

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH NEW BOMBAY

TRANSFERRED APPLICATION NO. 321/86

Arun Withalrao Khisti,  
161, Narayan Peth,  
Pune-30.

... Applicant.

Vs.

1. Union of India, through  
the Secretary to the Government,  
Secretariat,  
New Delhi-11.

2. Commandant,  
College of Military Engineering,  
Depodi, At & Post : Depodi.  
Pune-31.

3. Commander Works Engineer,  
Range Hills Road,  
Kirkee,  
Pune-3.

4. Garrison Engineer,  
Air Force,  
Lohogaon, P.O. Lohogaon,  
Pune-32.

5. Shri Vasant Krishnarao Nawathe,  
D/Man Grade II,  
'Ex' Civil.H.Q. C.M.E.  
C.M.E.,  
Depodi,  
Pune-31.

6. Shri Chandrakant Anant Diwakar,  
G.E. (P) No.1,  
B/R I,  
Dehu Road.

... Respondents

Coram: Hon'ble Member(A) J.G.RAJADHYAKSHA

Hon'ble Member(J) M.B.MUJUMDAR.

Appearances :

1. Shri S.R. Atre, advocate for  
applicant.
2. Shri M.I. Sethna, Counsel for  
respondents.

ORAL JUDGMENT

DATED : 20.11.1987

(Per: M.B. Mujumdar, Member(J))

The Applicant Shri A.V. Khisti, had filed Regular Civil Suit No. 1890/80 in the Court of the Civil Judge, Senior Division, Pune and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The applicant was appointed as a Draughtsman-Gr.III in the office of the Commander Works Engineer in Kamptee in 1964. In 1975, he was promoted as Draughtsman-Gr.II and was made Quasi Permanent. He was transferred in 1976 from the office of the Chief Engineer, Pune Zone, to the office of the Commandant, College of Military Engineering, Dapodi, Pune. He joined that post on 16.9.1976. By an order dated 15.4.1977 passed by the Commandant of the College of Military Engineering, Dapodi, Pune, the applicant was transferred to Garrison Engineer (Air Force), Lohagaon.

3. The applicant protested against that transfer on one ground or the other but that was of no use. By an order dated 30.9.1977 of the Major, Garrison Engineer, the applicant was asked to report to duty forthwith as per the transfer order. To that the applicant sent his letter dated 5.10.1977, stating that the Commandant, College of Military Engineering had not completed formalities regarding his transfer and that he was regularly attending the duties till that date. He further informed that after getting "each and everything" cleared he would join the new posting with a fresh movement order. It appears that even after the applicant was relieved on 15.4.1977 he was attending the College of Military Engineering but finally he was stopped by the Security Officer from coming into the premises.

4. As the applicant did not join his posting with Garrison Engineer (Air Force), Lohagaon for a long time, a charge sheet dated 8.3.1978 was served upon him. The charge was as follows :

"Article-I"

That the said Shri A.V. KHISTI D'Man Gde II Ty on transfer from Commandent, CME, Dapodi, Pune-31 to GE(AF) Lohagaon Pune-32 vide Commander CME, Dapodi Pune-31 Movement order No.12152/MES/D'Man/6/C dated 15 Apr,77 failed to report for duty to GE(AF) Lohagaon <sup>FN</sup> on 18 Apr 77 as directed therein and remained absent from duty from 18 Apr 77 onwards without any valid reason. Shri A.V. KHISTI, D'Man Gde II Ty by his above act behaved in a manner unbecoming of a Government Servant hereby violating Rule 3(I)(iii) of the CCS (Conduct) Rules 1964."

5. Along with the charge sheet a statement of imputation of misconduct or misbehaviour in support of the charge, and a list of documents which would be relied upon in support of the charge were sent to the applicant. As no witness was to be examined, the statement of list of witnesses was kept blank. The statement of imputation in support of the charge was as follows :

Shri A.V.KHISTI D'Man Gde II Ty was permanently transferred from Comdt. CME, Dapodi Pune-31 to GE(AF) Lohagaon Pune-32 vide Comdt. CME Movement order No. 12152/MES/D'Man/6/C dated 15th Apr 77. As per the Movement order the individual was relieved of his duties from Commandant CME on 16 Apr 77 (AN) and he was directed to report for duty to GE(A) Lohagaon <sup>18</sup> Pune-32 on 18 Apr 77(FN) (17 Apr being Sunday). As the individual failed to report for duty as directed in

the above order, he was again addressed under GE(AF) Lohogaon letter No.1083/Vol.66/178/E1 dated 30th Sep.77 directing him to report for duty forthwith, to which he replied vide his application dated 05 Oct.77 addressed to GE(AF) Lohogaon that the Commandant CME had not completed the formalities of his transfer and there he is regularly attending his duty in CME till date and after getting each and every thing clear along with fresh movement order, he will join the new formation."

The statement is quoted as it explains the charge in detail.

