

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 442/99

Date of Decision: 3/6/99

Mahesh Kamble _____ Applicant.

Shri P.M. Pradhan for Shri S.S. Karkera Advocate for
Applicant.

Versus

Union of India & 2 Ors. _____ Respondent(s)

Shri V.S. Masurkar _____ 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?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

abp.

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 442/99.

DATED THE 3RD DAY OF JUNE, 1999.

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

Mahesh Kamble,
Chief Cameraman, Film Division,
Office of the Films Division,
24, Dr. Gopalrao Deshmukh Marg,
Bombay - 400 026.

... Applicant.

By Advocate Shri P.M. Pradhan, alongwith
Shri S.S. Karkera
v/s.

Union of India,
through the Secretary,
Ministry of Information and
Broadcasting,
Government of India,
Shastri Bhavan,
New Delhi-110 001.

2. The Director of Administration,
Films Division,
Government of India,
Dr. Gopalrao Deshmukh Marg,
Mumbai - 400 026.

3. Chief Producer,
Films Division, having his
Office at Dr. Gopalrao
Deshmukh Marg,
Mumbai - 400 026.

... Respondents.

By Advocate Shri V.S. Masurkar

I O R D E R I

¶ Per Shri R.G. Vaidyanatha, Vice Chairman ¶

In this application, the applicant is challenging the order of transfer dated 10/5/99 under which he has been transferred from Films Division, Bombay to Films Division at Calcutta. Respondents have filed reply opposing the application. I have heard both the counsels regarding admission.

2. The applicant who is working as Chief Cameraman at Films Division, Bombay has now been transferred to Calcutta.



His grievance is that this order of transfer is malafide. The further reason given is that the very policy of merger of Chief Cameraman with Newsreel Officer has been challenged before this Tribunal and therefore the applicant could not have been transferred when the policy decision itself is challenged.

The respondents in their reply have justified the order of transfer being in public interest. They have denied the allegation that the order of transfer is malafide, due to the applicant filing OAs in this Tribunal.

3. At the time of arguments, the counsel for applicant contended that when the policy decision has been challenged and the case is pending in this Tribunal, the applicant could not have been transferred.

I am afraid that this argument cannot be accepted. A litigation may take few years for disposal. There are many cases of 1992 to 1995 pending. Even after the Tribunal gives a decision, the respondents or applicant may take the matter to High Court and then to Supreme Court. It may take years to take a final decision on policy matter and therefore the argument that the applicant should not be touched when the case is pending in Tribunal is not correct. Transfer is made in public interest. Therefore such transfers cannot be stalled by filing a case before the Tribunal.

4. The applicant's counsel has not brought to my notice any provision of law to show that the order of transfer is in violation of any statutory rule. Now it is fairly well settled by number of decisions of Supreme Court that transfers can be challenged only on two grounds namely, that it is contrary to any statutory rules or that it is malafide. No allegation that order of transfer is in violation of any statutory rule. There is an allegation that the order of transfer is malafide.



5. The only material placed on record by applicant to support the ground of malafides is that he has filed one OA in this Tribunal claiming Equal Pay for Equal Work and the OA is pending. One more OA has been filed by the applicant and others in this Tribunal challenging the policy of the Government merging the Films Division and Newsreel division. It is therefore argued that since the applicant has filed these two OAs, the department has transferred the applicant by way of revenge.

After hearing both sides, I am not impressed by the argument that the order of transfer is malafide on this ground. One is a case filed by applicant for Equal pay for Equal work. Therefore, the case of any higher officer aggrieved due to the case of Equal pay for Equal work does not appeal to me. As far as other case is concerned, it is a case where the applicant is challenging the policy decision of the Government which was passed on the recommendation of the Vth Pay Commission that these two cadres to be merged. If an official challenges such a policy matter, it is not affecting the Higher Officer or department in any way. There is no personal ill will between the applicant and Competent authority who has ordered the transfer. Merely because the applicant challenges the policy decision of merger of two cadres, he cannot be transferred till the case is pending, cannot be accepted. Therefore, in my view in the facts and circumstances of this case, ground for malafides is not made out.

Respondents have stated that the "order is in public interest." The learned counsel for applicant contended that the order of transfer does not give any indication that the order of transfer is in public interest.



This Tribunal is not sitting in appeal over the order of transfer. Respondents have made an averment in the order of transfer that it is in public interest and the same stand is taken in the affidavit in reply. Then it is also seen that the applicant is transferred to Calcutta to fill up a vacant post which necessarily means it is in public interest. The applicant is a Gazetted Officer and is liable for transfer all over India. Further it is seen that the applicant is in Bombay for 15 to 16 years. If he is now transferred, it cannot be called as malafide.

6. After going through the facts and circumstances of the case, I am not satisfied with the applicant's contention that the order of transfer is malafide.

In view of the above observations, no relief can be granted to applicant. At this stage, the counsel for applicant requested that the applicant should be granted one month's time to hand over charge to the Officer. Respondents counsel states that the applicant has already been relieved and the question of granting time for handing over charge does not arise. There is no provision under any rules for grant of time to hand over charge. This is an incidence of service. He should have handed over charge when he was relieved. If by chance the applicant is in possession of many articles and there is no time to hand over detail charge, it is open to the applicant to go and report at the transferred place at Calcutta and take permission and come back to Bombay and hand over detailed charge. Therefore, the question of Tribunal granting time to applicant to hand over charge does not arise.

The learned counsel for respondents also brought to my notice that/ the order of transfer, the applicant applied for Advance TA/DA and Competent Authority have sanctioned it.



7. In the result, the OA is rejected at the admission stage. There will be no orders as to costs. The Interim Order passed on 18/5/99 is vacated.

At this stage applicant's counsel prays for time for extension of Interim Order. The prayer is rejected. In my view, the interim order itself is not in force when the applicant has already been relieved on 14/5/99.

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.