

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

TRANSFERRED APPLICATION NO.240/86

Shri Rolland P. Pareira,
Vijaynagar Society,
Marol Village,
Andheri, Bombay.

... Applicant.

Vs.

1. The Union of India,
Represented by the External
Affairs Ministry,
New Delhi, Bombay.
2. Shri Vasudevan,
Public Relation Officer,
Regional Passport Office,
Manish Commercial Centre,
216-A, Dr. Annie Besant Road,
Worli, Bombay-25.
3. The Regional Passport Officer,
Pass-port and Imigfation Office,
Manish Commercial Centre,
216-A, Dr. Anne Besant Road,
Worli, Bombay 400 025. ... Respondents.

Coram: Hon'ble Vice-Chairman Justice Shri B.C. Gadgil.
Hon'ble Member Shri J.G. Rajadhyaksha.

Appearances:

Shri M.G. Bapat,
Advocate for
the applicant.

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

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

Date:14.01.1988

Writ Petition No.1489 of 1985 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision and is numbered as Transferred Application No.240/86. The applicant who is an employee in the Department of External Affairs, i.e. the Passport Office, Bombay has a grievance about his transfer from Bombay to Hyderabad.

2. The applicant is a Lower Division Clerk. He was working in the Passport Office at Bombay. It appears that he was initially taken up on daily wages. His services were terminated, and subsequently he was employed on monthly salary with effect from 1980. By an order

dated 31.5.1985 (vide Annexure-A to the Petition) he was transferred to Hyderabad and he was relieved on the same day. The applicant contends that this was a malafide transfer. According to him, some persons are having some grievance against him and they are out to harass him. He alleges that he was attending his duties diligently. He further contends that some time in 1982 he was assaulted by three persons who were working in the same department and that he had reported the matter to the police. The department did not take any action against those assailants. Respondent No.2 who was then Public Relations Officer used to demand certain files from the applicant and that respondent-2 got annoyed when applicant would not send the files to respondent-2 unless the applicant got instructions from the departmental head. It is alleged that for this reason, ~~that~~ the respondent-2 started harassing the applicant. The applicant has received a number of memos asking his explanation and that all this has been done with a view to spoil his record. It is thus contended that the transfer to Hyderabad was by way of victimisation. It was then submitted that Lower Division Clerks are not normally transferred and that, therefore, the impugned order is bad. The transfer of the applicant was ordered by the Ministry of External Affairs, New Delhi by an order dated 22nd May, 1985 vide Exhibit B. That order shows that there were a number of U.D.C.s who had become surplus and that therefore the said U.D.C.s have been transferred. In the list of such transferred U.D.C.s

the name of the applicant appears at Serial No.19. The applicant contends that he could not have been transferred to Hyderabad as he was not a U.D.C. and that, therefore, the subsequent order Exhibit A dated 31.5.1985 was bad. There are certain other contentions raised by the applicant but they are not relevant as they have not been pressed before us during the course of arguments.

3. The respondents resisted the application. They contended that initially in the communication dated 22.5.1985 (vide Annexure-B) the name of the applicant was wrongly mentioned as a U.D.C. However, the respondents contend that the Delhi Office modified the order by a telex message stating therein that the applicant's transfer as U.D.C. is partially modified, and at the same time informing the Bombay office that the applicant has been transferred to Hyderabad as L.D.C. On 31.5.1985 the formal order of transfer of the applicant along with that of 19 other L.D.Cs was passed by the New Delhi office. The respondents, therefore, contend that the order at Exhibit A issued by the Bombay office was not in accordance with the communication dated 22.5.1985. But according to them the applicant was actually transferred on the basis of the telex and subsequent order dated 31.5.1985. During the course of arguments copies of the said communication were made available to us. It is clear that by an order dated 31.5.1985 the Delhi office has transferred 20 L.D.Cs as some of them have become surplus at certain stations. The transfers have been made to various places viz., Bangalore, Bareilly, Bombay, Hyderabad and Madras. Respondents contend that this transfer of 20 L.D.Cs. (including that of the applicant) was for administrative convenience and arising from

exigencies of service. It was denied that the said transfer was a malafide one. Respondents denied that the applicant's work was good and proper. They have contended that a number of memos have been issued to the applicant. Along with the reply, copies of the memos issued from the year 1981 onwards have been filed. As far as the alleged assault on the applicant is concerned, the respondents contend that the office has nothing to do with the assault. It was denied that respondent No.2 harassed the applicant. The contention is that respondent-2 in his capacity as Public Relations Officer has a duty to call for the files and the records and see that the office work is done properly.

4. We have heard Mr. Bapat for the applicant and Mr. J.D. Desai (for Mr. M.I. Sethna) for the respondents. There appears to be no substance in the contention of the applicant that he was wrongly transferred on a wrong presumption that he was a U.D.C. It is true that in the transfer order of the U.D.C.s dated 22.5.1985 the applicant is shown to have been transferred from Bombay to Hyderabad. However the error was corrected by a telex and subsequently a formal order dated 31.5.1985 has been issued whereunder not only the applicant but 19 other L.D.C.s have been transferred.

5. We are not able to accept the contention of the applicant that the transfer order is a malafide one. It is true that a number of memos have been issued to the applicant from 1981 onwards. However, it is material to note that the respondents have produced those memos with a view to meet the contention of the

applicant that his service at Bombay was quite good. Those memos are not the basis of the transfer order. The basis of the transfer order is that some of the L.D.C.s have become surplus at various places and in view of that contingency, about 20 L.D.C.s have been transferred. It is in this way that the applicant has been transferred.

6. It is then urged that ordinarily L.D.C.s are not transferred. This may be true, but that does not mean that the administrative convenience and the exigencies of service would prohibit the department from transferring the L.D.C.s. As discussed above some of the posts of L.D.C.s have become surplus and it is for this reason that the transfer orders were issued. We do not think that a L.D.C. can claim protection against any transfer particularly when the administrative convenience needs such transfer.

7. It is material to note that the applicant has as yet joined his posting at Hyderabad though he was relieved of his duties from Bombay office. The applicant has made an application to the Bombay office for leave. The applicant was informed that he should better apply to Hyderabad office as he has already been relieved from the Bombay office. Mr. Bapat has made a grievance in this respect. However, we do not find anything wrong about this procedure.

8. It is next urged that the applicant would be put to hardship as he has to maintain a big family and that his salary as L.D.C. is a very meagre one. Ordinarily, the Tribunal would be very slow to interfere

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with the transfers on the ground of hardship. It is common ground that the applicant though relieved from Bombay in 1985 has not joined the posting at Hyderabad. Subsequently, the applicant was transferred to Jaipur. He did not join there also. Thus for the last 2½ years the applicant is not on duty. Mr. Desai contended that the fact that the applicant was able to maintain his family without any salary for over 2½ years would be a circumstance which would indicate that there is no financial strain as contended by the applicant. We are not impressed by this argument. However, we have made reference to it as a submission in that respect was made before us. At the same time we would like to observe that if a transfer is made for administrative convenience, the applicant cannot make a valid grievance that he would be put in a hardship.

9. These are the various submissions that have been pressed before us. After considering these we find that there is no substance in the application.

ORDER

The application is dismissed. However, there would be no order as to costs.

B.C. Gadgil
(B.C. GADGIL)
VICE-CHAIRMAN

I.G. Rajadhyaksha
(I.G. RAJADHYAKSHA)
MEMBER (A)