

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.669/1999

DATED: Thursday, this the 10 TH DAY OF AUGUST, 2000.

CORAM:  
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

1. S.K.Manchanda  
Working as Accounts Assistant  
Accounts Officer (EG)  
Headquarters Office  
Central Railway  
Mumbai C.S.T.  
Mumbai - 400 001.

2. Smt. Indira Manchanda  
Working as  
Accounts Assistant,  
Works Accounts officer  
Matunga  
Central Railway  
Mumbai 400 019.

(Residing at Flat No.3,  
Bldg. No.96  
Central Railway Colony  
Kurla (E)  
Mumbai 400 024.) ..... Applicants

vs.

1. Union of India, through  
General Manager  
Central Railway  
Head Quarters Office  
Mumbai C.S.T.  
Mumbai 400 001.

2. Financial Advisor and  
Chief Accounts Officer  
Central Railway  
Headquarters Office  
Mumbai C.S.T.  
Mumbai 400 001. .... Respondents

(By Shri S.C.Dhawan, Advocate )

ORDER

[Per: B.N.Bahadur, Member (A)]

The two Applicants in this OA (Applicant No.1 being the  
husband of Applicant No.2) have come up to this Tribunal

...2...

impugning the Order made by the Respondents (No.S00 160/99 dated 29.7.1999) through which both applicants have been transferred from their present postings, in Mumbai, to the Office of the Senior DAO at Jhansi. An Interim Order was made by this Tribunal on 13.8.1999 to the effect that the impugned transfer order shall not be given effect in respect of Applicant No.2 and that Applicant No.2 may make a formal representation to the concerned authority to consider her request for continuation on the present post, in view of problem of education her children. It was also decided at the same time that no Interim Order was being granted in respect of Applicant No.1. It is also seen that vide Rojnama order 2.3.2000, the Tribunal noted that "there is no necessity of continuation of Interim Order in favour of the second Applicant, since the Respondents have since cancelled the order of Transfer of second Applicant".

2. In view of the above position, the Application survives in substance in regard to the grievance of Applicant No.1 only i.e Shri S.K. Manchanda. The case made out by the Applicants was that they have two minor daughters studying in Mumbai, and with nobody else to look after them, they will have to endure hardships in case they have to move out of Mumbai. It is alleged that the orders speak of arbitrariness and vindictiveness, and has been made on extraneous considerations. A ground is also taken that in the Accounts side, in which applicants work, no such transfer is made except on request (outside Mumbai Division) and that the Respondents have been singled out, with both being transferred simultaneously.

3. The Respondents have filed a reply statement, resisting the challenge to the Order and state that the Order was made in administrative interest and that the Applicants are liable for

...3...

Bs

postings as made. An assertion is made that Transfer Order of both Applicants has been made to the same station in view of the guidelines which provide for care to be taken to post husband and wife at the same station, as far as possible. It is stated that it is because of this that Applicant No.2 was also transferred to Jhansi, where a number of vacancies exists. In the remaining part of the O.A. the respondents have given replies parawise, both to the facts and grounds taken in the O.A. These are not being reproduced and shall be mentioned wherever relevant.

4. I have heard learned Counsels on both sides and have perused the papers in the case, including the Rejoinder, the documents filed and case law cited as also the additional statement of Respondents.

5. The learned Counsel for the Applicants took me over the facts of the case, in detail, and argued his case on a number of points. The gist of the points made by him is B.S. reproduced below:

a) Normally no transfer is made outside Headquarter in Accounts side, and this and other facts show that Applicants are being singled out.

b) There is a long waiting list of requests by similar persons for transfer at Jhansi as can be seen from page 35 of the Paper Book and posting of applicants without considering <sup>these B.S.</sup> requests shows malice and arbitrariness.

c) Transfer of husband and wife issued together this also smacks of malice.

d) No foundation for public interest is laid down in the Order and Learned Counsel pleaded that this could be established through perusal of Office records.

B.S.

Learned Counsel strenuously argued that all the above facts showed malice and arbitrariness on the part of Respondents.

6. The case of Chata~~1~~ Singh decided (1996 (2) ATJ 222 was cited by counsel for Applicant, as also the case of Ramadhar Pandey V/s State of U.P. and others (1993) SCC L &S 918. for support of the case of applicants.

