

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 819 /1996

13th November 96
Date of Decision:

Om Prakash Tripathi

Petitioner/s

Mr. G.K. Masand

Advocate for the
Petitioner/s

V/s.

UOI & 4 ors

Respondent/s

Mr. M.I. Sethna with
Mr. V.S. Masurkar &

Advocate for the
Respondent/s

Mr. S.C. Dhawan

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?

M.R. Kolhatkar
MEMBER (A)

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOT ROAD, MUMBAI - 411001

O.A. No. 819 of 1996

DATED : 13th NOVEMBER, 1996

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

Om Prakash Tripathi
working as Shop Superintendent
at Kalyan Loco Shed of Central
Railway in Bombay Division and
residing at Railway
Quarter No. MD/229/1
Bara Bunglow, Thakurli (E)
PO. Dombivali, Dist. Thane
Maharashtra State

(By Adv. Mr. G.K. Masand)

..Applicant

v/s.

1. Union of India
through the General Manager
Central Railway
Mumbai CST 400001
2. Shri S.K. Agarwal,
Chief Personnel Officer
Central Railway
Mumbai CST
3. Divisional Railway Manager
Bombay Division
Central Railway
Mumbai CST 400001
4. Smt. Alka Mishra,
Senior Divisional Personnel
Officer,
Bombay Division,
Central Railway
Mumbai CST
5. Shri Sanjeev Sood
Senior Divisional
Electrical (TRS)
Kalyan, Dist. Thane
Central Railway

(By Mr. M.I. Sethna, Senior
Standing Counsel with
Mr. V.S. Masurkar, Central
Govt. Standing Counsel and
Adv. Mr. S.C. Dhawan)

..Respondents

O R D E R
[Per: M.R. Kolhatkar, Member(A)]

1. In this O.A. the applicant has challenged the order dated 11.5.96 transferring him, while working as Shop Superintendent at Kalyan in Bombay Division to Katni Loco Shed in Jabalpur Division. The same is reproduced below:

" CENTRAL RAILWAY

Office of the
Sr.DEE(TRS), Kalyan
No. S/TR/E/149 Dated: 11.5.1996

Sr. DEE (TBS) Katni

Sub.: Transfer of Shri G.P.Tripathi
Shop Supdtt. Kalyan to Katni
Loco Shed

Ref.: Sr.DPO's O.O.No.BB/P/558/KLDP/THK
dated 10.5.96

With reference to above Office Order,
Shri O.P. Tripathi, Shop Supdtt. Gr. Rs.
2375-3500 (RPS) is relieved to day i.e.,
11.05.96 after duty hours to report at
yours immediately.

His LPC will be sent at the earliest.

Sd/-xxx
(K.C. Sanjappa)
for Sr.DEE(TRS), Kalyan

Copy to: Shri O.P. Tripathi, SS : He should report to Katni Loco Shed immediately

Sr.DPO Mumbai CST for information with reference to his letter quoted above.

Sr.DAO BB for information. "

2. The contention of the applicant is that the
applicant was working at Kalyan Power House till 1.2.1988.

The surplus staff of Kalyan including the applicant was transferred to various units and the applicant is posted to work as Work Shop Superintendent at Kalyan. The main grievance of the applicant is that this transfer order has been issued malafide and the same has been issued by Respondent No.5 (Senior Divisional Electrical Engineer) at the behest of Respondent No.4 (Senior Divisional Personnel Officer) who is direct subordinate to Respondent No.2 (Chief Personnel Officer) and that the same is in implementation of the threat held out by Respondent No.2 to the applicant regarding such transfer. The background according to the applicant is as below:

There is a registered trust 'Mahila Samiti' for the wives of railway employees. The wife of the seniormost officer residing in colony at Thakurli works as President of the Trust. One Mrs. Bhatia was President of the said Trust. The applicant's wife Smt. Aparna Tripathi is an elected Hon. Secretary of the said Trust. It is said that the said Trust runs a School at Thakurli viz., Mahila Samiti English High School which has 2,700 students and about 80 staff headed by Principal Mrs. J.K. Kohli. It is stated that the railway administration has no control over the Trust or the School. The only nexus between the railway administration and the school is that the land on which the school has been constructed belongs to the Railways; the land has been given to the school on lease and the school pays rent to the railways for the same. In 1993 there was some dispute between the Principal and the staff on the one hand and the Trust on the other and the matter was taken to the Joint

Charity Commissioner who decided in favour of the Trust by order dated 22.11.93. It is alleged that Respondent No.2 purporting to help in resolving the dispute between the Principal along with Staff and the Trust called a meeting of the Trust Members on 22.4.96 and in the said meeting the respondent No.2 sided with the staff members and when the applicant's wife in her capacity as Secretary of the Trust protested at the behaviour of Respondent No.2, he threatened applicant's wife that if she did not mend her ways, her husband i.e., the Applicant, would be transferred to a far off place which will compel her to give up the post of Secretary of the Trust.

