application the contention that his wife was serving with the Reserve Bank of India in Nagpur, and therefore, he was invoking the policy decision of the Government of India as incorporated in Government of India Memo dt. 3.4.1986, he raised this issue for the first time when he applied for restoration of the 'status quo' order. A careful reading of page 8 submitted on 17.2.1988 with the additional say of the applicant containing the O.M. No. dt. 3.4.1986 mentioned earlier shows that the Government of India have prescribed certain guidelines for dealing with cases in which husband and wife both are in service and where both should be considered sympathetically for being posted at the same station.

12. The guidelines are elaborated at Page No.9. They very clearly suggest that in a case like the applicant's it is for the applicant or his spouse to apply to the cadre controlling authority for considering their request for being posted at one and the same station. If that is not possible, then they could be posted in one and the same State. I need not go into the details of these guidelines. Suffice it to say, that it is for the applicant or his wife to apply to their respective cadre controlling authorities to bring into operation these guidelines in their cases and to see if they can be posted at one and the same station. It is not contended by the applicant nor does it appear from the record that applicant or his wife had at any time applied to the cadre controlling authority for being posted in one and the same station. I am sure that if such an application is made, the Accountant General, Maharashtra would certainly consider the applicant's case for posting in Nagpur or at a

nearby station in implementation of the guidelines. Such is not the case at the moment and, therefore, it will not be possible for me to direct the Respondents to bring these guidelines into operation since applicant has not even orally applied today at the time of hearing for being posted at Nagpur in implementation of the guidelines. He seemed to suggest that the Respondents should by themselves take these guidelines into consideration and decide upon the posting of the applicant. I am unable to accept this contention as well. In the circumstances I pass the following orders:

O R D E R

1. The application in so far as it relates to transfer of applicant from Nagpur to Aurangabad is dismissed. He should obey the order of transfer dt. 18.11.1987.
2. So far as the applicant's case for posting at Nagpur in operation of O.M. No.28034/7/86-Estt(A) dt. 3.4.1986 is concerned, he is at liberty to apply thereunder and it will be for the Respondent No.1 to consider that application sympathetically and see how and where the applicant can be posted.
3. If applicant submits such an application to the Accountant General, Respondent No.1, he shall take a decision thereon within a period of two months from the date of this order.
4. No order as to costs.

(J. S. RAJADHYAKSHA)
MEMBER(A).

Delivered in Court Today

