

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 271/96

Transfer Application No.

Date of Decision 28.4.96

Bharat Gupta

Petitioner/s

Shri I.J.Naik

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J).

Hon'ble Shri. -

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 271 /1996.

28th this day of June 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J).

Bharat Gupta. ... Applicant.
(By Advocate Shri I.J.Naik)
V/s.

Union of India & Ors. ... Respondents.
(By Advocate Shri V.S.Masurkar,
Standing Counsel).

O R D E R

(Per Shri B.S.Hegde, Member(J))

Heard Shri I.J.Naik, advocate for the applicant and Shri V.S.Masurkar, Standing Counsel for the Respondents.

2. In this O.A. the applicant has challenged the impugned order dt. 20.3.1996 transferring the applicant on deputation to Diu Municipal Council, Diu as Municipal Engineer for a period of two years.

3. The undisputed facts are that the applicant was transferred on deputation basis to the post of Manager (Works) in the Omnibus Industrial Development Corporation (O.I.D.C.) of Daman and Diu and Dadra and Nagar Haveli Ltd on usual terms and conditions governing the service on deputation initially for a period of ~~six~~ months from 6.7.1993.

Thereafter, on 27.1.1994 his term of deputation was extended for a period of two years. Again his term was extended from 10.7.1995 to 9.7.1996. [] The new Managing Director of the Corporation sought his services to be repatriated to his parent

...2.

MJ

department. Pursuant to that direction, the applicant has been repatriated to his parent department vide order dt. 11.3.1996 and in his place one Shri I.S. Talekar was deputed for a period of two years. The applicant resumed his duties on 20.3.1996 and the impugned order was passed on the very same day i.e. 20.3.1996. The contention of the applicant is that the Municipal Engineers does not include the cadre of Assistant Engineer/Assistant Surveyor of works. The impugned order seeking to transfer the applicant outside the administration without obtaining his willingness is contrary to rules and also the guidelines laid down by the Ministry of Finance in the year 1961. Further the post of Municipal Engineer is under the control of the President of the Municipal Council and the said post is included in foreign service as per F.R. 110(a) which reads as follows:

"No Government servant may be transferred to foreign service against his will :

Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government."

Therefore, the counsel for the applicant submitted that invariably whenever the Foreign Service in Municipal Posts are being filled in the department invariably seek the willingness of the employees working in the department and so far as the applicant is concerned, before going to the Municipal Council he had given his consent, accordingly he had been appointed.

4. In reply, the learned counsel for the respondents submitted that the consent of the employees are not called for if the Municipal Council or the Body Corporation is wholly or substantially controlled by the Government. Further, the learned counsel

submitted that though the impugned order is passed on 20.3.1996, the applicant has been relieved only on 21.3.1996, whereas the Court's Order was passed on 22.3.1996 which has been received by the Respondents on 23.3.1996. Thereby, the contention of the applicant that he has not been relieved so far from his previous post in the Office of the Superintending Engineer does not appear to be correct. He further contended that so far as the transfer is concerned it is not open to the Tribunal to re-appraise the decision of the competent authority in view of the repeated decisions of the Apex Court. Since there is no mala fides in issuing the aforesaid transfer, it is not open to the Tribunal to go into the merits of the transfer. In fact, the applicant refused to carry out the orders of ^{his} superiors in various matters. Accordingly he has been directed to be repatriated on the grounds of dis-obedience and non-compliance of the orders of the superiors. Further, it is submitted that since the Municipality is administered by the Diu & Union Territory of Daman consent of the employee is not required for transfer to the Municipality and that who ever is posted to the Municipality certain deputation allowance is paid by the Municipality and there is no prescribed Rules that while sending on deputation his willingness is required to be obtained.

5. In the light of the above, the question to be seen here is whether the applicant is sent on transfer on deputation as Municipal Engineer to Diu or merely an order of transfer simplicitor. On perusal of the records, I find that the applicant has been repatriated on 11.3.1996 to his parent department, before his joining the parent department he has been sent on deputation again to a foreign service

without his consent. As stated earlier the applicant was working in the Omnibus Industrial Development Corporation (O.I.D.C.) of Daman and Diu and Dadra and Nagar Haveli Ltd till he was repatriated and he did resume his duties on 20.3.1996, but without seeking his willingness he has again been sent on deputation. The question to be seen here is whether further deputation without the consent of the employee is justified. It is not permissible to the respondents to send the applicant again on deputation without his consent especially having been repatriated from the Corporation to the parent department. In that event consent of the applicant is necessary. In this connection the counsel for the applicant drew my attention to O.A. No.925/95 dt. 4.4.1996 wherein while admitting the O.A. the Tribunal had passed an interim order in the similar circumstances which reads as under:

"In the circumstances, the orders become infructuous. Their contention will not hold good because he is sent on deputation without his consent. In the circumstances, the applicant is directed to continue to work in P.W.D., Daman. The Respondent is directed to take him on duties at their Department (P.W.D.) in Daman."

The applicant is similarly constituted like that of I.S.Talekar. In the instant case the pleadings are complete, hence I ~~had~~ ^{am} the arguments of both the counsel. In my view, it is appropriate to dispose of the O.A. at the admission stage itself by passing the following order:

O R D E R

Since the impugned order has already been stayed by an order dt. 22.3.1996 and the dictum laid down in O.A. No.925/95 would squarely apply to the facts of this case, it can be construed that

the impugned order is not an order of simplicitor, but it is an order of transfer in violation of settled law on deputation. In the result, the O.A. is allowed and the impugned order passed by the Respondents on 20.3.1996 is hereby quashed and set aside and I hold that since the applicant was sent on deputation without his consent and since he had already resumed his duty on 20.3.1996 in his parent department, subsequent relieving order passed by the respondents would not operate against the applicant for the reasons stated above and he is deemed to continue to work in P.W.D. department. The O.A. is disposed of in the light of the above. No order as to costs.



(B.S. HEGDE)
MEMBER (J)

B.