3. The applicant contends that he made a representation on 13.5.96 for retention at Kalyan because of difficulties to which he would be put because of transfer to Katni including that of his children's education and the fact that his wife is the Secretary of the Mahila Samiti Trust etc. But there was no reply. Thereafter by letter dated 8.6.96 he asked for a copy of the Senior DPOs letter dated 10.5.96 which is referred to in his transfer order. But the applicant was not given a copy of the same. The applicant states that he was unofficially informed that the Senior DPO has stated in the said order dated 10.5.96 that the applicant was being transferred along with the post of Shop Superintendent from Kalyan to Katni for a period of six months. The applicant states that he sent a letter on 15.6.96, Exhibit E, regarding his not being fit to join to which he received a reply on 25.6.96 from the Senior DPO informing him that since he has been transferred to Katni all his papers have been transmitted there and he should correspond with Katni for all purposes

including grant of leave etc. The applicant then wrote a letter dated 31.7.96 to the General Manager in which he took the point inter-alia that he could not be transferred to Katni because it was in a different promotional unit, and also that he has not been able to comply with the transfer as he is not well and intimated that in case his representation is not considered within 15 days he would be approaching the Court of law.

4. The basic ground on which the transfer has been impugned is that the order has been passed for a collateral purpose and that no administrative exigency is involved and that his transfer, along with the post, of Katni serves no public interest. The impugned order is alleged to be malafide and applicant therefore prays for quashing and setting aside the transfer order.

5. On 9.8.96 interim relief was granted staying the transfer and directing the Respondent No.5 to allow the applicant to rejoin his duties at Kalyan. In the interim order it was stated inter-alia that the applicant has not been given a copy of the Office Order passed by the Sr.DPO dated 10.5.96 till then and that the transfer is effected at the behest of Respondent No.2 and therefore it is malafide.

6. Written statement has been filed by Deputy Chief Personnel Officer (HRD), Central Railway on behalf of the Respondents. In addition, separate affidavits have been filed by the Respondents Nos. 2 and 4 as directed by the Tribunal. The respondents in their main affidavit have stated that there is a woman welfare centre in Railways at Zonal and Divisional levels and wives of General Manager and DRMs are the respective Chairpersons and

where there is a large number of railway employees the clubs or Samaties are formed by the railway employees and that the Mahila Samiti at Thakurli is one such samiti, which is meant to promote cultural and social activities amongst the officers/staff of the Power House and as per the bye-laws of the Mahila Samiti, it is managed by a Managing Committee and the Samiti elects the wife of the seniormost officer working at the Power House as President and that the Samiti runs a School. The land for school is given by the railway administration and the Chief Personnel Officer who is also Chief Welfare Officer of the Central Railway is the competent authority to oversee the smooth and proper functioning of the said Samiti, and school specially when complaints have been made to the Chief Personnel Officer and there are disputes between the management and staff of the school. It is contended that after 1992 the wife of the applicant who was working as Secretary did not call any meeting of General Body to elect a new President and that she is acting as sole in-charge of the said Samiti and not handling the affairs of the Samiti in a proper manner and refusing to handover the charge and accounts to the newly elected President. The applicant also happens to be a member of the School Managing Committee since 21.2.1994 which has obviously been arranged by his wife who is a Secretary of the Mahila Samiti.

7. According to the Respondents, a meeting was held in the Chamber of Chief Electrical Engineer on 22.4.96 with the senior railway officers including Respondent No.2. From the minutes it is seen that Mrs. Tripathi functioning

as Secretary of the Samiti was asked to hand over the books of accounts to the newly elected President Mrs. Raghuram within 15 days. According to the respondents in spite of the decision taken in the meeting on 22.4.96 an amount of Rs.50,000/= was withdrawn from the Andhra Bank by the wife of the applicant and this shows that misappropriation of funds has been done. According to the respondents, it is the duty of every employee to monitor the working of the family members and their action should not be prejudicial to the interest of administration as per the Conduct Rules, but in this case the applicant has failed to control his wife and allowed and assisted her to indulge in such nefarious activities.

