

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

TR.NO. 342/86

Mr. Basvaraj Ningappa Arlikatty
R/O 440 Rasta Peth
Pune - 11.

APPLICANT

V/S.

Union of India

- 1) Recruiting Directorate
Rtg - 5 (OR) B
- 2) Adjutant General's Branch
Army HQ. West Block III
R.K. Puram New Delhi-110022
- 3) Zonal Recruiting Officer
HQ. Recruiting Zone No. 3
Rajendrasingh Road
Pune 411 001
- 4) Zonal Recruiting Officer
HQ. Recruiting Zone
No. 46, Residency Road
Bangalore 560025

RESPONDENTS

CORAM : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) P Srinivasan

APPEARANCE :

Mr. Subhash Langote
Advocate
for the Applicant

Mr. J. D. Desai (for Mr. Sethna)
Advocate
for the Respondents

JUDGEMENT

Dated: 18.1.1988

(PER: Shri P. Srinivasan, Hon. Member (A))

This is a transferred application received from
the court of the Civil Judge, Senior Division, Pune
where it was originally filed as Regular Civil Suit
No. 776 of 1985.

P. Srinivasan

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2. By an order dated 7.6.1980, the office of the Adjutant General, Army Headquarters, New Delhi (Respondent No.2), the applicant who was working as a Daftari in the Zonal Recruiting Office at Pune was transferred to the Zonal Recruiting Office, Headquarters Zone, Bangalore. The applicant's representation against the said transfer was rejected by Respondent No. 2 by two letters dated 5.8.1980 and 28.10.1980. In this application the applicant has challenged his transfer. As stated earlier, the transfer was ordered by Army Headquarters at Delhi in its order dated 7.6.1980. The same was communicated to the applicant by a movement order dated 21.6.1980 issued by the Zonal Recruiting Office at Pune (Respondent No. 3). The applicant wants us to declare this movement order null & void. By implication therefore he is also challenging order dated 7.6.1980 passed by Army Headquarters.

3. The applicant was on leave from 19.5.1980 to 28.6.1980 and the aforesaid movement order was served on him when he was on leave. Thereafter the applicant applied for extension of leave upto 19.7.1980 to the Zonal Recruiting Office, Pune (Respondent No. 3) who forwarded the application to Zonal Recruiting Office, Headquarters Zone, Bangalore (Respondent No. 4) because his name was "Struck off strength (SOS) at Pune on 30.6.1980. Respondent No. 4 asked the applicant to join at Bangalore in order "regularise your leave" by a letter dated 25.7.1980 addressed to the applicant. The applicant did not join at Bangalore because he had represented to Army Headquarters, Delhi against his transfer. The effect of this was that from 30th June 1980 the applicant was absent from duty, having been

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Struck off strength at Pune and not having joined in Bangalore. For this absence, disciplinary proceedings were initiated against the applicant by Respondent No.4, namely, Zonal Recruiting Officer, Bangalore. After Departmental Enquiry Respondent No. 4 by order dated 23.8.1982 removed the applicant from service. Though the prayer in the application is not clear in this regard, he has again by implication challenged this order of punishment in the following words "the plaintiff should be reinstated on the original post at the Pune Office." (emphasis supplies).

4. As it appeared prima facie that so far as the challenge to the order of transfer dated 7.6.80 was concerned the suit originally filed in the court of the Civil Judge was barred by limitation, we called upon Shri Langote, learned counsel for the applicant to address us on this point. He submitted that even though the order of transfer was passed on 7.6.1980, and the applicant's representation against the said order was rejected by two letters dated 5.8.1980 and 28.10.1980 and therefore the original suit might be considered as barred by limitation, this Tribunal should still go into the validity of the said transfer order for the purpose of determining whether the disciplinary proceedings were validly initiated and completed, leading to the punishment of removal of the applicant from service by order dated 23.8.1982. If the transfer order was invalid, the applicant was not obliged to obey the said order and report at Bangalore and therefore the charge in the Departmental Proceedings that the applicant had failed to report for duty at Bangalore in obedience to the order of

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transfer after expiry of joining time/joining period and had thus absented himself from duty without permission, constituting lack of devotion to duty and disobedience of orders also losses its validity and the whole proceedings following the charge-sheet were liable to struck down as illegal. As for as the validity of the transfer order, Shri Langote made the following submissions : it was the policy of the Government not to transfer a Group 'D' official from one station to another station except in very special circumstances like adjustment or surplus and deficiencies, promotion, exigencies of service or administrative requirements. This was laid down in the Office Memorandum issued by the Ministry of Defence dated 21.5.1975. The applicant was a Group 'D' official. While rejecting the representations of the applicant the respondents had merely stated that the transfer was in the interest of service. No. reasons had been given for the transfer and it had not been shown how the interest of service would be advanced by the transfer. The respondents had also stated that the transfer was in the applicant's own interest. This was plainly incorrect because the applicant would have been put to great inconvenience by the transfer. The post in Bangalore had not been filled up for a long time which itself was a proof of the fact that there was no urgent need to fill the post by transferring the applicant.

