

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 319 /1996

Date of Decision: 4-10-96

Ashwinkumar Gajajan Oza

Petitioner/s

Shri V.V.Joglekar with
Shri Sanjay Buch

Advocate for the
Petitioner/s

V/s.

Union of India & 5 Ors.

Respondent/s

Shri V.S.Masurkar 1 to 4 and 6

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. Kolhatkar, Member (A).

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?

abp.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.NO:319/96

Pronounced this, the 4th day of October 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Ashwinkumar Gajajan Oza,
1st Floor, Paanwalla Manzil,
Opp. Vegetable Market,
Moti Daman 396 220.

(By Advocate Shri V.V.Joglekar with
Shri Sanjay Buch for Crawford Bailey .. Applicant
& Co.)

-versus-

1. Union of India
through
Secretary
Ministry of Home Affairs,
New Delhi.
2. The Administrator,
U.T. of Daman & Diu
and Dadra and Nagar
Haveli, Daman.
3. Mrs.C.A.Kapadi,
Asstt Secretary(GA)
Secretariat, Daman.
4. Shri J.G.Rana,
Superintending Engineer,
Public Works Department,
Daman.
5. Shri P.D.Rana,
Junior Engineer,
Public Works Department,
Sub Division II, Daman.
6. Development Commissioner,
Secretariat,
Daman.

(By Advocate Shri V.S.Masurkar
for Respondents No.1 to 4 & 6
Counsel for R.No.5 absent) *✓*
Shri I.J.Naik, absent on the date
of final hearing) - ORDER - .. Respondents

(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged
the order dt. 21-3-1996, Ex.'A', transferring the applicant

Mr

from the post of Assistant Engineer, Sub Division III, P.W.D. Daman to the post of Engineering Officer in the Office of the Superintending Engineer, P.W.D. Daman. Simultaneously it was ordered that Shri P.D.Rana, Jr. Engineer, Sub Division II, P.W.D. Daman, R.No.5, would hold the charge of the post of Asstt.Engineer, Sub Division III, P.W.D.Daman. It was stated that Shri P.D. Rana would continue to receive his salary against his own present post of Junior Engineer: Ex-parte ad interim relief staying the operation of the order dt. 21-3-96 was granted on 28-3-96 and the same was made absolute vide order dt. 30-4-1996 when the O.A. was admitted. O.A. was finally heard on 9-8-1996. When I heard the counsel for the applicant and for official respondents, counsel for private respondent (R.No.5) was absent. The oral request of his proxy on behalf of him for adjournment was rejected and the matter was finally heard and judgment reserved.

2. The facts of the case are that the applicant was transferred on Deputation as Municipal Engineer, Diu Municipal Council on 23-4-93 and had made representations for his retransfer to Daman. The applicant was initially transferred to Diu as Assistant Engineer, P.W.D. on 24-6-1991. By order dt. 6-7-1995, the applicant was transferred to Daman in the O/O Superintending Engineer, P.W.D.Daman in place of one Shri I.S.Talekar. However, the said transfer could not be implemented because the same came to be challenged before the Tribunal. Therefore, the transfer order dt. 6-7-1995 been deemed ineffective. By order dt. 3-11-1995 the order dt. 6-7-95 was cancelled and the applicant was posted as Assistant Engineer, Public Works

Department, Sub-Division No.III, Daman against existing vacancy, vide Ex.'E'. According to the applicant when the impugned transfer order dt. 21-3-96 was issued the applicant had hardly worked for about 4 months in his post as Assistant Engineer Sub-Division No.III, Daman. The ~~impugned~~ transfer order is stated to be not in accordance with the transfer guidelines which are in force since 18th May, 1993, Ex.'D'. According to guideline No.2, Govt. Servants who have completed three years in one place as on 31st March may ordinarily be transferred. According to transfer guideline No.8 applications for transfer before the completion of stipulated period of three years, will not ordinarily be entertained, except on request subject to administrative convenience. The applicant contends that he had not applied for transfer and no administrative exigency has been mentioned in the impugned transfer order. Therefore, the transfer order is illegal being in violation of the transfer guidelines.