8. So far as the transfer order is concerned, the applicant is working under the control of Chief Electrical Engineer who is the Principal Head of the Department and the applicant was transferred under orders of Principal Head of Department and Respondent No.2 has nothing to do with the transfer order except that such transfers are routed through the office of the second respondent for taking necessary action, and to execute the same. The order dated 10.5.96 was issued by the DRM in execution of the order of PHOD. It is contended that the alleged letter of applicant dated 8.6.96 seeking a copy of order of DPO has not been received by the respondents and therefore the question of supplying a copy of the same to the applicant did not arise. Regarding administrative necessity, it is stated that the same is apparent from the fact that the applicant has been transferred for a period of six months along with post itself.

9. Respondent No.2 in a separate affidavit has denied that he held out any threat to the wife of the

applicant that her husband would be transferred. He contends that it was at the request of the Members and Staff of the School to resolve the dispute and to ensure smooth functioning of the School that he convened a meeting on 22.4.96 in the Chamber of Chief Electrical Engineer. The Secretary of the Samiti (applicant's wife) was asked to hand over the books of accounts to the newly elected President within 15 days. He repeats that it is the duty of every employee to monitor the working of his family members and their action should not be prejudicial to the interest of administration.

10. Respondent No.4 in a separate affidavit has stated that the Respondent No.2 has not directed her to issue any transfer order. Her office only has carried out the order of the competent authority.

11. In his rejoinder the applicant has stated that the withdrawal of Rs.50,000/= on 23.4.96 from the Andhra Bank which is termed as misappropriation of funds by the respondents is nothing of the kind and the withdrawal was on the basis of a cheque ~~which~~ was signed by the President and Secretary of the Samiti and the same was withdrawn to defray any expenses in case any litigation is foisted on the Samiti. Regarding the meeting on 22.4.96, he has enclosed a copy of letter dated 17.4.96 addressed by C.P.O. (Law) to the applicant wherein he was directed to attend the meeting along with his wife. Along with the rejoinder of the applicant, he has filed an affidavit of one Satish Kumar Bhatia, retired Dy. Chief Electrical Engineer, who was present in the meeting held on 22.4.96 and who has stated that the minutes dated 22.4.96 as filed by the respondent administration are a complete distortion of the facts and that in his presence the Respondent No.2 had threatened Shri Tripathi and that there was an exchange

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of hot words between the Respondent No.2 and the applicant and the applicant's wife. There is also an affidavit of Mrs. Pushpa Dhande said to be the President of the Mahila Samiti Trust regarding the circumstances under which an amount of Rs.50,000/= was withdrawn. In the Affidavit of Mrs. Aparna Tripathi, wife of the applicant, it is stated that she was in fact threatened by Respondent No.2 and also mentioned the circumstances under which the amount of Rs.50,000/= was withdrawn.

12. A further affidavit is filed by the official respondents which has enclosed a copy of minutes of the General Body meeting held on 19.12.95 showing that Mrs. P. Raghuram was elected as the President of the Samiti and, it is also contended that Mrs. Dhande, who according to Mrs. Tripathi is President of the Samiti, is not wife of the senior most officer and therefore could not have been elected as President of the Samiti in terms of the bye-laws. Respondents have also enclosed copies of two letters dated 10.5.96 issued by DRM which led to the movement order dated 11.5.96. The same may be reproduced below:

(1) "

CENTRAL RAILWAY

HEADQUARTERS OFFICE,
Personnel Branch
Mumbai CST

No.WSSC/5/THK/MS Dt.: 10.5.1996

Sr₂DPO₄/MB

Sub.: Transfer of Shri O.P.Tripathi,
SS(TRS) KYN.

Shri O.P. Tripathi, SS(TRS) KYN may be transferred from Sr. DEE(TRS) KYN to Katni Loco Shed with immediate effect by temporarily transferring the post from Sr.DEE(TRS)KYN to Katni for a period of 6 months initially.

"2. Necessary orders may be issued accordingly.
3. This has the approval of Competent Authority.