5. Rebutting the contentions of Shri Langote, Shri J.D.Desai learned counsel for the respondents submitted that it was a sufficient answer to the applicant's representation that his transfer was in the interest of service. The authorities were not

P. Desai

expected to spell out in details how the interest of service would be affected if the transfer had not been made. The Office Memorandum dated 21.5.1975 only laid-down a guideline that normally a Class IV employee should not be transferred except in the circumstances stated which included exigencies of service and administrative requirements. The authorities here felt that it was an administrative requirement that the applicant be transferred to Bangalore. On the other hand, transfer was an incident of Government service and unless it is shown to be malafide or based on prejudice or animus, this Tribunal should not interfere with the order of transfer. Shri Desai also urged that since this application originated as a civil suit the limitation in regard to filing of such suits would apply to it and since it was filed more than three years after the cause of action arose, it should be dismissed as barred by limitation.

6. Having considering the rival contentions carefully we feel the applicant's contention that the transfer order dated 7.6.1980 was invalid deserves to be rejected even on merits. We are, therefore, not going into the question of limitation. The respondents have clarified to the applicant that the transfer was in the interest of service and we have no reason to disbelieve this statement. No allegations have been made in the application that the authority who made the transfer was prejudiced against the applicant or that the order of transfer was in any way malafide. We agree with Mr. Desai that the guideline contained in the Office Memorandum dated 21.5.1975 does not constitute an absolute prohibition against the transfer of a Class IV

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or Group 'D' official. The case of the applicant falls within the special circumstances mentioned in the said Office Memorandum itself under which a transfer could be made. This being so we reject the applicant's contention that his transfer was invalid.

7. As regards the impugned order of punishment Shri Langote contended that the Zonal Recruiting Officer, Bangalore who initiated the disciplinary proceeding and passed the order imposing penalty on 23.8.1980 was not competent authority. Though the applicant had been transferred from Pune to Bangalore by order dated 7.6.80, he did not join at Bangalore and did not therefore work there even for a single day. That being so, the Zonal Recruiting Officer, Bangalore did not acquire jurisdiction over the applicant and so could not initiate disciplinary proceedings against him, much less award punishment to him. Shri Langote relied on the decision of the Patna Bench of this Tribunal in Avadh Bihari's case 1987 (II) SLJ/(CAT) 308.

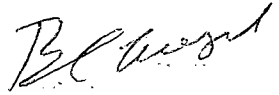
8. Shri J.D.Desai learned counsel for the respondent opposed the contentions of Shri Langote. The applicant was transferred from Pune to Bangalore by order of Army Headquarters dated 7.6.80. Pursuant to this order, the Zonal Recruiting Officer had passed a movement order on 21.8.80 stating that the applicant would be struck off the strength of his office on 30.6.80. There was no question of handing over charge for a Class IV official. Therefore as on 30.6.1980 the applicant

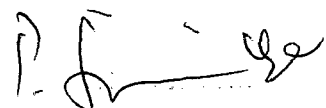
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stood relieved of his post at Pune and was duty bound to join at Bangalore. The Zonal Recruiting Officer at Pune had no jurisdiction which passed on to the Zonal Recruiting Officer, Bangalore on 30.6.1980. The decision in Avadh Bihari's case was not applicable here.

9. After careful consideration, we are of the view that the contention of Shri Langote in regard to the order of punishment has to fail. We may mention that in Avadh Bihari's case there is no reference to the applicant therein having been relieved from his original office as in this case. Once a person is relieved from the office from which he is transferred he will have to be treated as falling within the jurisdiction of the office to which he is transferred. That being so, the Zonal Recruiting Officer, Bangalore acquired jurisdiction over the applicant after 30.6.1980 and could initiate and complete disciplinary proceedings against him. In this view we are fortified by a decision of another bench of this Tribunal at Bombay rendered in Transferred Application No. 321 of 1986 on 20.11.1987. In view of this the second contention of the applicant challenging the validity of the disciplinary proceedings and the order of punishment passed against him on 23.8.1982 is also rejected.

10. In the result the application is dismissed. Parties to bear their own costs.


(B.C. Gadgil)
Vice Chairman


(P. Srinivasan)
Member (A)