

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 112/99

Date of Decision: 21.4.1999.

L.B.Shahdadpuri

Applicant.

Mr.S.A.Tawate

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr.S.S.Karkera

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R.G.Vaidyanatha
(R.G.Vaidyanatha)
Vice-Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.112/99.

Wednesday, this the 21st day of April, 1999.

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

L.B.Shahdadpuri,
Flat No.363, Bldg. No. 29,
Sector 3, Antop Hill,
Mumbai-400 037.
(By Advocate Mr.S.A.Tawate)

... Applicant.

Vs.

1. Union of India through
Regional Director,
Western Region,
Government of India,
Ministry of Law Justice and
Company Affairs,
Department of Company Affairs,
'Everest', 5th floor,
100, Netaji Subhash Road,
Marine Drive,
Mumbai - 400 002.
2. The Registrar of Companies,
Maharashtra, Mumbai,
Government of India,
Ministry of Law Justice & Company
Affairs, Department of Company Affairs,
'Everest', 1st floor, 100 Netaji Subhash Road,
Marine Drive,
Mumbai - 400 002.
(By Advocate Mr.S.S.Karkera for Mr.P.M.Pradhan)

... Respondents.

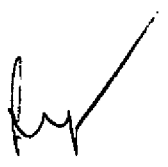
: ORDER :

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

This is an application challenging the order of transfer dt.8.1.1999.
The Respondents have filed a short reply opposing admission. I have heard the
learned counsel appearing on both sides.

2. The applicant who is working as a Junior Technical Assistant (for
short, (JTA) in the office of the second respondent is now transferred along
with post to Ahmedabad. Being aggrieved with that order, he has approached
this Tribunal for quashing the order of transfer on number of grounds.
According to him some anonymous complaints have been received against him and

...2.



on that basis the administration has decided to transfer him. His case is that allegations in the anonymous complaints are false. The administration gave copies of the anonymous complaints and asked for explanation of the applicant, for which he has given a reply denying the allegations. The applicant says that he has a good record of service from the beginning. Then he has mentioned some personal difficulties. He has also alleged that the order of transfer is mala fide, arbitrary and punitive in nature. Therefore, the applicant wants that the impugned order of transfer dt. 8.1.1999 should be quashed.

3. The respondents in their reply have justified the action of transfer being in public interest and exigencies of service. Mr. Samir Biswas who is the Regional Director has filed an affidavit. Mr. Samir Biswas who came to this office in November, 1998 received some complaints against applicant. He, therefore, thought that in administrative exigencies the applicant should be transferred.

Since only a short reply is filed on my direction, the respondents counsel placed before me the concerned file pertaining to the transfer of the applicant.

4. The learned counsel for the applicant questioned the legality and validity of the order of transfer on the ground that it is arbitrary, is in violation of Article 14 of the Constitution of India, it is mala fide and then it affects the family of the applicant who has got number of personal difficulties. He also contended that the order of transfer is punitive in nature. The learned counsel for the respondents justified the order of transfer mainly in public interest and exigencies of administration.

5. It is now clearly well settled by recent decisions of Supreme Court that Courts or Tribunals cannot sit in appeal over administrative decisions of transfer of government officials. The transfer is an incidence of service.



Therefore, the Supreme Court has clearly stated in number of recent decisions that order of transfers can be challenged only on two grounds viz. its being in violation of statutory rules or mala fide {vide (1) A.I.R. 1993 SC 2444 - Union of India & Ors. Vs. S.L.Abbas, (2) 1995 SCC L&S 666 - State of Madhya Pradesh & Another Vs. S.S.Kaurav & Ors., (3) A.I.R. 1993 SC 1236 - Rajendra Roy Vs. Union of India}. In the present case there is no allegation that the impugned order of transfer is contrary to any statutory rules. No such argument was addressed before me.

The only ground alleged is that it is arbitrary, punitive in nature, mala fide etc.

As far as the allegations of mala fides are concerned, except a bald allegation, I do not find any material in the O.A. to show that applicant has any personal enmity or ill-will with the Regional Director who passed the order of transfer. Therefore, this is not a case of transfer being mala fide at all. The Regional Director has come recently to Bombay only three months prior to the impugned order of transfer. The applicant has nowhere alleged that there was any hostility or ill-will or bitterness between him and the Regional Director. Therefore, on the face of it, the argument about the order to transfer being mala fide has no legs to stand.

