

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 550/89

~~Transcript Application No:~~

DATE OF DECISION: 25th May

Shri Baban Gangadhar Zalte Petitioner

Shri C. Nathan Advocate for the Petitioners

Versus

The District Manager, Telephones Respondent
MTNL, New Bombay and others.

Shri A.I. Bhatkar
Shri M.I. Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri R.Rangarajan, Member (A)

1. To be referred to the Reporter or not? M
2. Whether it needs to be circulated to other Benches of M the Tribunal?

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(R.Rangarajan)
Member (A)

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(a)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.550/89

Shri Baban Gangadhar Zalte

... Applicant

V/s.

The District Manager Telephones
Mahanagar Telephone Nigam Ltd.,
6th Floor, CGO Building
C.B.D. New Bombay.

The Divisional Engineer (A)
Mahanagar Telephone Nigam Ltd.,
6th floor, CGO Building,
C.B.D. New Bombay,

The Accounts Officer (TR)
Mahanagar Telephone Nigam Ltd.,
6th floor, CGO Building,
C.B.D. New Bombay.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

Hon'ble Shri R.Rangarajan, Member (A)

Appearance:

Shri C.Nathan, counsel
for the applicant.

Shri A.I. Bhatkar for
Shri M.I. Sethna, counsel
for the respondents.

JUDGEMENT

Dated: 25/3/89

25/3/89

¶ Per Shri R.Rangarajan, Member (A) ¶

Applicant joined the DOT as Lower Division Clerk on 25.6.71 and was promoted as U.D.C. on 1.4.82 and was confirmed in that post subsequently. He was posted as U.D.C. to which post a special pay was attached from 14.9.87 by respondent No.3 with effect from 7.2.89 by order dated 20.2.89 (Exhibit A). He alleges that he was doing the complex nature of work attached to the present U.D.C. which has a special pay from an earlier date namely 29.3.88 and hence he is entitled to that special pay from 29.3.88 instead of from 7.2.89 as granted to him now as per exhibit 'A'. He represented for this as can be seen from Exhibit 'B' which was regretted. In the meantime he was transferred as U.D.C.

to the office of the Divisional Engineer, MTNL, Turbhe Telephone Exchange, Sanpada, New Bombay by an order dated 4.4.89 (Exhibit D). This post does not have any special pay attached to it and hence the applicant state that he was denied of the special pay due to him due to ulterior motive. Aggrieved by the above actions of the respondents he has filed this O.A. seeking for the following reliefs.

- (i) to quash and set aside the impugned order dated 4.4.89 at Exhibit D.
- (ii) Payment of arrears of special pay from 29.3.88 to 7.2.89.
- (iii) A direction to the respondents to give him the special pay while he is working in the transferred unit.

2. It was submitted at the time of hearing that the special pay has been granted to him for the period from 29.3.88 to 7.2.89 as prayed for. Hence the second prayer does not survive. Only relief sought under prayer (i) and (iii) has to be adjudicated.

3. The respondents in the reply statement submit that a complaint was received from a lady employee of A.O.T.R. unit against the applicant stating that the applicant was in the habit of abusing the lady with all sorts of vulgar words including a threat of murder, character assassination and use of indecent language. Similar complaints were also made by other staff members. The applicant's behaviour was intolerable and it was necessary to take note of these complaints to avoid unrest. These complaints were got investigated by the vigilance section (East Zone) who recommended for the applicant's transfer to another zone in order to maintain proper discipline and maintenance of peace.

amongst the staff in the office. Hence he was transferred within the zone to a post which is 7 km. from the office of the A.O.T.R. As the post of U.D.C. in the transferred unit is not an ear-marked post for payment of special pay he was not given the special pay which is in order.

4. The applicant has filed a rejoinder stating that the complaints were given by the office staff at the instance of respondents No. 2 and 3 and the vigilance officer had prepared his report as per the directions of respondent No 2 and 3. The applicant further alleges in the rejoinder that the vigilance officer himself being a corrupt officer cannot sit on the judgement over his conduct.

5. The learned counsel for the applicant relies on the judgement of Kerala High Court dated 4.9.81 in 1982 LAB IC 251 - Dr. P. Damodaran V/s. State of Kerala and others - to bring to our notice that the power of transfer of an employee should not be used for malafide reasons. We have gone through the judgement. The important guide lines as can be seen from the judgement in para 17 is reproduced below:

" It is certainly true that the Supreme Court has said in Tara Chand V. Delhi Municipality (AIR 1977 SC 567): (1977 Lab IC 55) that the High Court would be justified in refusing to carry on investigation into the allegations of malafides if necessary particulars of the charge making out a prima facie case are not given in the writ petition. It is also necessary to keep in view the well established rule that the burden of establishing mala fides lies very heavily on the person who alleges it."

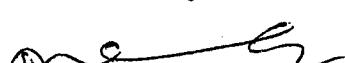
6. In the present case the applicant was transferred due to the complaints received from a lady employee and others about the conduct of the applicant. It is enquired into by the vigilance officer (East Zone) who recommended the transfer of the applicant to other units to maintain discipline and peace in the office of A.O.T.R. The applicant alleges that this vigilance report was motivated one and had been prepared at the instance of the respondents No.1 and 2. This statement of the applicant is not established on paper on the basis of record. ~~Mere~~ allegation against respondents No. 1 and 2 without documented proof cannot substantiate the allegations. The allegation against the Vigilance officer as being corrupt and hence canot sit on the judgement cannot be accepted as the corruption charges mentioned by the applicant against the Vigilance officer is a later event, later to the submission of the report and hence has no bearing to the recommendations made in the vigilance report. The Hon'ble Supreme Court had held in the case quoted above that it is in order to refuse by the Tribunal to carry on investigation on the allegation if prima faice case of malafides has not been made out. It is the responsibility of the applicant to establish malafides. In our opinion the malafide has not established in ordering the transfer and also in preparing the vigilance report. In view of the above reasoning we have to accept the recommendations of the vigilance report. As no mala fide has been established in transferring the applicant or any violation of statutory rules/rules have been brought to our notice, ~~we~~ do not see any reason to quash the transfer order dated 4.4.89. As a matter of fact in our opinion the transfer of the applicant was ordered to avoid indiscipline and unrest amongst the staff members

in the A.O.T.R. unit. This reasoning for transfer as given by the respondents is in order.

7. The learned counsel for the applicant submitted that the employees could have filed a police complaint if the behaviour of the applicant is abnoxious. The applicant has unblemished record and he cannot be made target of the complaints. The complaints are frivolous and action cannot be taken on the basis of these complaints. Normally the staff who are agitated over the behaviour of an employee, they do not run to the police station immediately for filing a complaint; but resort to remedial action to correct the erring employee through the office channel. Here also the employees resorted to this mode of redressal of their grievances by approaching the respondents. After due investigation by an independent official the applicant was transferred on the basis of the recommendations in the investigation report. In this view of the matter we see no force in the contention of the applicant and also see no irregularity in the issue of the transfer order.

8. Whether a post should have special pay attached to it or not is to be decided on the basis of the complex nature of the work involved in discharging the duties and responsibilities of the post. This being a policy matter it is for the executive to decide whether a post should have special pay or not and the Tribunal cannot decide this issue. Hence the prayer No. (iii) of the applicant also fails as it is bereft of any merit.

9. In the result we see no merit in this OA and is only liable to be dismissed. Accordingly we do so. No costs.



(R. Rangarajan)
Member (A)



(M.S. Deshpande)
Vice Chairman