

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 119/96

Date of Decision 15/3/96

H.D.Halpati

Petitioner

Shri I.J.Naik

Advocate for the Petitioner.

Versus

Union of India & Anr.

Respondent

Shri V.S.Masurkar

Advocate for the Respondents.

Coram:

The Hon'ble Mr. V.Ramakrishnan, Member (A)

The Hon'ble Mr.

1. To be referred to the Reporter or not? No
2. Whether it needs to be circulated to other Benches of the Tribunal? No

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

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO.6, PRESOT ROAD, 4TH FLOOR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.119/96.

DATED THE 15TH DAY OF MARCH, 1996.

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

H.D.Halpati ... Applicant
(Advocate by Shri I.J.Naik)

v/s.

Union of India & Anr. ... Respondents
(Advocate by Shri V.S.Masurkar)

X O R D E R I (ORAL)

X Per Shri V.Ramakrishnan, Member (A) X

The applicant a UDC in the Department of Agriculture
at Daman ^{and} has challenged his transfer to Directorate of
Accounts in Daman itself.

2. I have heard Shri Naik for applicant and Shri Masurkar
for respondents.

3. The main grounds urged in the pleadings and also
by Shri I.J.Naik is that the transfer is in violation of
various guidelines. He also contends that as this involves
transferring the applicant from the cadre of UDC to the
accounts ^{side} which according to him is a different department.
Shri Naik refers to the guidelines rendered by department
which is contained in the O.M.No.2/16/92-GA/714 dt.

11/5/93 as at Annexure A-2. In particular he refers to
guideline No.2 which states that Government servants who
have completed 3 years in one place as on the 31st March
may ordinarily be transferred. Admittedly, the applicant
has not completed 3 years in the present post of UDC and
Shri Naik asserts that as such the applicant is not
liable for transfer. He also mentions that guideline No.14
spells out that the Competent Authority should see that
transfers in a department do not exceed 1/3rd of the total
strength under each category. He states in the present
case, 3 out of 4 UDCs in the Directorate of Agriculture

have been shifted out and the administration has therefore clearly breached guideline No.14 also.

According to Shri Naik, deviation from guidelines vitiates the order passed by respondents and the same is arbitrary. He seeks to draw support from various Court decisions. He refers to the following:-

- (i) Shri H.S.Ajamani v/s. State of M.P. and Others (1989) 9 ATC and decided by Full Bench of Administrative Tribunal. He says that this judgement was rendered after considering a Supreme Court's judgement, namely 1987 S.C.C. (L & S) 460.
- (ii) R.Jayaraman v/s. Union of India (1991) 17 A.T.C. 151. rendered by Bombay Bench of C.A.T. on 30/8/90.
- (iii) S.A.Joshi & Ors v/s. Union of India reported in 1985 Gujarat Law Herald (N.C.C.) In this judgement, the Gujarat High Court has taken the view that guidelines issued by Government should be followed and not ignored and there should be no unfair or unjust denial of benefit arising out of a guideline.

He also refers to 2 more judgements of the Madras Bench and Bangalore Bench of Tribunal and contends that the power of transferring a government servant should be exercised by the authority honestly, bonafide and reasonably. If the exercise of such power is based on extraneous considerations or for achieving an alien purpose, it would amount to malafide and colourable exercise of power.

Shri Naik submits that even the Supreme Court in the decision of Union of India v/s. S.L.Abbas has held that the transfer can be interfered with by Courts if it is vitiated by malafide or is made in violation of statutory provision. According to the Learned Counsel, the fact that the guidelines have not been complied with amounts to legal malafide and clothes the Tribunal with the right to interfere and quash the order.

4. Shri Masurkar for the respondents does not agree

that the transfer can be interfered with by the Tribunal. He submits that the applicant has been transferred to another office in the same place which is only within 100 metres of his existing office. He draws attention to para-5 of the written statement of the respondents and as per that, there is no dislocation of residence or school education of children and as such the applicant has no cause to feel aggrieved. He also does not agree that the applicant is being transferred from one cadre to another. According to him the applicant is a Upper Division Clerk which is a common cadre irrespective of the office in which he may be serving. The fact that he has been transferred does not take away his status as 'UDC'. He seeks to allay the apprehension of the applicant that the transfer to accounts department may affect his promotion prospects and states that it will not have any such adverse impact.

Shri Masurkar also relies on the decision of the Supreme Court in Union of India v/s. S.L. Abbas to the effect that breach of guidelines is not a ground for interference with transfer. He also refers to Shri N.K. Singh's v/s. Union of India JT (1994) 5 S.C. 298 where the Court has held that the transfer is an incident of service and no Government servant can take objection to a transfer when it is not detrimental to his career prospects. There is also a reference to the decision of the Supreme Court judgement in State of Madhya Pradesh v/s. S.S. Kaurava and Others., where the Supreme Court had held that the transfer being an administrative matter, the Court should not interfere. For these reasons, he argues that the OA should be dismissed.

5. I have considered the contentions of both sides

The apprehension of the applicant that he is being shifted to another cadre is stated to be mis-conceived by the respondents and in their written statement they have clearly brought out that the transfer to accounts side will not in any way effect his future prospects. This statement is noted and recorded. I do not agree with the contention of Shri Naik, that breach of guidelines ~~may be taken as legal malafides and vitiate~~ the transfer. The decision of the Supreme Court in S.I. Abbas case AIR 1993 S.C. 2444 will squarely apply and Head Note thereof is reproduced below:-

"(A) Constitution of India, Article 309-Fundamental Rules, Rr.11, 15 - Transfer - Government employee - Guideline 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 malafides or is made in violation of statutory provision.

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

(B) Constitution of India, Article 323-A- Central Administrative Tribunal - Jurisdiction of - Is akin to jurisdiction of High Court under Art. 226 - C.A.T. not being Appellate Authority, cannot substitute its own judgement for that of competent authority."

Thus whatever may be the merit in the contention that transfer is in violation of guidelines, it is clear that the Tribunal cannot interfere in such cases even if there is a breach of guideline., in view of the law laid down by the Supreme Court in Abba's case are very clear and I do not agree that the contention that breach of guidelines amounts to legal malafides and confers right on the Tribunal to interfere in the transfer matters. The transfer of the applicant from the department of Agriculture to Accounts Department is also not violative

of any statutory rules.

6. In the light of the above, and in the context of the law laid down by the Supreme Court, the OA is devoid of merit and is accordingly dismissed with no order as to costs.

V.Ramakrishnan

(V.RAMAKRISHNAN)
MEMBER (A)

abp.