6. Now, coming to the question of order being punitive in nature, it all depends on facts and circumstances of each case. In the very nature of things a transfer is not a punishment. In this connection, I may also observe that in many grave cases of dereliction of duty an officer will be kept under suspension. It has been repeatedly held by the Supreme Court that the order of suspension is not a punishment. It may be that the order of suspension may be quashed on the ground of mala fide, but certainly not on the ground of it being punitive in nature. Whether suspension is justified or not has to

depend upon the facts and circumstances of each case including the gravity of allegations against the officer. Similarly, it cannot be said that order of transfer is punitive in all cases where some complaints are received against an official.

The administration may think that to have a proper congenial *working* atmosphere, in administrative exigencies shift a person from one place to another. It cannot be said that every transfer must be proceeded by holding a departmental enquiry which may take years together. Such is not the intent of law. Whether in the given case the transfer is punitive or not must depend upon the facts and circumstances of that particular case. No straight jacket formula can be mentioned as to under what circumstances the transfer is punitive and in what cases it is not.

7. Some of the decisions cited by the learned counsel for the applicant do not bear on the facts and circumstances of the present case. I will refer to the decisions relied on by the learned counsel for the applicant.

In 1974 (1) SLR SC 497 (E.P.Royappa Vs. State of Tamil Nadu & Ors.) a Chief Secretary of the Madras Government had challenged his transfer on the ground of mala fides. He further challenged the transfer on the ground that it is contrary to the rules since his post is an ex-cadre post which was not an I.A.S. cadre post. The Supreme Court rejected the ground of mala fides on some instances he had given about dis-agreement between him and the then Chief Minister. May be, in the general observations the Supreme Court has observed that Article 14 must be applied even in case of administrative orders. But, on facts the Supreme Court rejected the claim of the Chief Secretary ^{challenging} for transfer. A person who was holding the post of a Chief Secretary of a State, who is the Chief Executive of the State, had been transferred in the first instance as a Deputy Chairman of a Committee and again subsequently he was transferred as a Special Officer on Duty. The Supreme Court has rejected the

assertions of the Officer in that case and did not interfere with the order of transfer.

The learned counsel for the applicant placed strong reliance on the Judgment of a learned Single Judge of Bombay High Court reported in 1998(2) SLR (Bombay) 418 (Shamrao Chandrappa Kamble Vs. Deputy Engineer (B&C), Panchayat Samiti, Miraj, Sanli and Ors.), where no doubt the High Court has observed that a punitive transfer can be quashed. But, we must read the observations of the High Court with reference to the peculiar facts of that case. There is no dispute that if an order to transfer is punitive in nature it has to go. But, the question is whether in the facts and circumstances of a particular case, the order of transfer is punitive or not has to be decided. In the case before the Bombay High Court, the facts are eloquent. There was a dispute between the transferred employee and the immediate officer under whom he was working and his superior was asking him to do some private works beyond official duties. The High Court has gone into detailed facts and circumstances of that case and on facts came to the conclusion that it was a punitive transfer and therefore quashed the same.

In the present case, I have already pointed out that the applicant does not make any allegation against the officer who has transferred him. His only case is that if the officer has received some complaints he could not have transferred him unless an enquiry is held and the applicant is found guilty. In my view, the above cited decision is not applicable to the facts of the present case.

8. Then reliance was placed on a decision of Chandigarh Bench of the Tribunal reported in 1993 (2) ATJ 321 (Shri Avinash Chandre V/s. Union of India & Ors.), where again a Single Member Bench of this Tribunal has held that on receiving complaints and without giving an opportunity to the officer for explanation, the transfer should not have been made and it is punitive in

nature. In that case, after receiving some complaints against the official, the department made an informal enquiry and then transferred the official. The file was not made available to the Tribunal at the time of hearing of the O.A. The nature of the complaint against the two applicants was not made known. Then the applicant in that case was not asked to explain the complaints against them. In those circumstances, the Tribunal came to the conclusion that it is a punitive transfer and therefore liable to be quashed.

In the present case, the applicant himself admits that after receiving number of complaints xerox copies of the complaints were furnished to the applicant and his explanation was taken. Therefore, on facts it cannot be said that applicant has not been heard. It is not necessary that in every case the matter should end in a regular departmental enquiry. We can take judicial notice that in many cases departmental enquiries go on for years together. Can it be said that when grave allegations are made against the officials he should be kept in same place for years together till the disciplinary enquiry is completed.

Then reliance was placed on a decision of a Division Bench of this Tribunal in the case of S.A. Engineer Vs. Union of India & Ors. (reported in 1997(2) SLJ 306). I have gone through the facts of that case and the allegations show that there previous cases between the parties and number of disputes between the applicant and higher officer. On facts, the Tribunal came to the conclusion that it is an illegal transfer and liable to be quashed.