Sd/-
(N.K. Prasad)
Dy.CPO(HQ) "

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"CENTRAL RAILWAY

DIVISIONAL OFFICE
Personnel Branch
Mumbai CST.

No. BB/P/558/ELDR/THK Dt.10.5.1996.

OFFICE ORDER

Shri O.P. Tripathi, SS (TRS) KYN is transferred from Sr.DEE (TRS) KYN to Katni Loco Shed with immediate effect by temporarily transferring the post from Sr. DEE (TRS) KYN to Katni for a period of 6 months initially.

Shri Tripathi should be relieved to day itself.

Sd/-
(K.R.R. Nair)
for Divisional Railway Manager (P)
Mumbai CST

Copy to :

Sr.DEE (TRS) KYN
DRM(P) JBP
Sr. DAO Mumbai.

A letter from Mrs. P. Bhatia, former President of the Samiti dated 23.1.1996 addressed to Mrs. P. Raghuram is also enclosed which refers to the initiative taken by the CPO(IR) for setting right the troubles faced by the Samiti.

13. At the argument stage, the counsel for the respondents has vehemently argued that the interim order staying transfer of the applicant was obtained by the applicant by misrepresenting that he had not received a copy of the transfer order and that on this ground alone, the O.A. is liable to be dismissed as the applicant has not approached the Tribunal with clean hands. I have gone through the order of interim relief and it appears to me that is was not the applicant's case that he has not received the movement order dated 11.5.96 which he has impugned. His case was that he has not received the Senior DPO's order dated 10.5.96 which led to the movement order dated 11.5.96. It is significant to note that correspondence leading to movement order has not been produced by the respondents till the last. It is not annexed to the written statement of the respondents 2 or 4 but it was annexed with the sur-rejoinder filed by the respondents on 9.9.96 vide para 12 above. The interim order also mentions about the allegations of malafide and I am therefore, unable to hold that the interim order was procured by the applicant by misrepresentation and I am therefore unable to accept the contention of the respondents that O.A. is liable to be dismissed on this ground.

14. As part of pleadings several issues have been raised bearing on the malfunctioning of the Mahila Samiti, a Registered Trust and the Mahila Samiti School run by the Trust. The counsel for the applicant has produced before me the order dated 22.11.93 from the Joint Charity Commissioner. An application was made by 52 teachers

to the Charity Commissioner claiming that they are ordinary members of the Trust and that Mrs. Bhatia, Chairman of the Trust should be removed for mismanagement and for causing waste, damage and threat to the Trust property. The application was dismissed. There is also a letter dated 2.4.96 filed by the respondents from Mrs. J.K. Kolhi stating that she is supposed to manage the School as per judgment of 6th Additional Sessions Judge, ~~Thane~~, without any financial power and requesting for intervention. According to the Respondents, Mrs. Raghuram is the President and according to the applicant Mrs. Pushpa Dhande is the President. According to the respondents Mrs. Tripathi, the wife of the applicant, Secretary of the Samiti has misappropriated huge amounts of Trust funds. According to the applicant the Railway administration has no role to play in the management of the Trust or in the running of the School, whereas according to the respondents Respondent No.2 C.P.O. is required to intervene as the various activities of the Trust and the School are meant for welfare of Railway employees and as Chief Welfare Officer he is required to intervene as and when circumstances warrant. In my view I am not required to go into rights or wrongs of this aspect of the matter but I am only required to probe the circumstances which appear to have a bearing on the allegation of malafides. From this point of view, the minutes of meeting dated 22.4.96 are quite relevant. Whether or not the minutes were recorded properly and whether or not the hot exchange of words took place between the applicant and his wife on the one hand and the respondent No.2 on the other hand as part of which a threat was allegedly held out to the applicant by respondent No.2 as to his transfer, the fact that the transfer followed the holding of the meeting is self evident. The timing of the transfer is significant because one of the decisions taken in the meeting as per the minutes produced by the respondents at

para 10 states that Mrs. Tripathi would hand over the books of accounts and other documents of the Committee to Mrs. Raghuram within 15 days. The period of 15 days expired on 7.5.96 and it can be assumed that the fact that the books of accounts were not made available would have been reported to the respondent No.2 who presided over the meeting. ^{It may be} noted that 7th of May is Tuesday and 10th of May is Friday. Thus the orders of transfer have been issued at the end of the week during the course of which compliance of decision was expected. There is, therefore, a prima-facie nexus between non-compliance of decision of the meeting by the wife of the Applicant and issuance of transfer order of the applicant.

