

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 527/96

Transfer Application No.

Date of Decision 11.7.96

G.N.Vyas

Petitioner/s

Smt.N.V.Masurkar.

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.R.Shetty.

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. 527 / 1996.

11<sup>th</sup> this day of July 1996.

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

G.N.Vyas. ... (Applicant).  
(By Advocate Smt.N.V.Masurkar).

V/s.

Union of India & Ors. ... Respondents.  
(By Shri R.R.Shetty, Counsel).

O R D E R

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

Heard the arguments of Mrs.N.V.Masurkar, advocate for the applicant and Shri R.R.Shetty, counsel for the respondents.

2. In this O.A. the applicant has challenged the Transfer Order issued by the Respondents on 16.5.1996 by which the applicant has been transferred from CLI,Mumbai to RLI, Madras in public interest with immediate effect and has also challenged the relieving order dt. 23.5.1996. The applicant had filed this O.A. on 5.6.1996. Since the counsel for the applicant had made a statement while passing the order on 6.6.1996 that nobody has joined in his place and also stated that the daughter of the applicant is appearing for her B.E. final exam in the month of June and also that the applicant had made a representation which has not been disposed of, the Tribunal issued notice to the Respondents returnable by 20.6.1996 and also directed the Respondents not to post any one in place of the applicant for a period of 14 days. The respondents have filed their reply. The main thrust of the applicant is that the transfer order issued by the respondents is mala fide, arbitrary and the policy of

transfer is not applied equally to all people. Further since the applicant had been provided with the Quarter only in 1996 and pursuant ~~to~~ that his wife who was working in Bokaro Steel Plant had got a transfer to Bombay recently i.e. on 14.5.1996 and that his daughter is studying in the Engineering course and she cannot be transferred to any other institute at the final year of her studies, and states that the transfer order issued by the Respondent No.3 is with ulterior motive is to harrass him with mala fide intention. On a perusal of the O.A. I find that the entire allegation is raised against the Respondent No.3, whereas, the transfer is issued by the Respondent No.2 who is the competent authority to issue transfer order. Another contention is that ~~since~~ he has made a representation to the competent authority before he is relieved from the post on 22.5.1996, again on 24.5.1996, but no reply has been received by the applicant so far. The respondents in their reply have stated that the applicant was working as Dy. Director (Safety) and has been transferred to Regional Labour Institute, Madras to fill up the post of Dy. Director (Safety) at Madras. The applicant has an All India Service liability and is liable to be transferred throughout the Country, thereby the challenge of the transfer order by the applicant on frivolous grounds alleging malafides against the Respondent No.3 who is not the competent authority to transfer the applicant. In this connection, the learned counsel for the respondents draws our attention to the Supreme Court observation on transfer stating that it is the Management function

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and an incident of service which should not be interfered with under any circumstances more so frivolous ones as these. The applicant is working in a senior position should not indulge in this type of dodging and deliberate malicious propaganda for having a routine transfer order quashed. It is an admitted fact that the applicant was working in this office since 1989. In the O.A. the applicant has alleged bias on the part of Respondent No.3 and other officers of the institute and not against himself. But that is not relevant for me to decide the transfer order issued by the Respondents is arbitrary or capricious in nature. In this O.A. he states that he is a qualified Ayurveda Ratna and a poet by nature and therefore he is quite popular amongst his colleagues, which the Respondent No.3 does not like and he is jealous of him. The points raised in this O.A. are not germane to decide the question whether the transfer is in accordance with the rules and any mala fides or arbitrariness on the part of the Respondent No.3's action in deciding the issue of transfer order passed by the Respondent No.2 who is competent to issue such orders. The ad-interim relief was passed on the statement made by the learned counsel for the applicant that no other person is transferred to replace the applicant and no one has taken over his place and in that event of the matter I had directed the respondents not to appoint any one in his place. He also further submitted that the orders passed by the Respondents <sup>is</sup> perverse, discriminatory denying the right of equality and that he made a representation, but it has not been disposed

