

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 173/1999

DATE OF DECISION: 9/8/2001

K.Raveendran

Applicant

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri R.R.Shetty

Advocate for
Respondents.

Coram:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? ✓
3. Library. ✓

Shanta S
(SMT.SHANTA SHAstry)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO. 173/1999
DATED THE 10th DAY OF AUG, 2001

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

K.Raveendran
working as
Assistant Personnel Officer,
Bhabha Atomic Research Centre,
Trombay, Mumbai - 400 085. Applicant

By Advocate Shri G.S.Walia

v/s.

1. Union of India, through Additional Secretary/
Under Secretary (P),
Department of Atomic Energy,
Anushakti Bhavan,
Ch.Shivaji Maharaj Marg,
Colaba, Mumbai - 400 039.
2. Head
Personnel Division,
B.A.R.C.,
Trombay,
Mumbai - 400 085.
3. Smt.S.Vinayalata,
Assistant Personnel Officer,
Publicity Division,
Department of Atomic Energy,
Ch.Shivaji Maharaj Marg,
Mumbai - 400 039.

By Advocate Shri R.R.Shetty

(ORDER)

Per Smt. Shanta Shastry, Member (A)

The applicant in this OA has impugned the order dated 24/2/99 by which the applicant has been transferred and posted as Assistant Personnel Officer from Mumbai BARC to Tarapur.

2. The brief facts are that the applicant who joined the Bhabha Atomic Research Centre (BARC) on 20/12/73 was promoted from time to time and the last promotion being that of Assistant

Personnel Officer. Prior to that he was promoted as Senior Personal Assistant in BARC in the payscale of 2000-3200 on 21/3/95. The payscale of Senior PA and that of Assistant Personnel Officer (APO) is one and the same. On being promoted as APO, on the basis of regular selection, he was posted in the Publicity Division of the Department of Atomic Energy at Chatrapati Shivaji Marg, Colaba, Mumbai and he joined there on 11/10/95.

3. The applicant has now been transferred vide the impugned order dated 24/2/99 to BARC at Tarapur and was asked to report to the Head Personnel Division, BARC, Trombay on 22/6/99 after being relieved of his duties. Accordingly, the applicant reported on 1/3/99.

4. According to the applicant before his transfer to Tarapur, the applicant by his letter dated 17/7/97 had requested the respondents to post him in any of the units at Trombay/Anushaktinagar as his son was studying in IXth standard at that relevant time.

5. However the applicant was transferred to Tarapur instead. The applicants request was noted by the respondents vide their letter dated 23/9/97 to be considered at appropriate time keeping in view the vacancy position and administrative exigency. The applicant's transfer to Tarapur was necessitated because of the modification of the Office Order dated 3/2/99 whereby the respondent no.3, Smt.S.Vinayalata was promoted as APO and was posted at BARC Tarapur. The respondent no.3 had been continuously working as PA with the Cadre Controlling Authority,

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i.e. the Additional Secretary of DAE. The order dated 3/2/99 was cancelled and instead of respondent no.3, the applicant was transferred to Tarapur.

6. The applicant is aggrieved that his transfer to Tarapur is against the transfer policy, is arbitrary and illegal. It has been made not in public interest or due to administrative exigency but only with a view to accomodate respondent no.3 and therefore the transfer order deserves to be quashed and set aside. Many juniors to the applicant were posted as APOs in the DAE's Units at Trombay/Anushaktinagar from the select list of empanelled officers prepared by respondents department from time to time. The applicant was hoping to be transferred to one of the units at Trombay/Anushaktinagar but to his surprise he was transferred to Tarapur just when his son was about to appear in the Xth standard exam of the Central Board of Secondary Education.

7. The respondents submit that the transfer of the applicant was made in public interest. The applicant had no doubt sought a transfer to any of the constituent units of the DAE at Trombay/Anushaktinagar, Mumbai on educational grounds and the respondents too had promptly registered his request and intimated to the applicant that it would be considered at appropriate time keeping in view the vacancy position and the administrative exigencies. During February, 99 a vacancy in the grade of APO arose in BARC, Trombay but for the purpose of re-organising the administrative set up in BARC, the said constituent unit had decided to operate the aforesaid vacant post of APO at Tarapur. Accordingly, the respondent no.3 working as Personal Assistant in

the Office of the Additional Secretary in the DAE Secretariate and who was the next candidate available for posting as APO/AAO was initially posted as APO in BARC Tarapur vide order dated 3/2/99. The respondent no.3 had earlier been working in the capacity of Personal Assistant for a period of five years in the Office of the Additional Secretary and therefore was well conversant with the functions of the Additional Secretary. The then Additional Secretary had just taken charge only on 4/12/98. It is the prerogative of the Additional Secretary to choose his own staff to ensure smooth functioning of the office. With this intention, it was decided to retain respondent no.3 in the Department's Secretariate to maintain continuity and therefore she was not relieved to take up her new assignment in BARC, Tarapur. Instead she was posted as APO in the Publicity Division of the Department of Atomic Energy which is located in the same campus as the Office of the Additional Secretary, DAE. In the meantime, since the applicant had sought a transfer to any of the constituent units at Trombay/Anushaktinagar and the same was pending consideration, it was decided to transfer the applicant there. It was also learnt from the authorities at BARC that the vacancy earlier proposed to be operated at Tarapur would be operated at BARC, Trombay itself temporarily for some time and definitely upto March, 99. In view of this the respondents rightly considered the applicant's request to transfer him to BARC. Therefore, in partial modification of the earlier order dated 3/2/99, the applicant was transferred to BARC, Tarapur to be operated temporarily at Trombay itself in place of respondent

no.3. The applicant had requested vide letter dated 24/2/99 to defer his transfer order to Tarapur till a clear vacancy arose at BARC, Trombay. The request was considered and rejected in public interest vide letter dated 26/2/99.