3. Secondly, it is contended that the transfer has been effected under the influence and pressure of the 4th respondent vis. J.G.Rana, Superintending Engineer who is the maternal uncle of respondent No.5, P.D.Rana and ~~has~~ has been issued to accommodate 5th respondent and to give him a choice posting. It is stated that respondent No.5 is only a Junior Engineer and he is not the seniormost Junior Engineer, being 5th in the seniority list and that prior to the transfer of the applicant to the position respondent No.5 was holding charge of post of Sub-Division No.III for a

period of about two years. This officiation of respondent No.5 was interrupted by the passing of the order dt.3-11-95 and the purpose of the order dt. 21-3-1996 was to restore the same position to respondent No.5. The applicant therefore contends that the transfer order is in colourable exercise of powers of the administrative authorities. It is also pointed out that no other officers are transferred by the impugned order, that this is a special order of transfer and not a general order of transfer and that this also brings out that the transfer order is meant to favour respondent No.5. It is contended that so far as the post to which applicant has been posted viz. Engineering Officer, in the O/O Superintending Engineer is concerned, there are other Assistant Engineers who have completed more than 3 years in one post and in one place who could have been transferred but it is the applicant who has been solely picked up for transfer because the applicant was holding a post in which respondent No.4 wanted to accommodate respondent No.5 by giving him a gazetted post which he has already enjoyed for about two years. Therefore it is contended that the impugned order is patently arbitrary, illegal and is violative of Articles 14 and 16 of the Constitution of India.

4. Respondent No.5 has filed his written statement on 10-4-96 and official respondents have filed written statement on 16-4-96. It is the case of the applicant that respondent No.5 has taken upon himself to plead the case of official respondents and he has made certain points which have been repeated in the written statement of official respondents. Respondent No.5 has

stated that there were certain correct and valid considerations with the Head of the Department in giving him the charge of the Sub-Division No.III. This may be perhaps, due to the fact that he has already worked in the same Sub.Division No.III for a period of about two years whereas the applicant was away in Diu. Respondent No.5 has denied that the transfer order has been issued to favour him. He has further contended that no extra monetary benefit is available to him under the order. He has stated that the Tribunal had dismissed one O.A.138/96 on 1-3-1996 on the ground that the applicant was posted in the very same station and not much away. He has referred to the Supreme Case S.L.Abbas and had prayed for dismissal of the O.A.

5. The official respondents have filed the reply in which it is denied that there was any influence or pressure of respondent No.4 to direct respondent No.5 to hold the charge of the post of Asstt.Engineer, P.W.D. Sub-Division III as alleged by the applicant. It is stated that the transfer order was issued not by Respondent No.4, but by the Government. Regarding the alleged violation of the guidelines, it is contended that although guideline No.2 states that Govt. servants who have completed three years in one place as on 31st March may ordinarily be transferred, it does not affect the discretion of the Govt. to transfer the Govt. servant before completion of three years.

It is contended that guideline No.7 envisages that if any posts fall ^{vacant} in the middle of the year, a government servant may be transferred on the vacant post during the year if the competent authority so desires. It is contended that since the post of Engineering Assistant in the Office of the Superintending Engineer, P.W.D., Daman was vacant due to the transfer on deputation of Shri I.S. Talekar to the Omnibus Industrial Development Corporation, Daman as Works Manager (Executive Engineer), the competent authority decided to transfer the applicant to the said post and since R-5 ~~was~~ was the seniormost Junior Engineer in the P.W.D. Sub-Division No.II ^{he} was ordered to hold the charge of the post of Assistant Engineer, Sub-Division No.III. The respondents have denied that there was any extraneous consideration in the transfer. The respondents have contended that the post of Engineering Assistant in the Office of the Superintending Engineer, P.W.D. Daman is an important post which was required to be filled up immediately and therefore the transfer orders dt. 21.3.1996 were issued. It is stated that the transfer of the applicant is in the same station and it neither affects his school going children nor affects his accommodation. It is contended that the actions of the official respondents are in good faith and in furtherance of public interest.

6. The applicant filed an M.P. (un-numbered) seeking amendment of the O.A. on 11.4.1996. In this M.P. it is contended that in addition to the other grounds the

transfer is also illegal as it violated the ban on transfers which came into force w.e.f. 21.3.1996 in the context of General Elections. This M.P. was not decided till the date of final hearing and since the ban on transfer of the Officers in connection with the Election, if any, would in any case, lapse after the completion of the process of Elections in the Union Territory, the M.P. becomes infructuous and need not be dealt with further. The applicant has also filed a Rejoinder with reference to the written statement of official respondent and of the private respondent. In the Rejoinder dt. 4.7.1996 with reference to the written statement of the official respondents the applicant contended apart from reiterating what is stated by him earlier has/ that while order dt. 3.11.1995 clearly referred to an administrative exigency ^{in the form of} the vacancy in the post of Assistant Engineer, P.W.D., there is no such reference to the administrative exigency in the order dt. 21.3.1996 and that the impugned transfer order is nothing but a sort of colourable exercise of power. He has also relied following on the case Laws viz. (1) R.Jayaraman V/s. Union of India and Others (1991)17 AIC 151), (2) H.S.Ajamani V/s. State of M.P. and Others. (1989)9 AIC 122) and (3) Hareshwar Hiraji Desai & Ors. V/s. The State of Maharashtra and Ors. (1984(1) Bom. C.R. 290). The applicant contends that the last mentioned case particularly applies to the instant O.A. because it was

ML

a case of re-transfer. In the Rejoinder to the written statement of the private respondent, the applicant has stated that the fact that the private respondent filed his written statement earlier than the written statement of the official respondents and that the stand taken by the private respondent was substantially followed by the official respondents showed that the private Respondent No.5 was directly or indirectly involved in the impugned decision to transfer the applicant.

