

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 564/1996

Date of Decision: 13-11-96

Narendra Purushottam Munde

Petitioner/s

Shri S.P. Kulkarni

Advocate for the
Petitioner/s

V/s.

Union of India & 2 Ors.

Respondent/s

Shri S.S. Karkera for Shri P.M. Pradhan

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 ? X

abp.

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6,PRESOT ROAD, 4TH FLLOR,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO.564/96.

DATED THE 13th DAY OF NOVEMBER, 1996.

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

NARENDRA PURUSHOTTAM MUNDHE
Complaint's Inspector,
Office of the Sr.Supt. of Post Offices,
Aurangabad Division,
AURANGABAD.

... Applicant.

By Advocate Shri S.P.Kulkarni.

v/s.

Union of India,
Through:
Post Master General,
Aurangabad Region,
AURANGABAD.- 431 002.

Senior Superintendent of Post Offices,
Aurangabad Region,
AURANGABAD - 431 001.

Chief Post Master General,
Maharashtra Circle, Old. G.P.O.Bldg.,
Fort, Near C.S.T., C.Rly,
MUMBAI - 400 001.

... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Fradhan.

X O R D E R X

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

In this OA, the applicant has challenged the order of transfer dated 14/6/96 at page-14 (Annexure-A of the OA) by which the applicant/^{who} was working as Complaint's Inspector at Aurangabad has been transferred as IPO in Regional Stamp Dept. at Nasik. The applicant was/^{earlier} transferred/^{to Aurangabad} at his own cost and request on 3/5/94(vide Annexure-B) at page-15, It is not disputed that/^{the} normal tenure of a complaint's inspector is 4 years and normally, the applicant was not liable to be

transferred till May, 98. The applicant has therefore challenged the order of transfer^{firstly} as being in violation of the transfer guidelines and also not being in public interest.

2. In this connection, he has pointed out that the impugned order dated 14/6/96 does not say anything regarding the transfer order being in public interest. The Transfer order also does not appear to be in the normal course as being part of large scale transfers. In this connection, he invites my attention to page-38, Annexure-K, ^{another} the transfer order dated 13/6/96 which states in so many words^h that about 9 people have been transferred in the interest of service. It is also contended that the transfer^{has}/order caused personal inconvenience to the applicant because he has two school going children and old parents aged 60 to 65 years. Most importantly it is contended that the transfer is punitive, arbitrary and malafide having been engineered by Union Office bearers.

3. In this connection, the applicant has stated that an enquiry into a complaint against the applicant containing one Bansode as .. allegation of demand of money for appointment of B.P.M.

Dhakalgaon is under progress. The applicant suspects that this enquiry has been initiated on the basis of a complaint made by Union Office bearers especially Shri Takalkhede and Shri Mate.

4. According to the applicant, both these office bearers had threatened him to arrive at a particular conclusion in an enquiry against Shri F.M. Pasha, Postal Assistant. They had also threatened him when the applicant along-with Shri Takalkhede was functioning as a Presenting Officer and Defence Assistant ^{ively} respect/ in a case against Shri J.S. Gaikwad, Postman and here again a threat was held out to him to take a particular stand in that

case. In both these cases the applicant took independent stand justified ^{by} the objective circumstances which has antagonised union the/office bearers who have ^{now} carried out the threat of bringing him into trouble by starting an enquiry against him.

5. So far as the role of the applicant in the appointment of Shri Bansode is concerned, the applicant contends that his role was confined to conducting enquiry as directed by the SSPOS and to obtain^{ing} fresh applications of all the candidates sponsored by the Employment Exchange, which work he had attended to on 14/10/95. It is stated that Shri Bansode is related to Shri Mate. These facts are recounted in the representation made by the applicant to the Senior Officers vide page-30 to 34.

6. The applicant contends that he had made a request vide letter dated 22/4/96 (at Annexure-E) for being furnished with a copy of the complaint^s made by Shri S.B.Takalkhede and Shri Mate Postal Assistants at Aurangabad and the same was forwarded by the SSPQ^s ^{with strong recommendation}. The applicant's intention was to file a suit for defamation in the Court of Law against Shri Takalkhede and Shri Mate. However, a copy was not furnished to him vide Dept's letter dated 24/5/96 (at Annexure-I) and still the applicant was transferred by the Impugned order shortly thereafter.

7. Respondents have opposed the OA. According to them, applicant has been transferred before completion of tenure of 4 years after obtaining instructions of the competent authority ^{viz.} viz. the Chief Post Master General.