15. The counsel for respondents has submitted that the allegation that the transfer was actuated by mala-fide is an after thought, because the applicant in his representations submitted to his higher authority immediately after the transfer has not referred to there being any connection between his wife's position in the Trust and his transfer. It may be noted that in the representation dated 13.6.96 the applicant has stated that it is not clear what administrative interest is involved in his transfer and the concerned order is illegal and that the sudden and unexpected transfer has caused ill health etc. The same statements are repeated in subsequent representation dated 31.7.96. Since the applicant was mainly interested in having his order of transfer cancelled, it might not be expected that he would directly refer to any unpleasant incident. The contention of respondents therefore that the allegation of malafide is an after thought and is a result of fertile imagination of the Ld. Counsel for the Applicant is therefore difficult to accept. The O.A. appears to spell out what was implied by the applicant in his successive representations that the transfer order was actuated by extraneous considerations and that the role of his wife in the Samiti had something to do with his transfer order.

16. Ld. Counsel for the applicant has pointed out that in all successive written statements filed by the respondents nothing at all has been said regarding the pressing administrative necessity for transfer of the applicant from Kalyan to Katni. There has been no requisition from the DRM Jabalpur for any post for which he might have written to ~~DRM~~ Mumbai, and that there was no specific administrative exigency for transferring the applicant from Kalyan to Katni and the administrative necessity is simply pleaded without any supporting ground. I agree that respondents have failed to make out the existence of any administrative necessity or public interest.

17. Counsel for the applicant has additionally submitted that the transfer order is bad in law because it involves inter-regional transfer and such inter-regional transfers can be effected only by the General Manager. However, the respondents have filed a copy of Schedule of Powers on Establishment Matters of Central Railway dated 12.2.1985. From page 13 of it it is seen that Head Quarter Officer in Senior Administrative Grade of Level-I has full powers to transfer staff within the railway. I am not therefore able to accept this contention of the applicant.

18. The applicant has relied on the case of DEBENDRA NATH BAIG Vs. UNION OF INDIA & ORS., AISLJ, X-1989(3), 302 which is a case decided by the Calcutta Bench of the Tribunal. The Ld. Counsel relies on this case for two propositions viz., (i) in the judgment it has been stated that C.P.O. has no power to transfer an employee from Calcutta to Jamalpur which involves inter-divisional transfer. Since in this case the transfer is

ordered by Principal Head of the Department this part of the judgment is not relevant; (ii) secondly the judgment has held that there was no public interest or exigency involved in the transfer and that when it was shown that the applicant was transferred and also a charge sheet was issued it was held that the transfer was penal and the same was quashed. This aspect is also not relevant in the instant case. Id. Counsel for the applicant also relies on the judgment, to which I was a party, in B.S. LALCHANDANI Vs. UNION OF INDIA (O.A. No. 930/94) along with KAMTA PRASAD Vs. UNION OF INDIA (O.A.No.941/94) decided on 30 August 1996. That was a case in which the issue involved was regarding whether the transfer was transfer simplicitor or whether it was a deputation in the guise of the transfer. In my view the ratio of that case is not applicable in the instant case.

19. The respondents have relied on DIRECTOR OF SCHOOL EDUCATION MADRAS & ORS Vs. O.KARUPPA THEVAN & ANR., (1994) 28 ATC 99, in which the Hon'ble Supreme Court laid down that no law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. In the present case the applicant has not challenged the order on the ground of not being heard prior to the transfer and hence the judgment has no applicability.

20. Respondents also relied on SRICHAND & ORS Vs. UNION OF INDIA & ORS (1992)20 ATC 474. This is a judgment of the Ahmedabad Bench of the Tribunal decided on 16.8.1989 in which the scope of judicial review of transfer order is referred to. It is stated that the function of judicial review of transfers has necessarily to be limited to ascertain whether there is any mala-fide, arbitrariness,

exercise of colourable authority vitiating the order or whether there is any justification on grounds of exigency or public interest. The judges cannot determine the extent of such justification but can ascertain its existence. I have already held that apparently the order is passed on extraneous considerations and exigency of administration or public interest is non-existent. This judgment therefore does not help the respondents.