7. Arguing the case on behalf of Respondents their Learned Counsel stated that there was no vindictiveness or malafide and that no one has been made a party in the case, as required by law, while alleging malafide. It was denied that any Union activity of the Applicant or any extraneous reasons were responsible for the transfer order and that these contentions and allegations were beng made only at the final stage. It was contended by learned Counsel that it is never necessary nor the practice to spell out reasons for transfer as already held in the case of Srich and Jose V/s Union of India (1989 (2) ATR page 593)

8. The learned counsel stated that it was not correct to say that persons from Headquarters could not be posted outside Mumbai, and in fact averred that no rule or instructions was breached. Similarly, It was not necessary or incumbent for the Respondent to first exhaust the list of persons who have opted for transfer to Jhansi. Learned Counsel also cited some cases in his defence regarding the well settled law relating to transfers.

9. Since the order of Applicant No.2 has now being cancelled, we find no reason to disbelieve the stand taken by the Respondents regarding the reason for making the transfer order of both husband and wife simulataneously. In any case, the grievance on this count does not survive now and the Application will now be consdered with reference to the prayer of first Applicant. On going through the papers submitted, as also some

...5...

Bs

part of the records shown, the first point that become clear is that there is nothing which can convince the Tribunal that there has been any breach of Rules or instructions on the point of non transferability of employees on the accounts side outside Mumbai. No rule is cited by applicants. Also there is no rule that when requests from a number of people for transfer to Jhansi are pending, as indeed is true, the Respondents are bound to consider them first. This is an administrative judgement and it will not be open for me to sit in judicial assessment over the merits of the administrative desirability of posting one person or the other to any particular station. Thus, the Tribunal will not be in a position to take a view that it would be preferable to consider those persons for transfer who had asked for the posting to Jhansi in preference to the applicant.

10. The above views are taken in consonance with the well settled law by the Hon'ble Apex Court in several judgements and the position being well known on this aspect no detailed reasoning needs to be offered by way of repetition. This Tribunal, as per settled law, will certainly go into the aspect of malice, arbitrariness or the allegations that the transfer is punitive. I have carefully considered the grounds taken by the Applicant in this regard, and the arguments made by his learned Counsel, as mentioned in the paragraphs above. Firstly, there is no malafide against any particular person/s by making him/her as a party by name. Thus, what could be alleged could only be malice in law. On a careful consideration of the facts and circumstances I cannot see how any malice in law could be seen to be evident, and this ground is not sustainable. Similarly, it is not seen how the lack of public interest can be proved.

128

Learned Counsel has cited the case of Ramadhar Pandey [1993 SCC L&S 918]. I have perused this case and find that it related to an ex-cadre post and it was held that transfer to ex-cadre post must be in public interest and that no such public interest was involved in that particular case. Thus that order was made in the facts and circumstances of the particular case cited. During re-argument the point regarding lack of public interest was again taken up by learned Counsel for Applicant when he cited the case reported at SLJ [1974 (15) Delhi High Court] to argue that no reasons have been recorded regarding <sup>public int</sup> interest and hence the orders are arbitrary. I have read the judgement and find that given the facts of the case there, the judgement is <sup>not</sup> applicable here.

11. I have also seen the case of Chattar Singh cited by Counsel for Applicant and see that the finding in that case was based on what the Court found to be a colourable exercise of power and that a nexus was found to exist in that case in a manner that the order was seen to be clearly punitive. In the facts and circumstances of the present case, I have no material before me to conclude that the transfer Order of Shri Manchanda is punitive in nature or that any incident can be shown as will establish a nexus to show a punitive design. The vague reference <sup>to</sup> ~~reference to~~ Union activities of applicant in the O.A. and the allegations during the stage of arguments are most insufficient for such a conclusion to be made. These are, at best vague allegations and cannot provide any relief to the Applicant.

12. In view of the discussions above, I am not convinced that there is any ground to interfere with the transfer in respect of Applicant No.1. In regard to Applicant No.2 the matter is really

Bnt

:7:

infructuous now as her transfer order is cancelled and she is retained in her present office vide 500/41/2000 dated 23.2.2000 (copy on record). This is noted by the Tribunal.

13. In the consequence this Application is hereby dismissed with no orders as to costs. The Interim Orders made on 13.8.1999 and continued in respect of Applicant No.1 are hereby vacated.

*B. N. Bahadur*

(B.N. Bahadur)  
Member (A)

10/8/2000

sj\*