

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Original Application No. 697/88
(Stamp No. 570/1988)

Shri Ramesh Suryanarayanan@Tiwari
Marketing Officer
C/o. Deputy Agricultural Marketing Adviser
(Directorate of Marketing & Inspection)
New C.G.O. Building
New Marine Lines
BOMBAY-400020

Applicant

V/s.

1. Union of India
through Agricultural Marketing Adviser
Directorate of Marketing & Inspection
C.G.O. Building
N.H. 4, Faridabad

2. The Deputy Agricultural Adviser
(Directorate of Marketing & Inspection)
New C.G.O. Building
New Marine Line
Bombay -400020

Respondents

Coram : Hon'ble Vice Chairman B.C. Gadgil
Hon'ble Member (A) P.S. Chaudhuri

Appearance:

Shri D.V. Gangal
Advocate
for the applicant

Shri J.D. Desai
(for Shri M.I. Sethna)
Counsel
for the respondents

JUDGMENT
(Per: B.C. Gadgil, Vice Chairman)

DATED: 10.10.1988

The applicant who is working as an Assistant
Marketing Officer under the Ministry of Agriculture and
Rural Development is challenging his transfer from Bombay
to Nagpur.

2. The applicant joined service as Assistant Marketing Officer at Nagpur in 1981. Thereafter in June 1987 he was transferred to Bombay. The impugned order (Annexure F) dated 7.7.1988 was passed by the Agricultural Marketing Adviser to the Government of India (AMA, for short). By that order a number of officers in various grades were transferred. As far as the present application is concerned suffice it to say that the applicant was transferred from Bombay to Nagpur. This application was originally placed before a single Member. However, he directed that it may be heard by a Division Bench at the admission stage and it is in this way that we have heard Sri Gangal for the applicant and Shri J.D. Desai (for Shri M I Sethna) for the respondents on the question of admission of the application.

3. The applicant challenges the impugned order on various grounds. However, we would refer to only those contentions that have been pressed before us by Shri Gangal. The Government has on 25.4.1985 issued certain

guidelines as to how the transfer of the employees in this organisation should be effected. The guide lines state that the officers engaged in the field operations shall be transferred from one station to another station after five years of stay at a particular station. The grievance of the applicant is that he has been transferred from Bombay though he has not completed five years service at Bombay. It was, therefore, urged that there was a breach of this guide line and consequently the order is bad. However, it is material to note as to what has been provided in guide lines no. 8 & 9. They read as follows:

"8. Exigencies of public work

The general principles of transfer laid down above are to be followed subject to the exigencies of work. Transfers can be made disregarding any one or more of the above general principles if it is necessary to do so in public interest.

"9. Relaxation of guidelines

Where it is found necessary to order transfer in public interest in relaxation of the above general principles, each case shall be submitted to the Agricultural Marketing Adviser to the Government of India for orders giving full justification of the proposal."

4. The contention of the applicant is that though the guideline of transfer after five years may not be strictly adheared to still it is necessary that such transfer before the period of five years must be shown to be in public interest and that the matter has to be placed before the AMA for orders regarding such transfers. The applicant contends that his transfer to Nagpur is not in public interest and that the matter has not been considered at the level of AMA.

5. The respondents have filed a reply opposing the admission. In that reply it is stated that the matter has been considered by the AMA and that the said authority came to the conclusion that it was necessary in public interest to transfer the applicant from Bombay. In the application the applicant has stated that he has unblemished record and his integrity and honesty are beyond doubt. He also alleged that no communication was sent to him about any complaint against his work. With these allegations he

contended that his transfer was not in exigencies of service and not in public interest. To meet this claim the respondents have contended that the question of public interest has a number of facets viz., the ability of the person, his integrity, his organisation, skill etc. The organisation deals with scrutiny of goods as certified by the Agmark Laboratory. According to the respondents the response of the public regarding the work of an employee is important consideration so far as the public image and the public trust and confidence in the working of the organisation is concerned.

6. Along with the reply the respondents have filed two complaints, Exhibits 2 & 3. Exhibit 2 is a letter to the Bombay office by the Bombay Honey Packers Association wherein it is alleged as follows:

".... From time to time we were guided and helped by the concerned AGMARK Officers all these years. It is only recently we find that an officer who has taken charge has started tarnishing the image of AGMARK. The modus operandi is to harass us and extract money and threaten us with dire consequences for non compliance. The demands are heavy and that too often with an assurance for problem free operation during his service period here as a Marketing Officer."

"We therefore have to request you to kindly initiate steps to curb this menace and help restore the AGMARK image. The Officer under reference is Mr. Tiwari."

