

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

ORIGINAL APPLICATION NO.275/86

Mr. Dayal Das Lalvani,
Quarter No.3938,
Block 102, Sector VII,
Central Government Staff Quarters,
Antop Hill,
Bombay 400 037

... Applicant

V/s.

1. Mr. A.C. Panchari, C.E.,
2. Mr. V.G. Ramdasi, S.E.,
3. Mr. S.M. Agarwal, S.E.,
4. Mr. J.M. Swaroop, E.E.,

C/o Chief Engineer,
Central Public Works Department,
Old Central Government Office Annexe,
New Marine Lines,
Bombay 400 020.

... Respondents.

Coram: Honourable Member (A) Shri P. Srinivasan.

APPEARANCE:

Mr. G.K. Masand,
Advocate
for the Applicant.

Mr. J.D. Desai (for Mr. M.I. Sethna)
Counsel
for the Respondents.

ORAL JUDGMENT

Dated: 11.9.1987.

[PER: P. SRINIVASAN, MEMBER (A)]

The applicant who is working as a Junior Engineer in the Central Public Works Department complains against an order of transfer dated 13.8.1986 by which he was transferred from Bombay to Bhuj.

Shri G.K. Masand, Learned Counsel for the applicant, made the following submissions: The order of transfer was

P. Srinivasan

...2.

malafide on the face of it because though it referred to transfers of the "following Junior Engineers", only the applicant was transferred. No substitute was appointed for the applicant in that order. The transfer was obviously based on a letter dated 23.7.86 referred to at item 5 below the order. It seemed that the authority mentioned at item 5 had complained against the applicant in that letter and the transfer was by way of punishment. When a transfer is made by way of punishment, the Government official should be given an opportunity of being heard which was not given here. Though the transfer order is dated 13.8.1986, it was served on the applicant only on 30.8.1986, and he was immediately relieved. The great hurry with which he was relieved was obviously to prevent him from going to court against the transfer. The transfer order was malafide for other reasons also. It was against the official guideline requiring that husband and wife should be allowed to remain in the same station as far as possible. The applicant's wife was working in Bombay. It was because of this that he had asked for a transfer to Bombay from Ahmedabad earlier and had been so transferred in 1983. He had an ailment for which treatment was available only in Bombay. There was another guideline that a person should not be transferred out of a station till he completed seven years there, in the State of Maharashtra the period being eight years. The respondents had not shown that the deviation from these guidelines was for any administrative exigencies. On the other hand, the applicant had filed a Criminal Case against Respondent No.4, Shri J.M. Swaroop, Executive Engineer, under whom he (the applicant) was working and Respondent No.4 was obviously irked and wanted ^{of} ~~that~~ the applicant out of the way. The transfer order speaks of

P. S. W.

public interest and no public interest had been spelt out therein. Shri Masand complained that the letter dated 22/23rd July 1986 referred to in item 5 below the order had not been shown to him. Shri J.D. Desai (for Mr.M.I. Sethna) Learned Counsel for the respondents produced this letter. Shri Masand thereupon contended that the contents of this letter clearly showed that the transfer had a motivation behind it and was in the nature of a disciplinary action. He referred to a decision of the Kerala High Court in 1973 SLJ 213 and another judgment of the Madras High Court in 1980 SLJ 94 to show that where a transfer is mad out of bad faith or in ^{colourable} ~~colourful~~ exercise of power, the court can interfere with the transfer. There was no pressing need for appointing the applicant to Bhuj because two months thereafter he was transferred to Gandhidham even though he did not join at Bhuj at all. The reply of the respondents has urged public interest and administrative grounds, but does not substantiate. Normally transfers should be made in April and not in August as in this case. The respondents had gone to the extent ^{of} ~~to~~ doubting the applicant's statement that he had a wife, as seen from the language used in their reply. Taking all the facts together, Shri Masand submitted that the transfer was wholly unjust, malafide and in the nature of punishment and, therefore, should be set aside by this Tribunal.