7. It is well settled by a series of decisions of the Supreme Court that transfer of a government employee is an incident of service and it is not a condition of service. The scope for judicial review of the transfer orders is therefore very limited. The Supreme Court decision in Union of India & Others V/s. S.L.Abbas (1993) 25 ATC 844 and State of Madhya Pradesh & Ors. V/s. Sri S.S.Kourav & Ors. (JT 1995(2) S.C. 498) indicate that unless transfer order is mala fide or is made in violation of statutory provisions, the courts or Tribunals cannot interfere with it. In the present case, the transfer guidelines are not shown to be statutory guidelines and any alleged violation thereof by itself would not justify intervention of the Tribunal. In any case, on reading transfer guidelines as a whole including the transfer guideline Nos 2 and 8 relied on by the applicant and transfer guideline No.7 relied upon by the respondents, I do not find that there was any violation of the

M

transfer guidelines. It is evident from the record that he had made a request for transfer to Daman and he the applicant/was transferred in July, 1995 as Assistant Engineer in the office of the Superintending Engineer, Daman P.W.D./and the same could not be given effect to, because Shri I.S.Talekar who was to relieve him obtained a stay on his transfer from this Tribunal. Therefore, the applicant was transferred in November, 1995 to the post of Assistant Engineer P.W.D. Division No. III. Subsequently, when the vacancy of Assistant Engineer in the office of the Superintending Engineer arose because of transfer of Shri I.S.Talekar to the post of Works Manager in the Omnibus Industrial Development Corporation, Daman, the Respondents transferred the applicant from the post of Assistant Engineer P.W.D. Sub-Division No.3 to the post of Assistant Engineer in the office of the Superintending Engineer P.W.D., Daman. In other words, the original transfer orders of July, 1995 were given effect to. In the process the applicant was subjected to a transfer within four months from the post of Assistant Engineer, P.W.D. Sub-Division No. III to the post of Assistant Engineer this had in the office of the Superintending Engineer and/also coming the effect of R-5/ to hold the charge of the post of Assistant Engineer, P.W.D. Sub-Division No. III. The applicant has not suffered a personal detriment because of order dt. 21.3.1996 the transfer/nor does the transfer involve a change of station. It has also not been brought out that Respondent No.5 has in any way benefitted monetarily from holding

additional charge of the post. The applicant himself has conceded that the stay obtained by Shri I.S.Talekar in whose place the applicant was originally to report was partly responsible for the developments which had taken place, because the applicant obviously could not have had any grievance if Shri I.S.Talekar had joined at Municipal Council, Diu, in which case the applicant could have taken over as Assistant Engineer in the Office of the Superintending Engineer, P.W.D. It is admitted that there is a relationship between Respondent No.4 who is a senior Officer in the P.W.D's hierarchy and Respondent No.5 who is alleged to have benefitted by the transfer order. It may be that the transfer proposals in this regard are initiated by R-4, but R-4 is not the final authority, ^{since} the final authority is the Government. The impugned order is issued in the name of the Administrator and the final authority appears to be the Development Commissioner Secretariat at Daman. It has been alleged that the transfer order has been issued under pressure, but it would be difficult to believe that the Development Commissioner has acted under pressure of a subordinate to benefit the relative of that subordinate. Apart from the allegation, nothing has been brought out to show that the Development Commissioner bore any mala fide against the applicant or was particularly amenable to the pressure of R-4.

8. I now consider the case ^{law} relied on by the applicant. In R.Jayaraman's case, the Tribunal accepted the contention of the applicant that the transfer was in colourable exercise of powers, because the Tribunal

was satisfied that the transfer of the Officer who was a Superintending Engineer in Military Engineering Service was engineered by Building Contractors who were not happy with the applicant. The ratio in R.Jayaraman's case therefore does not apply to the present case.

In H.S.Ajamani's case, the Madhya Pradesh Administrative Tribunal, Jabalpur ~~which~~ had entertained a petition impugning the transfer of a government servant in violation of government instructions. It was also brought out that the applicant was being transferred frequently viz. five times in a period of 4 years and the Tribunal had held that the petitioner is a victim of breach of government instructions. This was the background of the intervention by the Tribunal. The ratio of H.S. Ajamani's case therefore, is not applicable apart from the fact that same needs to be considered in the ^{the} content of latest pronouncements of the Supreme Court.