9. As already stated, the question whether in a given case the transfer is punitive or in public interest must be examined in the facts and circumstances of that particular case. No hard and fast rules can be laid down on a matter like this. The learned counsel for the respondents has placed before me the file pertaining to the transfer of the applicant. It

contains number of anonymous complaints and one written complaint on a letterhead of a Chartered Accountant Firm against the applicant. Then there is a report dt. 7.1.1999, just one day prior to the impugned order of transfer dt. 8.1.1999 by the Regional Director to the Joint Secretary of the Department of Company Affairs. In this, the Regional Director has mentioned that he has received some anonymous complaints and also one specific complaint against the applicant, not only against the applicant, but also against the Registrar of Companies, Mr. Prabodh. He has given number of reasons as to why he feels that in the interest of administration he wants to transfer both of them. Now, I am told that Mr. Prabodh is transferred to Calcutta and under the impugned order the applicant is transferred to Ahmedabad. The letter of the Regional Director shows that he wants to have extreme transparency in the office and speeding up of the work and streamlining the whole official set up. He has noticed that there is delay in attending to applications and documents in the office. There are complaints about undesirable behaviour of applicant in dealing with the public. In order to avoid inconvenience to the public and in public interest and administrative exigencies, he has decided to transfer these two officials viz. the applicant and the Registrar of Companies to different places and has reported the matter to the Head of the Department even prior to the order of transfer. He has also mentioned that considering the background of the applicant and the frequency of complaints and freedom given to him by the ROC, without going to the truth or otherwise to the allegations, he feels that in the interest of administration the applicant should be transferred.

Therefore, it is not a case of the applicant being transferred ^{as} on a punitive measure. Having regard to the background of complaints if the administration feels to have a congenial ^{working} atmosphere and to avoid inconvenience

to the public and if he wants to transfer an official it cannot be said that the transfer is punitive in nature. If now enquiry has to be held, it may take two years, three years or even more. Even then, it cannot be final ^{and} it can be challenged before the appellate authority and then before a judicial forum. The administration cannot be left without any power of transferring an official if it feels that in larger administrative interest a transfer is necessary without going to the truth or otherwise of allegations against a particular officer. The ultimate test is public interest and administrative exigency and not individual or personal difficulties of an official.

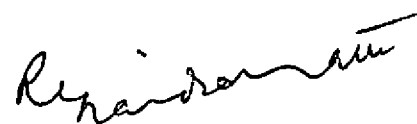
The argument is that if there are complaints against an official he cannot be transferred since it amounts to punitive transfer unless a proper and regular enquiry is held and he is found guilty. Even if we accept this argument as correct, in my view, an order of transfer cannot be passed by way of punishment. Rule 11 of CCS (CCA) Rules provide as to what are the penalties or punishments that can be imposed after an official is found guilty. Then transfer is nowhere mentioned as one of the punishments in that rule. Therefore, ^{after} if finding an official as guilty and the Disciplinary Authority passes an order that in view of his being held guilty by way of punishment he is being transferred, it can be seriously challenged on the ground that there is no power for the Disciplinary Authority to inflict an order of transfer by way of penalty since it is not one of the penalties mentioned in Rule 11. Therefore, we find that in the case of serious allegations against an official he cannot be transferred prior to enquiry since it amounts to punitive transfer and he cannot be transferred after enquiry since transfer is not one of the punishments in Rule 11 of CCS (CCA) Rules. In my view, such an interpretation on the exercise of power cannot be given. Ultimately, it is a question for the administration to decide having regard to the facts and circumstances of the case and to have a clean and

efficient administration whether it is necessary to transfer an official or not. It may be having regard to some complaints against an official, the administration may feel that to have a proper and congenial atmosphere and in public interest and to avoid inconvenience to public, he may transfer an official and it cannot be called as a punitive transfer.

10. The learned counsel for the applicant pointed out some personal difficulties of the applicant like his father is not well, about eviction of quarters, his wife working at Bombay etc. These are personal difficulties which are to be pressed before the Competent Authority or higher authority as pointed out by the Supreme Court in recent decisions, these personal difficulties are not grounds for a Court or Tribunal to interfere with an order of transfer. There are many guidelines for effecting orders of transfer, but the guidelines are meant to be obeyed by the officer and if it is disobeyed, grievances may be made to higher officer, but certainly not to a judicial Tribunal. In view of the latest legal proposition, I do not find that the applicant's case of challenging the transfer is not sustainable in law {vide S.L.Abbas - AIR 1993 SC 2444}}.

I may also place it on record that the impugned order of transfer is dt. 8.1.1999, the applicant came to be relieved by order dt. 22.1.1999.

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



(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.