6. Along with the charge sheet and other documents a memorandum dated 8.3.1978 was served upon the applicant. By that memorandum the applicant was directed to submit a written statement of his defence within ten days of the receipt of the memorandum. He was also asked to inform whether he desired to be heard in person. The applicant did not send any reply. He also did not take part in the enquiry nor did he remain present before the Enquiry Officer.

7. One Shri Balasubramanian, Superintendent, Electrical and Mechanical, Gr.I, was appointed as the Presenting Officer. Shri V.D. Paranjpe, Assistant Engineer, was appointed as the Enquiry Officer. After considering the documents, the Enquiry Officer held that the charge framed against the applicant was proved.

8. By a memorandum dated 26.10.1978 the Disciplinary Authority i.e., the Commander, Works Engineer, sent a copy of the Enquiry Officers report to the applicant. He indicated in the memorandum that he was agreeing with the findings of the Enquiry

Officer and holding that the Article of charge was proved. He also informed of his provisional conclusion that the applicant was not a fit person to be retained in service and hence he proposed to impose on him the penalty of removal from service. The applicant was given an opportunity to making a representation on the proposed penalty within fifteen days from the receipt of the memorandum. The applicant did not reply to that memorandum also. The Disciplinary Authority by the order dated 8.12.1978 imposed the penalty of removal from service without disqualification for future Government employment.

9. The applicant did not prefer any appeal against the said order of penalty. However, he filed the suit in the Civil Court of Pune on 24.10.80. In the suit, he has challenged the movement order dated 15.4.1977 and the order of penalty dated 8.12.1978. According to him, both are illegal, void and not binding on him. He has requested for declaring both these orders as void and for arrears of a salary amounting to Rs.19,021.75 on the basis that he was still in service.

10. We have just heard Mr. S.R. Atre, the Learned Advocate for the applicant and Mr. M.I. Sethna the Learned Counsel for the respondents.

11. Mr. Atre challenged the movement order on two grounds : (i) that it is not a transfer order and (ii) that it was issued mala fide. As regards the first attack, we may point out that the transfer order is entitled : "Movement order - postings/ transfers. D'Man GDE II". It is true that no separate transfer order was passed. But in our opinion that was not necessary. The order clearly shows that the applicant was permanently transferred to the Garrison Engineer (Air Force), Lohagaon, in

the interest of the state. The order further shows that he was to be relieved of his duties in the College of Military Engineering on the afternoon of 16.4.1977 and he was directed to report to the Garrison Engineer, (Air Force), Lohagaon on 18.4.1977, forenoon. According to the order the pay and allowances upto and for 30.4.1977 were to be claimed by the applicant through the College of Military Engineering. From these contents of the order it is difficult to accept the contentions of Mr. Atre that as no separate transfer order was passed this order was ineffective.

12. Regarding the second submission, Mr. Atre pointed out that respondent No. 5 Mr. V. K. Navathe and respondent 6 Mr. C. A. Divekar, were working in the same office since about three years. But applicant was transferred though he was working there only for six months and hence the order should be treated as malafide. But the order shows that the applicant was transferred in Public Interest. It is for the authorities to decide who should be transferred considering the nature of work and other circumstances. It is indicated in para 10 of the written statement that the applicant was transferred as he was found surplus due to reduction and establishment. Merely because the applicant who was junior in the office was transferred by retaining other senior persons, the order cannot be said to be malafide.

13. At one stage Mr. Atre submitted that the posting in the College was a tenure posting and it was for a fixed period. This was stoutly denied by the respondents and the applicant could not show anything to us that his posting in the College of Military Engineering was for a fixed period. We, therefore, find that the transfer order dated 15.4.77 cannot be held invalid or infirm on any ground.

14. Regarding the order of penalty, Mr. Atre submitted that the submission of the charge sheet by the Commander Works Engineer, Kirkee, was not proper and hence the proceedings as well as the order of penalty are vitiated. In support of this argument he submitted that the movement order was not proper and hence applicant should be deemed not to have been relieved from the College of Military Engineering. It is true that separate relieving certificate or clearance certificate was not issued in respect of the applicant, But after the movement order was passed, and after he was asked to join his new posting with the Garrison Engineer (Air Force) at Lohagaon it did not lie in his mouth to say that he would not join his new posting because the relieving order was not proper. The technicalities regarding clearance certificate and relieving certificate are meant for the authorities and would not entitle the person transferred to refuse to join his new posting. Hence it was not proper on the part of the applicant to claim in his letter dated 5.10.1977 that he would join his new posting only after getting each and every thing cleared. This shows how adamant he was in not joining his new posting.

