

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 494/89

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DATE OF DECISION 4.10.1989

Shri J.S.Morajkar

Petitioner

Dr. Kulkarni

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S.Shah, Vice Chairman

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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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

DA.NO. 494/89

Shri J.S.Morajkar
17 Pendharkar Chawl,
S.S.Wagh Marg,
Dadar, Bombay.

... Applicant

V/S.

Union of India
through
Chief Post Master General,
General Post Office,
Bombay 400 001.

... Respondent

CORAM: Hon'ble Vice Chairman Shri P.S.Shah

Appearances :

Dr. Kulkarni
Advocate
for the Applicant

Mr.P.M.Pradhan
Advocate
for the Respondent

ORAL JUDGMENT

Dated: 4.10.1989

(PER: P.S.Shah, Vice Chairman)

The petitioner who is employed in the Postal Department and working as Postal Assistant Mail Department, General Post Office, Bombay has challenged the order of his transfer dated 17.7.1989 from Bombay to Malvan on various grounds. The impugned order of transfer states that the same has been effected under Rule 37 of the Posts & Telegraphs Manual Vol. 4 "in the interest of service". Dr. Kulkarni appearing for the petitioner raised three contentions. First, he submitted that under Rule 37 read with 37 (A) of the Posts & Telegraphs Manual a legal transfer must be one which is "in the interest of the public service". The impugned order does not refer to "public service" at all which shows that there is total non-application of mind on the part of the authority directing the transfer and the transfer is wholly arbitrary. Secondly, it is submitted that under Rule 37 (A)

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transfer can ordinarily be effected in the month of April and this being not the case of transfer on administrative grounds, the same cannot be supported as a valid transfer and contravins the provisions of Rule 37 (A). Lastly, he submitted that the facts of the present case show that the transfer has been ordered as a punishment for the alleged misconduct on the part of the petitioner. Since the transfer has been effected by way of penalty, the petitioner ought to have been given adequate opportunity to meet the charge levelled against him. I find considerable substance in the contentions urged by the learned counsel.

2. In the reply filed by respondents, it is categorically admitted that the petitioner was transferred because of his misbehaviour/misconduct in respect of which an enquiry was conducted by the authority. It is stated in the reply that the order was under the circumstances justified as being one "in the interest of public service". The law on the point is well settled. It is sufficient to refer to the following observations of the Supreme Court in State of Bihar v/s. Shiva Bhikshuk Vol. 4 (1970) S.L.R. 863.

"We are unable to accede to the contention of the appellant that the ratio of the above decision is that so long as there are no express words of stigma attributed to the conduct of a Government Officer in the impugned order it cannot be held to have been made by way of punishment. The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order. In Dhaba's case (2) it was not found that the order of reversion was based on misconduct or negligence of the officer. So far as we are aware no such rigid principle has ever been laid down by this court that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct (see S.R.Tewari v. District Board Agra and Anr.) (3)

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It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

In the present case the specific allegation against the petitioner is that he had mis-behaved with a lady employee of his office. She had lodged a complaint with the authority. Statements of witnesses as well as that of the petitioner were recorded. However, the petitioner was not given opportunity to cross-examine these witnesses nor was any charge-sheet issued to him. The transfer order is clearly on account of the alleged misconduct on the part of the applicant. It cannot be said that the alleged misconduct was merely the motive for the transfer. The Department has in terms admitted that he has been transferred on account of the petitioner's alleged misconduct. Thus in the present case the misconduct is the foundation of the order and not merely the motive for the same. It is true that there are no express words of stigma used in the impugned order. But the form of the order is not decisive of the true nature of the order. The circumstances of the case clearly show that it was merely a cloak or camouflage for an order founded on misconduct.

3. Under Rule 37 inter alia, the transfer should not be ordered except when advisable "in the interests of the public service". A perusal of the order shows that the authority has not applied his mind to this prerequisite for a valid transfer. The impugned order merely refers to "interest of service". The word "public" is missing in the order. There is, therefore, substance in the contention of Dr. Kulkarni

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that the order has been passed without application of mind and is arbitrarily passed with a view to punish the petitioner for his alleged misconduct.

4. It is not necessary for us to consider the contention that the transfer violates Rule 37 A since we have held the order as bad and illegal on other substantial grounds.

5. For the reasons stated above, the impugned order of transfer cannot be sustained and must be quashed. In the result, the application is allowed. The impugned order of transfer dated 17.7.1989 is quashed and set asides. No order as to costs.

PSShuah
(P.S. SHAH)
Vice Chairman