21. Respondents referred to NARESH KUMAR JAIN Vs. UNION OF INDIA & ORS. (1988) 6 ATC 439 decided by the Principal Bench on 2.9.87. It is not clear why the respondents relied on this case. Para 17 which is relevant is to the effect that notice served on the applicant was refused. In the instant case the applicant has not denied receipt of movement order dated 11.5.96 but only complained of non-receipt of order of the Senior DPO leading to the movement order. The case referred to does not appear to help the respondents.

22. Respondents then relied on STATE OF MADHYA PRADESH & ORS Vs. S.S. KOURAV & ORS, J.T. 1995(2) S.C.498 wherein the Hon'ble Supreme Court has held that "the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background/

foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place." This view was expressed in the context of the plea that the Government employee had already worked at Bhopal for about 7 years and when he was transferred to Jagdalpur he challenged the correctness thereof. It is in this connection that the above observation was made by the Hon'ble Supreme Court. The Hon'ble Supreme Court had also further noted that an administrative decision of transfer shall stand unless it is vitiated either by malafides or by extraneous consideration. Therefore, KOURAV's case does not help the respondents.

23. Respondents relied on N.K.SINGH V/s. UNION OF INDIA (1994)28 ATC 246. Here the Supreme Court has reiterated the scope of judicial review and observed that interference is justified only in cases of malafides or infraction of any professed norm or principle. Again this case also does not help the case of the Respondents.

24. Lastly respondents have cited the judgment of SHRI AMAR NATH VAISH Vs. UNION OF INDIA & ORS., ATR (1987(1) CAT 353, a judgment of Jodhpur Bench of the Tribunal delivered on 11.1.1987. In that judgment the Tribunal in para 6 referred to the proposition that Court or Judicial Forum can intervene and set aside the transfer order if the same is found to be mala-fide or in breach of the constitutional provisions/statutory rules or binding administrative instructions or is capricious and based on extraneous considerations or is a colourable exercise of powers. The Court observed that order of transfer was a sequel to action of employee and

that there was a time lag between making of the impugned order and the action of the employee and it was not the applicant alone who was transferred but three officers were transferred.

25. In the instant O.A. it appears to me that malafides are writ large on the impugned order because the applicant alone has been singled out for transfer, that the applicant has been transferred to Katni where there is no post of Shop Superintendent and therefore the applicant has been transferred along with the post and that the applicant has been transferred with the post only for six months and the reasons for this six monthly transfer are not made clear. Most importantly there is a clear nexus between the action which was to be taken by the wife of the applicant and which was not taken viz., failure of the applicant's wife in submitting the books of accounts to the alleged president of the Trust and the date of transfer order viz., within 3 days of the expiry of the period, the applicant was transferred. Even otherwise the respondents have not been able to produce a thread of evidence or any document to show any apparent much less ~~are~~al administrative need, for transfer of the applicant from Kalyan to Katni. In my view, the action of transfer of the applicant is eloquent of legal malafides actuating the Respondents to transfer the applicant. While arriving at this finding I make no judgment as to the wisdom of the role played especially by Respondent No.2 and whether the interest and initiative taken by him in the affairs of the Trust and School were justified or not and whether it was actuated by the best of motives or not. The fact remains, that the transfer of the applicant was clearly actuated by the extraneous considerations and was in colourable exercise of power. The order of transfer therefore cannot stand and the O.A. succeeds.

26: I, therefore, allow the O.A and quash and set aside the order of movement dated 11.5.96 signed by Shri K.C. Sanjappa, Sr.DEE(TRS) Kalyan and all other orders relating to transfer of the applicant from Kalyan to Katni i.e., the order dated 10.5.96 of N.K. Prasad, Deputy CPO(HQ) and the order dated 10.5.96 by K.R.R. Nair, DPO, Exhibits 1 and 2 of rejoinder of respondents. There will be no order as to costs.

27. Before parting with the matter, it is necessary to pass an order regarding regularisation of the intervening period. On 26.09.1996 interim order was passed in the following terms:

"So far as the payment for the intervening period is concerned, it is only just and proper that the respondents should make an advance payment restricted to 50 per cent of leave pay towards salary for the period 12.5.96 to 19.8.96 to be adjusted against the payment due to Applicant when the period is regularised as per rules or orders of Court."

In view of the orders that are now being passed it is directed that the period from 12.5.96 to 19.8.96 should be regularised by grant of medical leave as per rules and salary payment should be regulated accordingly after adjustment of payment made earlier.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member(A)

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