

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 142/89

T.A. No.

198

DATE OF DECISION

22-8-1991

Shri R.C. Rustogi

Petitioner

Mr. S.P. Saxena for

Advocate for the Petitioner(s)

Mr. Babu Marlapalle
VersusThe Chairman, Ordnance Factory Respondent
Calcutta & another.

Mr. Babu Marlapalle.

Advocate for the Respondent(s)

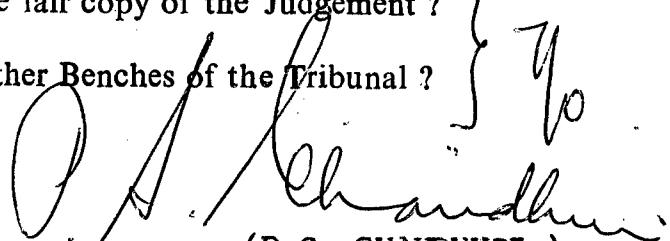
Mr. R.K. Shetty.

CORAM

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether in needs to be circulated to other Benches of the Tribunal ?


 (P.S. CHAUDHURI.)
 MEMBER (A)

(H)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 142/89

Shri R.O. Rustogi.

... Applicant

V/s.

The Chairman,
Ordnance Factory Board,
Calcutta & another.

... Respondents.

GORAM: Hon'ble Member (A), Shri P.S. Chaudhuri.

Appearance

Applicant by Mr. S.P.Saxena
holding the brief of Mr.
Babu Marlapalle. R

Respondents by Mr. R.K. Shetty.

JUDGEMENT

Dated: 22.8.91

(Per Shri P.S.Chaudhuri, Member(A))

1. This application under section 19 of the Administrative Tribunals Act, 1985 was filed in 14.2.1989. In it the applicant who was working as Director, Controllerate of Safety in the Ordnance Factory Organisation at Kirkee is challenging the order dated 17.10.1988 by which he is transferred from Kirkee to Calcutta and seeking connected reliefs.

2. By order dated 21.3.1988 passed in exercise of the powers conferred by Section 5(6) of the said Act, the Chairman has authorised all the Members of the Central Administrative Tribunal to function as a Bench consisting of a Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as are specified in the said order. Cases relating to transfer have been so specified in the said order. Further, Mr. S.P. Saxena learned counsel for the applicant and Mr. R.K. Shetty, learned counsel for the respondents both submitted that there were no complex legal issues involved in deciding this case. Besides, after being specifically asked as to

whether the matter should go to a Bench of two Members, neither of the counsel appearing before me suggested that the matter should go to a Bench of two Members. In view of this position I have proceeded to hear and decide this case.

3. It is the applicant's case that he joined service, after selection through UPSC, in 1963 as Assistant Works Manager. During 1981-82 when he was working in the Development team in the Gun Carriage Factory, Jabalpur, he had occasion to write a confidential letter regarding certain improprieties and irregularities committed by the Officer in charge of the Development team. It is alleged that on this an inquiry was ordered and one Shri P.U. Bhavikatti, Joint General Manager was appointed as one man fact finding/investigation board. Since no action was taken on the report on the investigation, the applicant requested for transfer back to Gun Carriage Factory, Jabalpur. However, by order dated April 1983 he was transferred to Ordnance Factory, Varangaon where he eventually joined on 12.10.1983. It so happened that the above mentioned Shri P.U. Bhavikatti also joined Ordnance Factory, Varangaon on transfer from Ordnance Factory, Khamaria on 28.12.1984. The applicant alleged that he was harrased by Shri Bhavikatti and this eventually resulted in his transfer to Itarsi by order dated 22.5.1986 but on applicant's representation this transfer order was cancelled. However, he was thereafter transferred to Kirkee where he eventually joined on 14.8.87 in his present post. Finally he was again transferred, from Kirkee to Calcutta, by impugned order. He submitted a representation against this order on 21.11.1988 but it was rejected by order dated 2.1.1989.



4. Being aggrieved he filed the present application which ^{the} respondents have opposed by filing their written statement. I have also heard the learned counsel on both sides.

5. The applicant tried to build up a case that the transfer order was malafide on the ground that he was ill-treated by his superiors prior to his transfer to Varangaon in 1987 and that this continues in his transferred post at Kirkee. The applicant was however, unable to establish any connection between the alleged ill-treatment and the impugned transfer order. In J.K. Dave v. State of Gujarat and others, 1989(3) SLR 593, with which I am in respectful agreement, the Gujarat High Court held

" Simply because some averments are made in the petition and the order of transfer is labelled as discriminatory and/or as actuated by mala fides, it does not become discriminatory or cannot be said to have been passed on account of mala fides. To make out a case for interference in matter of transfer. There should be concrete material which should be unimpeachable in character."

