

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 110/96

Transfer Application No.

Date of Decision 18-3-1996

Shri P.S.Kalyanshetty

Petitioner/s

Shri A.I.Bhatkar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

Hon'ble Shri. V.Ramakrishnan, 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 ? ✓

V.Ramakrishnan
(V.RAMAKRISHNAN)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 110/96

Shri P.S.Kalyanshetty ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri V.Ramakrishnan

Appearance

Shri A.I.Bhatkar
Advocate
for the Applicant

Shri R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated: 18.3.96

(PER: V.Ramakrishnan, Member (A))

The applicant is an employee in the Office of the Garrison Engineer (Naval Works), Bombay ^{and} has challenged his transfer from the Office of the Garrison Engineer (Naval Works) to the Office of Garrison Engineer (Navy), Bombay as contained in the order dated 10.1.1996 (Annexure-'A-1').

2. He had also prayed for an interim order and the Tribunal on 1.2.1996 had directed maintenance of Status-quo. It, however, transpired that the Movement Order has been issued by the authorities on 31.1.1996 itself.

3. I have heard Shri Bhatkar for the applicant and Shri Shetty, the learned standing counsel for the Central Government.

4. The applicant was working as Superintendent
Gr. I
(Electrical/Mechanical) with Garrison Engineer
(Naval Works), Bombay which has been categorised
as Executive or sensitive appointment and was
transferred to the Office of Garrison Engineer (Navy)
which is classified as Staff appointment. There are
certain guidelines which deal with turn-over of staff
from sensitive appointment to staff appointment. These
guidelines inter-alia mention that such persons should
be turned over from one division to another division in the
same station every three years and they should be turned
over from executive to staff after a period of 6 years.
It lays down that no Gde. I should be allowed to remain
in an executive appointment for more than 6 years
continuously and staff appointment for Gde I is for
a minimum period of 3 years. Para 4 (h) of the guidelines
provides that :-

"(h) there is no embargo in turning over
any individual holding executive or
sensitive appt. to a staff or non-sensitive
appointment even before completion of 3 years
of lesser period if the Zonal CE/Command CE
SC desires on adm. grounds. However, shifting
from staff/non-sensitive appts. to executive/
sensitive appts. within the minimum period laid
down is totally prohibited even on attachment.
CE command only can relax this condition."

Shri Bhatkar for the applicant submits that the applicant
had been serving in the present sensitive appointment only
for $2\frac{1}{2}$ years and no administrative grounds of public interest
have been brought out to justify such transfers when he
has not completed the tenure of 3 years. He also argues
that a number of other employees who had served for more
than six years in executive appointment have been retained

in the same position and not been shifted to staff appointment. He says that once the guidelines exist with regard to the transfer policy, they should be applied equally to everybody and any deviation should only be in public interest ~~and~~ refers to the decision of Calcutta Bench in Pradip Kumar Banerjee vs. Union of India. ^{He says further that} ~~any discriminatory approach on the part of the authority would initiate the transfers~~ has been held in Smt. Vatsala Ravi Kumar & Ors. vs. The Chief Engineer MES, Southern Command, Pune & Ors. He contends that the authorities ~~follow~~ ^a practice of pick and choose for effecting transfers. Besides one Shri M.V. George who held the staff appointment for less than 3 years has been ordered to replace the applicant and this has been done without the approval of the Chief Engineer of Command and as such ^{is} in clear violation of Para 4 (h) of the guidelines. The transfer of applicant in order to accommodate another person is not in public interest and should be set aside. He refers to the decision of the Tribunal in Hemant Juyal vs. Union of India & Ors. and also to the Ahmedabad Bench decision in D.R. Sengal vs. Chief Postmaster-General & Ors.

According to Shri Bhatkar ~~it~~ this would show that the authorities have exercised their powers arbitrarily in effecting the transfer of the applicant and the same deserves to be quashed.

