

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1063/99

Date of Decision: 9-3-2000

Mrs.Meena Barla

.. Applicant

Mr.G.K.Masand

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Mr.V.S.Masurkar and Mr.G.S.Walia

.. Advocate for
Respondent(s)

CORAM:

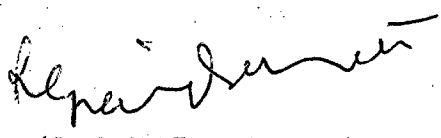
The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? NO

(3) Library? Yes


(R.G.VAIDYANATHA)

VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1063/99.

Thursday, this the 9th day of March 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

Mrs. Meena Barla,
4/84, Uneethan,
Rafi Kidwai Road, Wadala
Mumbai - 400 031.
(By Advocate Mr.G.K.Masand)

...Applicant.

Vs.

1. Union of India, through
Ministry of Home Affairs,
Deptt. of Official language,
Central Hindi Training Building,
7th Floor, Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi.
2. Secretary,
Home Ministry, Department of Official
Language, Lok Nayak Bhavan,
Khan Market,
New Delhi.
3. Mrs.Shilpa Mahale,
working as Dy. Director
(North) Hindi Teaching Scheme,
'A' Barracks, Janpath,
New Delhi - 110 001.

...Respondents.

(By Advocates Mr.V.S.Masurkar and
Mr.G.S.Walia).

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

The applicant is challenging the order of transfer in this application. Both the official respondents and the private respondents have supported the impugned order of transfer. I have heard counsels appearing on both sides regarding admission.

2. Unfortunately, this is a dispute between two ladies viz. the applicant and the third respondent. Both are married ladies and both are in the rank of Dy. Director in the Hindi Teaching Scheme under the control of Ministry of Home. Both

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of them want Mumbai on the ground that their spouses are living at Mumbai and their children are studying at Mumbai.

3. The few facts which are necessary for the disposal of this application are as follows.

Earlier, the third respondent Mrs. Shilpa Mahale was working as Dy. Director at Mumbai. The applicant was working under her as Assistant Director at Mumbai. Then, applicant was promoted as Dy. Director and posted at Delhi. She went to Delhi and took charge as Dy. Director in May, 1998 and then she made a request that since her husband is a Central Government servant and he is posted at Mumbai and he is suffering from certain injury sustained in an accident, her presence was required in Mumbai. Her request was considered by the Department and she was transferred as Dy. Director in Mumbai in place of third respondent and in pursuance of that order the applicant took charge as Dy. Director at Mumbai on 8.2.1999, exactly about a year back. Consequently, the third respondent was transferred to Delhi. Then, third respondent filed the previous application viz. O.A. No.93/99 challenging her order of transfer to accommodate the applicant at Mumbai. The applicant who was R-3 in the previous OA strongly opposed that application. After hearing both sides, I dismissed that application on the ground that this Tribunal cannot sit in appeal over administrative orders of transfer.

Now, the tables have turned. The third respondent who was in Delhi and lost the previous case went on making representations to the administration including the Minister incharge seeking a transfer to Bombay on the ground of her husband working at Bombay and her personal difficulties including her health and her daughter's education etc. Now, the administration has conceded the request of third respondent and transferred her to Bombay in place of applicant, in turn,

applicant stands transferred to Delhi.

I may also place on record that in pursuance of the impugned order of transfer, the third respondent has taken charge at Bombay on 23.12.1999 and applicant has been relieved. I do not know whether applicant has joined her post at Delhi or she is awaiting the result of this OA.

4. Now, the applicant is challenging the order of transfer by filing the present OA. Her main grievance is that she is put to great difficulty in view of her transfer, since her husband who is suffering from injury sustained in an accident will be put to great difficulty if the applicant is not there to look after him. She also relies on the Government Guideline of 1986 which says that when both husband and wife are working in Central Government, then as far as possible, they should be posted in the same place. She has also attacked the order of transfer of third respondent as mala fide.

5. Both, the administration and the private respondent viz. third respondent have supported the impugned order of transfer and they have asserted that no case is made out for interfering with the order of transfer.

