

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 863/1996

Date of Decision: 23.9.96

S. Anantharaman

Petitioner/s

Applicant in person.

Advocate for the
Petitioner/s

V/s.

Union Of India & Others

Respondent/s

Shri V. S. Masurkar,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. HEGDE, MEMBER (J).

~~Hon'ble Shri B. S. HEGDE, MEMBER (J).~~

- (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).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 863 OF 1996.

Dated, this 23rd, the day of September, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

S. Anantharaman,
Chief Communication Engineer,
Western Railway,
Headquarters Office,
Churchgate,
MUMBAI - 400 020.

... **Applicant**

(Applicant in person).

VERSUS

1. Union Of India through Secretary, Railway Board, Rail Bhavan, NEW DELHI - 110 001.
2. General Manager, Western Railway, Head Quarters Office, Churchgate, Mumbai - 400 020.

Respondents

(By Advocate Shri V.S. Masurkar).

• ORDER •

PER.: SHRI B. S. HEGDE, MEMBER (J)

The applicant is working as a Chief Communication Engineer ~~in the Western Railway~~, Mumbai in the pay scale of Rs. 5900-6700. He states that he is the senior most Chief Communication Engineer on all Indian Railways and as such, he is also due for further promotion as Principal Head of

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Department in the pay scale of Rs. 7200-7600.

2. In this O.A., the applicant is challenging the transfer order issued by the Respondents vide dated 15.07.1996 read with Railway Board's order dated 12.06.1996. The Tribunal vide its order dated 02.09.1996 passed a status-quo order against the order passed by the respondents vide dated 15.07.1996 till the next date of hearing i.e. 05.09.1996 and directed the respondents to file their reply before admission. The applicant has been transferred from Bombay to Secunderabad as Director, IRISSET-SC on the same capacity against an existing vacancy. The respondents filed their reply on 04.09.1996 and prayed for vacation of the ex-parte interim order granted in favour of the applicant in the interest of administration of Railways and also in the interest of justice. It is also submitted that the transfer of the applicant is on administrative grounds. Since the applicant has completed nearly 5 years in Bombay, it is necessary to transfer him as he has no vested right to continue in the same place. The transfer order was issued by the Railway Board vide its order dated 12.06.1996, which was communicated to the applicant by the local order issued from the Office of the General Manager dated 15.07.1996 and the said order was issued on the administrative grounds in the administrative exigencies. Admittedly, the applicant is a Group 'A' officer of I.R.S.S.E. Service and according to



para 226 of Indian Railway Establishment Code, Volume-I, which is statutory in nature, the Group 'A' Officers have All India Transfer Liability, therefore, the contention of the applicant that the transfer suffer from malafides and is in violation of principle of natural justice, is not maintainable in law. Pursuant to the order issued by the Railway Board, the applicant had made a request to the General Manager to allow him to continue for sometime and he was given time till 25.07.1996. Again he made a request to the General Manager to allow him to continue on personal grounds, which was granted till 30.08.1996. Thereafter, the applicant filed this O.A. seeking consideration of the transfer order. Since the applicant has already been relieved on 30.08.1996 and one Shri R. Krishnaswamy, CPE, has been posted at Churchgate in his place, the question of cancelling the transfer order at this stage is not in the interest of the administration. In the absence of any malafides or arbitrariness in the order of transfer, it is not open to the applicant to seek cancellation of the transfer order. In this connection, the learned counsel for the respondents relies upon the various decision of the Apex Court in (i) Union Of India & Others V/s. H.N. Kirtania [1989 3 SCC 445] and (ii) Shilpi Bose (Mrs.) & Others V/s. State of Bihar & Others [1991 Suppl. (2) SCC 659]. The Supreme Court in Union Of India V/s. S. L. Abbas [1993(25) ATC SC 844] has clearly stated that an order of transfer is an incident of government service. Who should be transferred where, is a matter for the appropriate authority to decide.

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Unless the order is vitiated by malafides or is made in violation of any statutory provisions, the Court/Tribunal cannot interfere with it, etc. Further, in the recent decision of the Supreme Court in N.K. Singh V/s. Union Of India & Others [1994] 28 ATC 246] has reiterated the same view and the Apex Court has observed as follows :-

The private rights of the appellant being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to them. The appellant belongs to a disciplined force and as a senior officer would be making several transfers himself. Quite likely many of his men, like him, may be genuinely aggrieved by their transfers. If even a few of them follow his example and challenge the transfer in courts, the appellant would be spending his time defending his actions instead of doing work for which he holds the office. Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised."

3. Keeping in view the ratio laid down by the Apex Court, it is not the case of the applicant that by virtue of his transfer to Secunderabad he will not be considered for further promotion. Wherever he works, his candidature will

have to be considered in accordance with seniority and merit, thereby, his chances of further promotion is in no way affected by this transfer. If at all the applicant is aggrieved by the transfer order issued by the respondents, it is open to him to make representation to the competent authority to reconsider their decision. It is also very clear that whenever a public servant is transferred, he must comply with the order but if there be any genuine reason, 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 another, etc. In the instant case, since the applicant has already been relieved on 30.08.1996 and he has not made any representation to the competent authority for reconsideration to cancel the transfer order, on the other hand, the applicant himself had requested the General Manager to allow him to join the post at Secunderabad after some time and accordingly, he was given time till 30.08.1996. Therefore, I do not find any merit in the contention of the applicant that the transfer order should be cancelled. Being a senior-most officer, he should be an example to his subordinates.

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4. In the circumstances, I do not find any malafide or arbitrariness in the action of the respondents in the order of transfer dated 15.07.1996 and accordingly, the O.A. is dismissed as devoid of merits. The status-quo order passed on 02.09.1996 shall stand vacated alongwith the dismissal of the O.A. No order as to costs.

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

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