Shri M.I. Sethna and Shri J.D. Desai appearing for the Respondents sought to refute the contentions of Shri Masand. It was not as if only Respondent-4, against whom the applicant has filed a Criminal Complaint, had engineered the applicant's transfer. Wherever the applicant worked, he was unable to get on with colleagues and atleast

three authorities had referred to this problem of the applicant viz., his inability to adjust and get on with others. Copies of letters from these authorities were produced at the hearing and were shown to Shri Masand. One of the authorities was the Superintending Engineer at Ahmedabad under whom the applicant was working in 1983. In a letter dated 30.4.1983 he had recommended that the applicant be transferred to Bombay because he was not getting on with others and if any enquiry was to be made against him it was best that he ^{was} out of the way. In a letter dated 16.8.1984, the Superintending Engineer Bombay Central Circle-III, complained that the applicant's output was not satisfactory and that he had not been able to carry out even the light work assigned to him, though the Executive Engineer tried his best to accommodate him. The applicant had problems with his colleagues and office staff and unless he was transferred out of the Circle there could be trouble with the staff. In a letter dated 13.12.1983, one Mr. Bhatia, writing on behalf of the Superintending Surveyour of Works, Central Public Works Department, Bombay referred to the illness of the applicant and suggested that he be sent for medical examination before disciplinary action could be taken against him. All this showed that the applicant was creating problems wherever he went and so both in his interest and in the interest of the work, Respondent No.1 had transferred him to Bhuj to give him a chance to improve atleast there. Otherwise the respondents would have had to take disciplinary action against him which they did not want to do on humanitarian grounds. In the letter dated 22/23.7.86 referred to in item 5 below the impugned order, the Chief Engineer (Respondent No.1) had referred to the absence of cordial relations between

[Handwritten signature]

the applicant and his colleagues ^{because of which} ~~and therefore~~ his continuance in Bombay would not be 'Conducive' either to him or for the department. The reference to the applicant's wife as "alleged wife" in the reply was because the records with the respondents did not show that he was married. In a statement in Form No.3 submitted by the applicant on 26.2.1986, the CGIES form submitted on the same date and the CGHS form submitted by him on 29.7.1983 he had stated that he had no family. It was not correct to say that the order of transfer dated 13.8.1986 was served on the applicant only on 30.8.1986 because the applicant asked for TA advance on 28.8.1986 itself which was granted to him on 1.9.1986. This showed that the applicant knew of his transfer before 30.8.1986. Therefore, there was no malafide or unseemly hurry in ~~the service of the order or in~~ relieving the applicant. Otherwise the transfer was in the interests of the applicant himself as ^{he} was not getting along with his colleagues at Bombay. It was also in the interests of the administration because his continuance in Bombay would cause problem with his superiors, colleagues and subordinates. There was no element of punishment as such, though the transfer may have been necessitated by the applicant's inability to get on with others.

I have considered the contentions of both sides very carefully. It is true that transfer is normally a routine administrative affair with which I should be slow to interfere. The administration can have various kinds of problems which are compendiously called administrative exigencies. Shri Masand pointed out that a very good officer may be required for work at different places or where there is a breakdown, an officer may have to be urgently deputed.

P. L. Masand

In addition where an officer is not able to get on with his colleagues it is not unusual for the administration to transfer him to another place to see whether he could get on well there. This would no doubt also show the inability of the officer to adjust himself with his colleagues but that does not mean his transfer amounts to a punishment. After all, to transfer a person before the expiry of the period of his tenure, there has to be some reason and the reason may well be the officer's inability to carry on with persons with whom he has to work everyday leading to a difficult work situation. The guideline not to separate husband and wife cannot be taken as an inviolable rule. As far as possible, the husband should be posted in the same place as his wife and again as far as possible a person should not be disturbed from a station for a tenure period of 7 or 8 years, as the case may be. But in this case, looking at all the facts together, I find it was not that one person had a malice against the applicant and got him transferred, many responsible officials were of the view that he was unable to get on with persons working with him. That being so, it was only natural that Respondent 1 should transfer him. This was an exceptional situation where the guideline had to yield to expediency. The applicant, it is said, is suffering from schizophrenia. Though he has been in Bombay for three years, and it was pointed on behalf of the respondents that the certificate of illness produced by him is from a Doctor at Indore. The respondents therefore say, that the transfer from Bombay will not affect his treatment, if any, as his doctor was not in Bombay but at Indore. In the circumstances already narrated, the respondents had necessarily to shift the applicant from

P. L. B.

Bombay. I find no legal infirmity in the action of the respondents on which ground it can be struck down by this Tribunal. The cases cited by learned Counsel for the applicant show that normally a court should not interfere with a transfer, except in cases of malafide or ^{Colorable} ~~colourful~~ exercise of power. I am unable to find malafides or ^{Colorable} ~~colourful~~ exercise of powers in this case. M

For the reasons stated above, the application is dismissed.

Parties to bear their own costs.



(P. SRINIVASAN)
MEMBER (A)