In Alexander Kurian V/s. Director, Central Marine Fisheries Research Institute, Cochin and Another (1988) 6 ATC 421) the CAT, Madras Bench quashed the order of transfer of the applicant from Bombay Research Centre to Minicoy, because the Tribunal observed that the official working at Minicoy had not completed his tenure and was transferred out of Minicoy on his own request and the applicant was sought to be transferred in his place. While transferring the applicant

M the Tribunal noted that the relevant considerations in the Scientific Organisation viz. nature of the project on which he is working, the adverse effect that will be had on the results of the Research work, that

the Research work was continued till the end of 1987-88 and the Officer in charge of the Research Centre had requested for retention of the applicant to carry out the Project work, that the applicant had registered for Phd. in Bombay University which was consistent with the policy of giving opportunity to the Officers for continuous professional growth and lastly the personal problems, if any, of the Officer were not at all taken into account by the Transfer Committee. The Tribunal, therefore, held that the mere assertion by the government that the transfer was in public interest does not validate the transfer order unless there are specific grounds to support it. Therefore, the facts of this case also arenot applicable to the present case. The applicant particular has placed/reliance on the case of Hareshwar Hiraji Desai and Ors. That was a case in which the petitioners were Assistant Commissioners of Food and Drugs Administration working in Bombay and they were sought to be transferred to Pen, Aurangabad and Jalgaon respectively to accommodate Respondents No.3, 4 and 5 on whose behalf some M.L.As. had also intervened. There was no dispute in the case that the petitioners had suffered a detriment, inasmuch as, they had not completed three years as Assistant Commissioners in Bombay and that they were required to go to mofussil places which would involve dis-location in their personal life. The Court, therefore, held that the private respondents who were earlier working in Bombay and who against their wishes were transferred to mofussil places like Pen, Aurangabad and

Jalgaon were re-transferred in place of petitioners and there were no administrative grounds for re-transfer and the main ground was personal request of the private respondents and the intervention of M.L.As. The Court, therefore, held that such a re-transfer was made in exercise of power for a collateral purpose and was contrary to public interest and therefore, quashed the orders of transfer of the petitioners. In the present case, the facts are entirely different. The petitioner has not suffered any detriment as a result of his transfer to the office of the Superintending Engineer. The transfer was in respect of a position to which the applicant was originally posted which could not be given effect to due to the stay ~~on~~ transfer of Shri I.S.Talekar. Therefore, after Talekar had moved, the action of the respondents to re-transfer applicant to the post of Assistant Engineer in the office of the Superintending Engineer cannot be said to be arbitrary exercise of power. Finally, I may refer to the Supreme Court Judgment in N.K.Singh V/s. Union of India and others. (AIR 1995 SC 423). That was a case in which the applicant was transferred from a deputation post (Joint Director, C.B.I.) to another deputation post in B.S.F. The impugned transfer order had no adverse consequences of service career and the prospect of the appellant, his transfer being to an equivalent post. The allegation of the appellant was that the transfer was mala fide because the intention

of the Government was alleged to be to shift the applicant from a sensitive investigation which action was also alleged to be prejudicial to public interest. The Supreme Court observed that there are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in the case of transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it ^a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. The observations of the Supreme Court ^{fully} apply to the facts of this case. The applicant has not suffered any personal detriment and he has not laid down any ground work to show that the transferring authority which is different from R-4 with whom Respondent No.5 is related was actuated by extraneous considerations. Therefore, in such a case there is hardly any scope for judicial interference. I have already referred to the case of Union of India & Ors. v/s. S.L.Abbas (1993) 25 ATC 844) and State of M.P. & Ors. v/s. Sri S.S.Kourav & Ors. (JT 1995(2)S.C.498).

9. In the result, I find that there is no merit in the O.A. which is accordingly dismissed with no order as to costs.

10. Before parting with this case, I would like to refer to a relevant development/matter after it was finally heard and the case was reserved for Judgment. It appears that the counsel for R-5 sent a submission to this Tribunal with copy to the counsel for the applicant and the counsel for the applicant/opposed entertaining such a submission. Normally, leave is sought and granted to the counsel to file the case law after final hearing within stipulated time of one or two days. Except in the special case of such a leave, no party or counsel has the right to make any submissions after the case is finally heard and Judgment reserved. In view of the above, I have not taken any note of ~~subsequent~~ subsequent submissions of R-5 or the written submissions in opposition by the applicant.

M.R.K. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

B.