This letter is signed by five establishments such as Phondaghat Pharmacy, Shri Ramnath Yogashram, Kamal Traders Hebbar & Co., and Zar Enterprises. Though there is no date on the top of the letter, date 6.6.88 has been put by the signatory for Phondaghat Pharmacy. Exhibit 3 to the reply is again a letter by Hakim & Company. It is an establishment dealing in export and import of Indian perfumes and essential oils. The letter is dated February 15th, 1988. The grievance is that some of the samples taken were found to be below mark. However, subsequent samples taken from the same lot on reexamination were found to be up to the mark. The grievance is that this is the result of the blunder in the Bombay office of the respondents. According to respondents, in view of these complaints they decided to transfer the applicant from Bombay to Nagpur.

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7. Shri Gangal for the applicant contended that personally he would not have argued that an officer should be retained if there are any real complaints against the applicant. He, however, argues that in the present case the two complaints are very vague. Exhibit-2 is signed for five establishments mentioned above. Shri Gangal submitted that there is nothing on record to show that the signatories in the establishments referred to in the Exhibit were authorised to sign. But it is material to note that there is a rubber stamp near each signature to show that the proprietor of the concern has signed it. In addition it is on the letter head of the Bombay Honey Packers Association. Similarly on the other letter (Exhibit 3) is signed by the Managing Director and it is on the letter head of the Company. It is material to note that at this juncture and in this proceeding it would neither be necessary nor desirable to ascertain whether the persons who signed were authorised to

sign. We have to presume that they have been signed by the proprietors. Shri Gangal then urged that the applicant was not even asked his explanation about these complaints. His statement was not recorded. He was not even warned about these complaints and that, therefore, to transfer the applicant on the basis of such complaints cannot be treated as in public interest. He argued that such transfer on the basis of complaints would be doubtful in nature and a penalty of transfer cannot be imposed without holding any enquiry about these complaints. This question was considered by the Full Bench of the Tribunal in the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research & Another, reported in ATR 1988(2) C.A.T. 116. The relevant head note reads as under:

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not vitiate.
"But we must add that question of observing the principles of natural justice in a case of transfer

does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee."

8. The applicant has asked for production of certain documents as to how the matter of the applicant's transfer has been processed. The applicant was given inspection of those documents and those were referred to during the course of arguments. It is necessary to mention that there is a note dated 27.6.88 by the Deputy Agricultural Marketing Adviser (Dy. AMA) to the Government (Shri M.K. Biswas). He states that the Dy. AMA at Bombay Shri A.S. Yawalkar when on tour to New Delhi had a discussion with him regarding certain administrative matters and that at that time Yawalkar told him about the allegations of corruption by the applicant. The note further states that the representation from the Bombay Honey Packers Association against Shri Tiwari was also submitted to the AMA which mentions about the harassment and extraction of money from the packers by Shri Tiwari. The AMA, therefore, handed over that representation to Shri Biswas with the direction that Shri Tiwari should be transferred forthwith and that the

from the representation of Honey Packers Association be put up to AMA for indicating further action to be taken against Shri Tiwari. It is thus clear that the department took an action to transfer the applicant because there were complaints against him and that that action was in the interest of the organisation and also in public interest. It is rightly contended by Shri Desai that the department would not like that an officer against whom complaints of corruption have been received should be continued at the same place. Of course he further stated that in due course an enquiry will be held by the department about the allegations of corruption. He further contended that it would not be correct on the part of the applicant to contend that the applicant need not be transferred unless a detailed enquiry was held and he was found guilty. It is true that the transfer may be penal if it is based upon the finding of the enquiry that the applicant is guilty of corruption. In the present case the concerned authority has taken an action to transfer the applicant and has also directed that the matter should be put up for further action against Shri

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Tiwari, that would be considered in due course. The office then proposed that Shri Tiwari should be transferred from Bombay to Bangalore. However, the AMA passed an order that he should be transferred to Nagpur for the time being. Taking into account all these factors it would be too much for the applicant to contend that his transfer is not in public interest or guideline no. 9 has not been followed.