Since I am disposing of this application at the admission stage, I am not mentioning the details of pleadings. Further, in the light of the arguments addressed before me, the point involved is a very short point which can be disposed of without referring to unnecessary and lengthy pleadings which are on record.

6. The learned counsel for the applicant pressed only two points. His first submission is that the order of transfer is mala fide since it is passed to accommodate third respondent at Bombay at the cost of the applicant. The other submission is that the order of transfer is in violation of transfer

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guidelines of 1986 and it causes serious hardship and difficulty to the applicant and her husband. The respondents have denied the allegations of mala fides. The stand of official respondents is that on the representation of third respondent, the matter was re-considered and the administration has conceded the request of third respondent to transfer her from Delhi to Bombay in view of her personal difficulties and applicant has been transferred to Delhi since she had a long tenure at Bombay in different capacities for nearly 27 years except for a short break of one or two years. They have denied the allegations of mala fides.

7. I have not been able to persuade myself to accept the argument that the order of transfer is mala fide. It may be that third respondent made a request for transfer and that request has been conceded by the Head of Department. How can it be said that the order is mala fide. It is not the applicant's case that the Head of the Department or the concerned Minister had any hostile ~~attitude~~ ^{animosity} or animosity against the applicant to transfer by way of punishment or to see that she ~~is~~ taken out from Bombay. It is nobody's case. There are no allegations of mala fides against the Secretary of the Department or against the Minister or against any other higher Officer that for extraneous considerations or with oblique motive the applicant has been transferred. A vague or bald allegation of mala fides cannot be accepted.

Only point highlighted by the learned counsel for the applicant is that R-3 has brought political pressure and thereby the order is mala fide. For this argument, reliance was placed on a letter dt. 24.11.1999 written by third respondent to the Minister of State, Home Department. Copy of this letter is at page 109 of the paper book. The letter

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only shows that third respondent is praying for transfer due to her personal difficulties and she has not made any allegation against the applicant. Every official is free to make a representation. It may be that, this letter is addressed to the Minister of State in the Home Department not as a Politician, but he is the Minister in-charge of this concerned Hindi Department. When the third respondent did not get favourable orders from the Secretary to the Department she has addressed another letter to a still higher authority viz. the Minister in-charge of the Department. It cannot be said that third respondent has brought political pressure. If the letter had been addressed to a Member of Parliament or some other Minister un-connected with the Department and if that authority had put pressure for transfer, then the matter is different. Here, the letter is addressed to the Minister in-charge of the Department and there is nothing wrong.

I have perused the concerned file produced by the official respondents. It shows that the request of the applicant has been considered by the respondent and on merits she has been given a change to Bombay, hence this is not a case of order of transfer being mala fide.

If the order of transfer is held to be mala fide only on the ground that it is passed to accommodate the third respondent and to shift the applicant, then the same argument will hold good even for applicant's earlier posting at Bombay. As already stated, it was third respondent who was working as Dy. Director in Bombay and applicant made representation pleading her difficulties and ~~in~~ in the order issued in 1999 she was transferred to Bombay. Then, we must hold that applicant's transfer to Bombay was also mala fide. Therefore, if we set aside the impugned order of transfer, then we will



be restoring the earlier order of transfer of the applicant to Bombay which will also be mala fide on the same line of argument which is pressed into service by the learned counsel for the applicant.

8. Now, on the question of personal hardship it is a case of two married ladies fighting each other asserting one's difficulty is more than the other. Applicant says that her family is in Bombay and her husband is not well and she has to look after him. The third respondent says that she is suffering from Asthma, her daughter is studying and her husband is working at Bombay and therefore she wants transfer to Bombay. It is a question of deciding comparative hardship between the applicant and the third respondent. This is a matter which has to be decided by the Competent Authority and not by a Court or Tribunal. The Competent Authority has accepted the request of the third respondent and transferred her to Bombay. We cannot re-appreciate the materials and then come to a conclusion that applicant will suffer greater hardship than the third respondent and therefore the order transfer has to be interfered with. That is not the province of judicial review. We are only concerned with the legality of the decision making process and not legality of the actual decision. We cannot sit in appeal over the administrative order of transfer and take a different view, even if another view is possible.