of till now. It is further alleged that despite the representation he has been transferred and relieved which is illegal and mala fide at the behest of Respondent No.3 and other various difficulties such as his wife's transfer from Bokaro to Bombay and his daughter's study in Bombay. It is not the contention of the applicant that he has been demoted and that transfer is to a very remote area. During the course of hearing, it is contended that the Respondent No.3 is not authorised to sign on behalf of Respondent No.2. However, during the course of hearing the learned counsel for the respondents furnished a copy of the OM dt. 4.8.1992 wherein the delegation of powers under Rule 14 have been given to R-3 and have treated him as Head of Office and have authorised him to file affidavits on behalf of the respondents. Therefore, the contention raised by the applicant does not stand the scrutiny of law. Since the applicant has been relieved and struck off from the rolls from Bombay Office w.e.f. 23.5.1996, the question of cancelling the transfer order and my interference is not called for in view of the clear cut observation of the Supreme Court in Mrs. Shilpi Bose V/s. State of Bihar, as well as, Union of India V/s. S.I. Abbas wherein it has been emphasised that the order of transfer is an incident of government service who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is violated by mala fides or is made in violation of any statutory provisions, the Courts/Tribunal cannot interfere with it. In the instant case the plea of mala fide has not been proved except the allegations. Regarding representation, the Apex Court has observed in Gujarat State Electricity Board V/s. A.R. Sungomal Poshani that

Transfer from one place is generally a condition of service and the employee has no choice in the matter. 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 his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to 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. Further, insofar as his daughter's education, the respondents in their reply have categorically stated that the respondents are ready and willing to allow him to retain the quarter at Bombay till she completes her B.E. Engineering course; as per Government Rules and Regulations subject to the applicant's applying for consideration of his case for continuation of the allotment of the quarter at Bombay in his name. Insofar as, harrassment mentioned in the O.A. it is meted out to persons other than the applicant at the hands of 3rd respondent and no mala fide is made out against Respondent No.2 who issued the transfer order.

3. I have perused the pleadings and for the

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reasons stated above, I do not find any merit in interfering with the transfer order issued by the Respondents.

4. In my view, the impugned order passed by the Respondent is just and proper and does not call for any interference. Since he has already been relieved from the post and is directed to join the new post at Madras, the applicant should join at Madras at an early date. However, in case, the applicant desires to retain the quarters at Bombay because of his wife's presence and continuing the daughter's education he can make an application to the competent authority, who on receipt of the same may pass appropriate order allowing him to retain the quarters till the completion of his daughter's education in accordance with the rules. There is no merit in the O.A. The O.A. is dismissed with no order as to costs.

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

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

R.P.NO.81/96 in OA.NO.527/96

29<sup>th</sup> this the day of August 1996

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

G.N.VYAS ... Applicant

V/s.

Union of India & Ors. ... Respondents

Tribunal's Order by Circulation

In this Review Petition the applicant is seeking review of the judgement dated 11.7.1996.

2. In the OA. the applicant has challenged the transfer order issued by the respondents vide dated 16.5.1996 transferring the applicant from Bombay to Madras. The said order was challenged on the ground of malafide or arbitrariness on the part of the respondents. The Tribunal after hearing both the parties, dismissed the application on merits. Since the allegation of malafide is not proved except the allegation, no further proof has been adduced by the applicant. The question of public interest is to be determined by the Government and not by the Tribunal. Malice will be proved when it is shown that the discretionary power has exercised from an unauthorised or extreaneous purpose, none of the grounds exists in this case. The Court does not decide cases in the abstract. It undertakes determination of a controversy provided it is necessary in order to give relief to a party.

3. It is a well settled principle that review petition is maintainable if there is an error apparent on the face of the record or discovery of new and important matter or evidence is found out. On perusal of the review petition, I find that the main contention of the applicant is that as per guidelines or transfer policy, he should not have been transferred to Madras. The Apex Court in catena of cases in regard to transfer has held, whom to transfer and to where it is the prerogative of the respondent department and not the function of the court. The review petition cannot be utilised for rearguing the case on the same ground. A review must be subject to the rules of the zone and cannot rightly be entertained. Since the applicant did not make out any grounds for review of the judgement and the grounds raised in the R.P. are more germane for an appeal against the judgement and not for review. Accordingly, the Review Petition is dismissed.

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

dt 29/8/96  
Order/Judgment despatched  
to Applicnt/Respondent(s)  
on 29/8/96

*SA*  
29/8/96