9. The applicant has alleged certain malafide. The malafide are not for the further purpose of contending that the action taken was by way of vengeance against the applicant. Shri Gangal argued that another officer by name Mathur was initially posted at Jaipur and that after holding a departmental enquiry an order was passed that not he should be posted on any field station. Mathur was thereafter transferred to Nagpur (which is not a field station) on 12.6.87. However, Mathur made a representation that he should be transferred from Nagpur. The

matter was processed. The file pertaining to it was seen by Mr. Gangal and it was also shown to us. Initially a note was prepared that Mathur should be continued at Nagpur for one year. That note was put up before the AMA. He directed that the matter should be discussed. Accordingly, the discussion took place on the next day and there is a note that the request of Mathur was on the ground of ill health due to non-suitability of climate of Nagpur and that Mathur has produced medical certificate to that effect. A decision was taken by the AMA that Mathur should be posted to Calcutta. It is in this way that Mathur was transferred from Nagpur. Shri Gangal then relied upon certain averments made in the rejoinder. During the course of arguments he contended that certain other officers viz., R K Pandey; A S Sharma; T C Krishnamurti; D P Singh and others were allowed transfer on their own request. It was urged that these orders in connection with Mathur and others would indicate that favouritism has been shown by the office to these persons. In our opinion there is nothing to indicate that any

favour has been shown as such. The most that can be said is that the department took into account the request made by the officers and they have been accepted. Apart from that, in this litigation, we are not at all concerned as to how other officers have been transferred. It has nothing to do with the transfer of the applicant. Of course the applicant has made a grievance that in the earlier year i.e., 1987 he wanted to go to Delhi. At the time of rotational transfer of 1987 the applicant was informed that he is due for transfer and that he may indicate the choice station amongst three places viz., Nagpur, New Delhi and Bombay. The applicant gave his choice station as New Delhi. But the applicant was transferred to Bombay. This can be seen from an officer named pages 22 to 26. In that year Roy wanted a shift from Bombay to Nagpur while Mathur wanted a shift from Delhi to Bombay. However, the administration thought it fit not to accede to the request of the applicant and the above mentioned two officers in as much as Roy was transferred to Delhi and Mathur was transferred to Nagpur and the applicant to Bombay.

This took place in 1987 and we fail to understand how it has any relevance for alleging malafide regarding the impugned order of 1988.

10. In view of the above discussions, we do not feel that the applicant has made any *prima facie* case for admission of the application and the application is, therefore, liable to be dismissed. Before closing we may also refer to the contention of Shri Gangal that this matter should have been heard and decided by a Single Member and that the Division Bench is not entitled to do so. Section 5(6) of the Administrative Tribunals Act provides that it shall be competent for the Chairman or any other Member authorised by Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify. *Qm* Proviso to that sub section states that if it appears to such Member that the case or matter is of such a nature that

it ought to be heard by a Bench consisting of two Members the case or matter may be transferred by the Chairman, or as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit. Shri Gangal argued that since there are no orders from the Chairman, this Bench has no jurisdiction. It is not necessary to go into this question in as much as the litigant ^{cannot} be said to have suffered ~~any~~ prejudice simply because a single Member matter has been heard by a Bench of two Members. Apart from that it is material to note that the contents of the order passed by the Chairman on 27.6.87. That order was passed in exercise of Sec. 5(6) of the Act and the order states that the matters enumerated in that order will be dealt with by a single Member. Paragraph 2 of that order further states as follows:

"All cases specified in para 1 above shall be posted for admission before a single member Bench. If the single Member Bench is of the view that any such case is not fit for admission, it shall order such a case to be posted before a Bench of two Members."

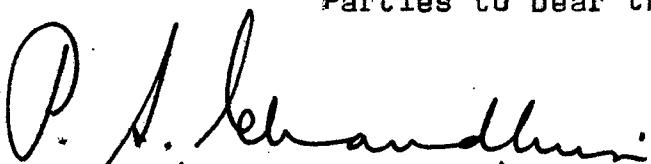
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In our opinion the very purpose of this provision is that a single Member can admit a matter. However, he cannot

summarily dismiss it. In the later contingency the Chairman has directed that the case should be posted before a Bench of two Members. In the present case the matter was initially posted for admission before a single Member and at that stage the single Member has directed that it should be placed before the Division Bench. It is in this way that the matter has come before us and we do not think that there is any irregularity in the said procedure.

ORDER

The net result is that the application fails and is summarily rejected. The interim relief order passed by this Tribunal stands vacated.

Parties to bear their own costs.


(P.S. Chaudhuri)
Member (A)


(B C Gadgil)
Vice Chairman

After the above order was passed Mr. Gangal for the applicant submitted that the applicant intends to

join his posting at Nagpur and that he would require some time as he would like to have Transfer TA & DA from the department. Mr. Desai on instructions from Senior Marketing Officer states that the applicant would be given Transfer TA & DA, if he makes an application, and in addition joining time will be granted. The applicant and Mr. Gangal state that the applicant would make an application tomorrow in that respect. The department will pass appropriate orders in that respect.



(P.S. Chaudhuri)
Member (A)



(B C Gadgil)
Vice Chairman