9. The Supreme Court has in many of the recent cases held that Courts and Tribunals should not interfere with routine orders of transfer unless the orders suffer from mala fides or is in violation of any statutory rule. In this case, there is no allegation that the order of transfer is in contravention of any statutory rule. I have already rejected the argument about mala fides.

The argument about transfer guidelines also has no

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merit. The Supreme Court has observed in S.I.Abbas's case that transfer guidelines about husband and wife to be accommodated in the same place is not a vested right or a statutory right to be enforced by a Court of Law or Tribunal (AIR 1993 SC 2444), the same view is taken by the Supreme Court in the case of Bank of India Vs. Jagjit Singh Mehta (1992 SCC (L&S) 268), where it is clearly stated that the 1986 guideline does not give any right for husband and wife to be kept in same place. At any rate, it is not a matter which can be enforced in Court of law. On the basis of the guideline an official can make a request to the Competent Authority for transfer. It is not like a statutory rule which can be enforced by a Court.

In the case of Rajendra Roy Vs. Union of India and Anr. (1993) 23 ATC 426), which was also a case of transfer of one employee to accommodate another employee, the Supreme Court pointed out that when one official has been transferred on request from Calcutta, that place had to be filled up and the appellant before the Supreme Court was transferred to that post. The Supreme Court has clearly pointed out that unless the order is passed mala fide or in violation of the Service Rules it cannot be interfered.

10. The learned counsel for the applicant invited my attention to two authorities.

The first one is a case decided by the Ahmedabad Bench of this Tribunal in T.C.Kalra Vs. Union of India & Ors. (1989 (2) SLJ 651), where the transfer was quashed on the ground that the transfer was made to accommodate certain persons and therefore, the transfer of another official cannot be in public interest.

In our view, the above observation may not be a good law in view of the observation of the Apex Court in Rajendra

Roy's case where one official had been transferred in public interest to Calcutta since another official on request had been transferred from Calcutta.

We have also come across another decision of the Apex Court viz. Mrs. Shilpi Bose and Ors. Vs. State of Bihar & Ors. (1992 (6) SLR 713 (SC)), where certain Lady Teachers had been transferred on their request to their native places, which resulted in transfer of other Male Teachers from that place. The High Court quashed the order of transfer which was later reversed by the Supreme Court by holding that when one request transfer had been granted by the Government then the post vacated on request transfer has to be filled by transferring others.

As already stated, when the applicant herself had come to Bombay on request transfer from Delhi cannot now say that R-3 cannot be transferred on request and that she should not be posted in her place.

Another decision relied on by the applicant's counsel is State of Kerala Vs. Balakrishnan (1993 (1) SLJ 151), where a Division Bench of the Kerala High Court sustained the order of a Single Judge who had quashed an order of transfer. The Division Bench also noticed that the official who was transferred had only few months for his retirement. The decision is based on the peculiar facts of that case.

11. After considering the entire materials on record, I find that no case is made out for interfering with the order of transfer. As already stated, if I am sitting in appeal over the order of transfer, then I have to examine the comparative hardship between the applicant and third respondent and then decide as to who is to be retained at Bombay. But, I cannot do that exercise, since the scope of judicial review is very limited. I do not find any illegality or irregularity

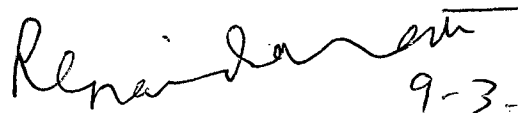
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in the order of transfer. It may cause hardship to the applicant, but it cannot be helped as observed by the Supreme Court in Rajendra Roy's case mentioned above. It is open to the applicant to make a representation to the administration about her difficulty and it is for the Competent Authority to decide that matter.

12. Before parting with the case, I should observe that applicant's grievance is that her husband is working at Bombay and she is transferred to Delhi and her husband will be put to great difficulty in view of his illness. If that is so, since husband is also a Central Government servant, he can easily make a request to the Government for transfer to Delhi so that he can stay with his wife, the applicant. If such a ~~representation~~ representation is made by the husband, then the Government should sympathetically consider the same and pass appropriate orders according to law.

13. In the result, the application is rejected at the admission stage. No order as to costs.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN
9-3-2000

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