15. About the competence of Commander, Works Engineer, there cannot be any doubt that he was competent to start the disciplinary proceedings and to frame the charge sheet. In this connection Mr. Atre relied on the letter from the Chief Engineer (Southern Command) dated 28.11.1977 addressed to the Commandant of the College of Military Engineering, Pune. The letter was sent with reference to the letter dated 17.11.1977 from the Chief Engineer, probably because initially there was some doubt as to who should start the disciplinary proceedings i.e. the Commandant of the College of Military Engineering or the Commander, Works Engineer, Lohagaon. By Clause-III of the Chief Engineer's letter the Commandant, Military Engineering was informed that his

organisation should start disciplinary action against the applicant. But this was contrary to the letter from the Under Secretary, Government of India, Ministry of Defence, dated 14.10.1977.

According to that letter some amendment was made in the memorandum dated 15.10.1968. For old para 1(g), the following para was substituted :

(g) In case where the transfer is by way of posting of a Government servant from one unit to another unit under the same administrative organisation he comes under the jurisdiction of the disciplinary authority in the receiving unit by virtue of the order of transfer irrespective of the fact whether the Government servant has actually reported for duty in the receiving unit or not. However, where the transfer is from one organisation to another organisation, so as to enter into a fresh legal relationship, in such cases a proper nexus should be created between the Government servant and the new organisation can not have disciplinary jurisdiction over the Government servant until he joins it."

As the College of Military Engineering as well as the Garrison Engineer (Air Force) Lohogaon were under the same administrative organisation, the first part of the above para would apply to the applicant in this case. It was, therefore, clear that the office of the Garrison Engineer (Air Force), Lohogaon was competent and had jurisdiction to start disciplinary proceedings against the applicant, irrespective of the fact whether he had actually reported for duty in this unit or not. As both the offices were not under separate administrative organisations, the second part of the above paragraph would not have applied to the applicant. For that reason, the opinion given in the letter dated 28.11.1977 was corrected by another letter dated 8.12.1977 from Army Headquarters. By that

letter the Chief Engineer (Southern Command) was informed that since College of Military Engineering and the Military Engineering Services formations were under the same administrative organisation, disciplinary action against the applicant was to be initiated by the receiving unit.

16. The above view appears to be proper and legal. As seen earlier, in spite of the movement order the applicant had not joined his new posting with the Garrison Engineer (Air Force) Lohagaon for a long time. He was asked to join by the Garrison Engineer (Air Force) Lohagaon but he remained adamant. Hence we do not find any force in the submission that the initiation of the proceedings and the penalty order are bad in law because they are not started or passed by competent authority.

17. Lastly, Mr. Atre submitted that the Enquiry Officer had not taken into consideration the letter of the applicant dated 5.10.1977. As already pointed out, this letter was written by the applicant in reply to the letter from the office of the Garrison Engineer (Air Force) Lohagaon on 30.9.1977. The letter of the applicant is referred to in the statement of imputations in support of the charge. According to Mr. Atre as the letter dated 5.10.1977 is not even referred to in the Enquiry Officer's report, the report holding the applicant guilty of the charge is vitiated. After all what had the applicant stated in the letter dated 5.10.1977? He had merely mentioned that in spite of the movement order, the necessary formalities regarding transfer were not completed and, therefore, he was regularly attending to his duties in the College of Military Engineering. He further stated that he would join the new posting "after getting each and every thing cleared along with a fresh movement order". As already pointed out, completion of formalities

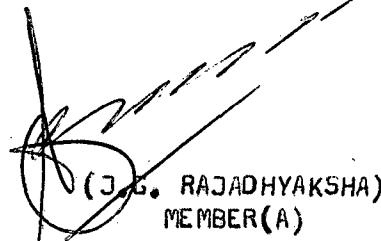
regarding clearance and relieving report were not essential for carrying out the order of transfer. In fact the movement/transfer order was complete in itself. Moreover, the applicant had not even cared to reply to the memorandum dated 8.3.1978. The report of the Enquiry Officer was based on the documentary evidence on record, and the undisputed fact that the applicant had not joined his new posting at Lohogaon. Hence non-consideration of the letter dated 5.10.1977 would not vitiate the report of the Enquiry Officer.

18. We, therefore, find no substance in the contention that the movement/transfer order and the order of penalty were bad in law.

19. Lastly, Mr. Atre submitted that the penalty of removal from service is disproportionate to the gravity of the charge. We are not inclined to accept this submission also. The applicant was all the while adamant. He never cared for the consequences of ~~not~~ complying with order or the inconvenience that would be caused by not giving his posting at Lohogaon. In none of his letters he has expressed his sense of regret. We, therefore, find that the penalty of removal from service can not be said to be disproportionate to the charge in any way.

20. In the result the application is liable to be dismissed. But considering all the circumstances we feel that the applicant should be saddled with some costs. We quantify the costs at Rs. 1,000/-.

21. We, therefore, dismiss the application and direct that the applicant shall pay Rs. 1,000/- as costs of this case to the respondents.

  
(J.G. RAJADHYAKSHA)  
MEMBER(A)

  
(M.B. MUZUMDAR)  
MEMBER(J)