This argument, must, therefore, be rejected straight away.

6. The transfer order was then assailed on the grounds of arbitrariness in as much as the applicant had been subjected to repeated transfers, there was no vacancy at Kirkee when the applicant was transferred there in 1987, whereas the applicant has had experience and training in general management functions he has had no such training or experience in the areas of safety and, finally, instead of transferring him first from Varangaon to Kirkee and shortly thereafter to Calcutta he could, instead, have been transferred straight away to Calcutta from Varangaon. All these issues ^{can be} ~~comes~~ classified as ^{under} " exigencies of service". In Lachman Dass v. Shiveshwarkar & Others, AIR 1967 Punjab 76, with which I am in respectful agreement, H.R. Khanna, J (as his Lordship then was) held that:

" A variety of factors may weigh with the authorities while considering the question of transfer, viz. the suitability of the official for the post, his aptitude, post conduct, reputation, the period for which he has been on that post and a number of other grounds which may be clubbed together under the head "exigencies of service" ... The Court can only interfere if the transfer is violative of any legal provision or is otherwise mala fide. Except in such a limited contingency, the order of transfer is neither open to judicial review nor justifiable."

Again in Prem Praveen v. Union of India & Ors, 1974 SLJ S.N. 15 at page xviii (Delhi), ^{With} which I am also in respectful agreement, Sachar. J (as his Lordship then was) held that :

" the administration is the best judge and in the know of all relevant circumstances and to determine as to the desirability or the propriety of any particular posting and at what place of a Government Servant. But it is equally well settled that Courts can interfere if the transfer is violative of any legal provision or is otherwise mala fide."

In view of this position I see no merit in this submission.

7. The transfer order was also challenged on the grounds of being arbitrary and unreasonable because there were vacancy at Pune where the applicant could have been accommodated. It was also alleged that there are others who have been at Pune for longer periods than the applicant. But the mere fact that the respondents do not wish to post the applicant against any such posts but, instead, to retain others in these posts, does not constitute an arbitrary action. These actions of the respondents, too, come under " exigencies of service" as detailed earlier. Besides, in M.A. Rasheed and others v. The State of Kerala, AIR 1974 SC 2249, the Supreme Court have held

" The onus of establishing unreasonableness rests upon the person challenging the validity of the acts." In view of this position, this submission of the applicant, too, must be rejected.

8. The applicant's final submission was that he deserves sympathetic consideration in view of his ill health and the education of his children. While I sympathise with the applicant regarding his personnel problems and difficulties, I cannot hold that these circumstances warrant or permit interference with a legally valid order of transfer.

9. Over a decade ago in Shanti Kumari v. Regional Director, Health Services, Patna Division and others, AIR 1981 SC 1577, the Supreme Court held :-

" Transfer of a government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters. "

This was reiterated in Gujarat Electricity Board and another v. Atmaram Sungomal Poshani, AIR 1989 SC 1433 Court at 1436, in which the Supreme Court has lucidly summarised the legal position regarding transfer of employees in the following words : -

" 4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."



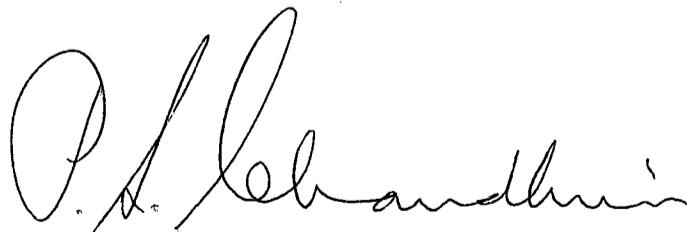
Finally, in Union of India and others v. H.N. Kirtania, (1989) 11 ATC 269, the Supreme Court held :

" Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. "

From these decisions it is clear that the legal position is that interference is permissible only in the limited contingency that the order of transfer is violative of any rules or legal provisions or is otherwise mala fide.

10. There is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred and posted to any place within India. So, against the legal position discussed in detail, the only question which falls for determination in this case is whether the impugned order of transfer is violative of any legal provisions or statutory rules or mandatory instructions or is mala fide in any way whatsoever. The impugned order of transfer does not suffer from any of these fatal flaws. In this view of the matter I see no merit in this application and am of the opinion that it deserves to be dismissed.

11. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)

22-8-1991