8. In this connection, the respondents have invited my attention to the rotational transfer policy guidelines for the year 1996-97 issued on 26/2/96 under letter No.141.37/96-SPB II. According to this letter, in para-9, it is laid down that the deviations from the above guidelines are permissible where

transfer of the officials in urgent public interest becomes necessary and such transfer should be effected with prior approval of the Regional Post Master General or Head of Office as the case may be. According to the respondents, in this case, the approval of the Chief Post Master General, Maharashtra Circle at Bombay was obtained ^{before transferring applicant} and therefore there is no violation of the transfer guidelines.

9. Regarding the contention of the applicant that the transfer is engineered by the Union office bearers, respondents have stated that a complaint against the applicant and others ~~xxxx~~ alleging corrupt activity was pending before the Anti Corruption Bureau and also before the Vigilance Officer of the Chief Post Master General's office, that the said enquiry is under process and since the applicant was holding the sensitive post of complaints ^{and} inspector, the applicant was likely to ^{with} ~~tamper~~ documentary evidence and therefore it was considered necessary to transfer him.

10. Regarding the letter of applicant, requesting a copy of the complaint made by Union Office bearers to enable him to file a suit for defamation in the Court of Law, the respondents have contended that the application could not be considered as the complaint relating to the corrupt activities ^{and hence} is under process. ^{the} said application for furnishing a copy was rejected. Respondents have also pointed out that not only the applicant, but also all those connected with the enquiry namely SSPO himself and another officer namely Shri R.D.Dandage, ASPO (Head Office) have also been transferred, the latter by the order dated 13/6/96 (at Annexure.K) page-39 of OA. The respondents thus have stoutly denied that the transfer order is malafide or arbitrary or violative of article 14 of the Constitution of India.

11. At the argument stage, the counsel for the applicant relied on the case of Hem Chand and Anr. v/s. Union of India which is a case of Principal Bench, New Delhi decided on 29/3/96 and reported at 1996(2) ATJ - 96. In this case the applicants were transferred from Ghaziabad to Delhi on administrative grounds, ~~xxxx~~ they were working as Electric Loco Shed ~~xxx~~ fitters and were ~~selected~~ as office bearers of the local branch, of Uttariya Railway Mazdoor Union (URMU). The applicants had approached the local Munsif Court of Ghaziabad for getting the charge of the Branch and the Munsif Court restrained the defendants from interfering with the function^{ing} of the plaintiffs in the suit and directing them to hand over charge. This order was passed on 5/4/95. The order of transfer was passed immediately on^{the} next date namely on 6/4/95. The Railway Administration had averred that the transfer was on administrative grounds namely that there were certain complaints against the applicants, but they same were received in September, 94, whereas the transfer order was passed as noted above on 6/4/95.

12. The Learned Counsel for the applicant invites my attention to the observations made by the Tribunal in para-5 of the judgement to the effect^{that} transfer cannot be resorted to as a softer option to avoid taking disciplinary action for the misconduct if it is so warranted in the circumstances. The Counsel would argue that if the applicant was involved in a corrupt practice, it was open to the respondents to take disciplinary action against him but they cannot transfer him on the grounds of misconduct.

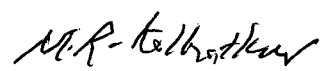
13. In my view the ratio of Hem Chand case does not apply to the facts of the instant case. The main point

which led the Tribunal to interfere^{in the} the order of transfer was that administrative grounds were pleaded[^] but there was a nexus between the ~~interim~~ order obtained by the applicant from the local Munsif Court and the transfer order; the Tribunal had observed that if there were complaints against the applicants pending since September, 94., the respondent No.1 ought to have initiated disciplinary action rather than transferring the applicant, but the reason for interfering in the transfer order was^{in that way} /timed to frustrate the order of local Munsif Court.

14. In the instant case, the facts are quite different. Admittedly, there is an anti-corruption enquiry going on against the applicant alongwith other officials and the applicant has been transferred alongwith other officials. No fault therefore can be found with the action of the respondents in transferring the applicant. No other judgements were cited before me and the scope of judicial interference in the transfer matters is now well settled. In the facts and circumstances, I am of the view that no case has been made out for interference in the Impugned Order of Transfer and OA is therefore dismissed with no orders as to cost.

15. The judgement is being pronounced in November, 96 when half of the academic term is over. In the circumstances, therefore, while I do not interfere with the Transfer order, it would be just and proper for the respondents to permit the applicant's family to stay in the departmental quarters if any provided to the applicant till the end of the academic year.

abp.



(M. R. KOLHATKAR)
MEMBER (A)