5. Shri Shetty for the respondents opposes the application. He contends that the applicant has been transferred from the Office of Respondent No. 3 to that of Respondent No. 1 which is within a distance of one K.M. He brings out that initially the respondents had transferred the applicant to the Office of the G.E. 860, Jaisalmer, which was a hard tenure station but subsequently the transfer order was changed and the present transfer does not involve change of residence or shifting of his family. He also does not agree that the applicant has a right to be retained in an executive appointment. He submits that the applicant had put in 8 years of service of which he has had the benefit of executive post for the last 6 years and 4 months. Even though in the present division of G.E.(NW) he has served only for $2\frac{1}{2}$ years, in the previous assignment in G.E.(N.W.) ~~Bandup~~ he had worked for 3 years and 10 months. In fact, the All India M.E.S. Civilian Engineers Association has also sought for the movement/transfer of the applicant from the sensitive executive position and for deploying him in a staff posting. The learned standing counsel does not agree that the authority has followed any discriminatory attitude. Smt. Komalam P. Sarasappan referred to by the applicant was allowed to continue in sensitive appointment from Nov. 89 due to administrative reasons as she was handling important papers and no suitable persons were available. She has worked only for 6 years in sensitive executive appointment out of her 30 years of total service.

Shri Parthasarthy had completed $2\frac{1}{2}$ years of service before being brought to the executive appointment in October, 1989 subsequent to the posting of the applicant in a sensitive appointment. Shri Parthasarthy had completed $2\frac{1}{2}$ years of service in staff appointment whereas the applicant had put in only 2 years of staff service and as such his case stands on a different footing. As regards Shri George, the learned counsel makes available the department's file which shows that his present posting has been done on compassionate ground.

6. Shri Shetty also states that the Supreme Court has categorically laid down time and again that transfer is an incident of service and should not be stayed or interfered with. He refers to the decision of Supreme Court in Shilpi Bose and Kaurav's cases. He submits that transfer is a management function and is best left to the management. Shri Shetty also submits that although the applicant had made allegations of malafide, colourable exercise of power, favouritism and arbitrariness, there is not an iota of evidence to prove the said unfounded false allegations. For these reasons, according to the counsel for the respondents, the application should be dismissed with costs.

7. I have carefully considered the rival contentions. It is well settled that the scope of the Tribunal in respect of transfer orders is quite limited and such transfers cannot be interfered with unless it is vitiated by malafides or is against statutory rules. From the facts and circumstances of the case referred to earlier, it is abundantly clear that the applicant has not been able to establish any malafides on the part of the authorities even though he has made a passing reference to the same in the pleadings. The guidelines referred to by the applicant are of non statutory nature. They are only directory and not mandatory. Shri Shetty contends that there has been no deviation from the guidelines. It is seen that the department had by and large conformed to the guidelines but they had not strictly followed the same in all cases, for example, in the case of George, his transfer from staff appointment to executive appointment before he had completed 3 years of staff appointment was done with the approval of the Zonal Chief Engineer and not of Chief Engineer Command as required under Para 4 (h) of the guidelines. This, however, does not make any material difference to the position as the Supreme Court has held that the guidelines issued by the Government do not confer any right on the applicant. In this connection, I may refer to the decision of the Supreme Court in Union of India vs. S.L.Abbas, AIR 1993 SC 2444 and may with advantage extract Head Note 'A' as follows :-

"(A) Constitution of India, Article 309
- Fundamental Rules, Rr.11, 15 -
Transfer - Government employee - Guidelines issued by Government - Do not confer upon employee legally enforceable right - Order of transfer made without following guidelines - Cannot be interfered with by Court unless it is vitiated by mala fides or is made in violation of statutory provision.

Transfer - Government employee - Guidelines issued by Government - Do not confer upon employee legally enforceable right."

8. As such the fact that the authorities have not [redacted] complied with their own guidelines does not help the applicant as he has not [redacted] any malafides nor he has shown that the transfer is in violation of statutory may [redacted] of the Supreme Court any rules. I also refer to the decision in State of Madhya Pradesh & Ors. vs. Sri S.S.Kourav & Ors., JT 1995 (2) S.C. 498. In that case the apex court has held as follows :-

"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."

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9. In the light of the foregoing discussion and keeping in view the law laid down by the Supreme Court in this regard, I find no merit in the application and accordingly dismiss the same with no order as to costs.

V.Ramakrishnan
(18/3/1996)

(V.RAMAKRISHNAN)

MEMBER (A)

mrj.