8. The respondents submit that it is true that as per the transfer policy of DAE with regard to Centralised Cadre Officers, they are entitled for a transfer to a place of their choice after a mandatory period of two years of their initial posting. However, this is not mandatory or obligatory on the part of the respondents to consider such a transfer request immediately on completion of two years service in the grade of initial posting of the employees concerned. The action of the respondents was taken in good faith and there was no arbitrariness in the transfer order nor is there any direct violation of transfer policy adopted and promulgated by the department. What was done was in the exigencies of work and, therefore it cannot be said to be a malafide transfer order.

9. The respondents have also taken a plea that while the applicant has alleged malafides against the Additional Secretary, DAE, he had not made him a party to this OA. Also respondent no.3 is not at all responsible. She had not complained against the transfer order dated 3/2/99 posting her as APO at Tarapur. It is the administration itself which considered her services necessary and therefore transferred her in place of the applicant and sent the applicant to Tarapur in her place. There is therefore no question of her wielding any influence. Had it been such a case, then the respondent no.3 would not have been transferred to Tarapur at all in the first instance.

10. The respondents further submit that the applicant was called back to BARC, Publicity Division Mumbai for a temporary period of two months. However, the applicant proceeded on leave after joining at BARC. The Office order dated 24/2/99 had been issued after taking into account the transfer request of the applicant as well as the exigencies of service in respect of respondent no.3. The applicant joined in his new place of transfer and therefore the OA has also become infructuous.

11. The applicant filed a rejoinder reiterating that the respondents distorted the applicant's request for transfer to any unit in DAE at Trombay/Anushaktinagar and instead of posting him in a unit at Trombay/Anushaktinagar, he was posted to Tarapur which is not what he wanted and this was done only to accommodate respondent no.3. The applicant holds that the impugned transfer order has been issued for extraneous reasons only to help and favour respondent no.3 and is in no way in public interest. The applicant has submitted that there was a vacancy of APO at Heavy Water Plant at Manuguru (Andhra Pradesh) w.e.f. 15/9/98. A lady candidate empanelled at Sr.No.7 was debarred for promotion for one year w.e.f. 15/9/98 due to her inability to take up a position at out-station as per the Transfer Policy adopted by the Department. In normal course, the respondent should have taken immediate steps to fill up the said vacancy but the respondents did not do anything only in order to favour respondent no.3 and not to get herself debarred from promotion for one year, this post of APO was kept inoperative for a period of more than six months. All actions of the respondents have been only to favour

the respondent no.3 so as to retain her at Bombay.

12. In the sur-rejoinder filed by the respondents, the respondents have rebutted the arguments of the applicant and have stated that transfer is an incidence of service and the applicant cannot claim as of right a posting of his choice in a particular office. The choice given to the promoted officer as regards the place of posting is not a mandatory one. The respondents are free and very much within their right to post the applicant at the place of their choice as per work requirement and exigencies of service. The applicant has been transferred and posted as per his own request. Though the post of APO was at Tarapur in the BARC yet it was operated from BARC, Trombay for some time. Thus, the applicant would have been in a position to remain in BARC, Mumbai and he could have requested the respondents to accommodate him in BARC, Trombay as and when any of his juniors are posted in BARC. The respondents had thus taken into account the spirit of the request of the applicant. The respondents did not deny that the respondent no.3 was initially posted to BARC at Tarapur. However the same was modified as her services were required in the Office of the Additional Secretary. The respondent no.3 by herself had not sought any cancellation of the transfer order dated 3/2/99 posting her at Tarapur; therefore, it was purely in administrative interest that respondent no.3 was posted in the Publicity Division, where the applicant was posted earlier. The respondents have also explained the position in regard to the post of APO at Heavy Water Project, Manuguru. The learned counsel further submits that the applicant was allowed to retain

his accommodation at Anushaktinagar inspite of his being posted at Tarapur. The applicant has not proved any malafides or vindictiveness nor has he made the Additional Secretary a party.

13. In this context, the learned counsel for the respondents is relying on the judgement in the case of All India State Bank Officer's Federation V/s. Union of India 1996(2)SCSLJ 484 wherein it has been held that the person against whom the malafide is alleged should be made a necessary party. The learned counsel has also referred to the judgement in the case of Union of India V/s. S.L.Abbas 1993(2)SLR-585-SC.

13. I have given careful consideration to the arguments advanced both by the learned counsel for the applicant as well as the respondents. I find that this is a simple transfer order transferring the applicant as APO to BARC Tarapur. Nodoubt, the applicant had made a request to post him in any unit of the DAE at Trombay/Anushaktinagar. The respondents transferred him when a vacancy was available at Tarapur and the respondents had learnt that initially the post would be operated at Trombay. This being in keeping with the request of the applicant, the applicant was rightly posted there. On the face of it, it appears that the respondent no.3 had to be posted as APO in the publicity division where the applicant was working earlier, thus dislocating the applicant. However, I am satisfied that the action of the respondents was in the wake of administrative exigencies. Also it is to be noted that the respondent no.3 by herself neither represented nor asked this transfer order dated 3/2/99 to be cancelled. This being so, the respondent no.3 cannot be blamed

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for replacing the applicant in the publicity division at BARC. I further find that it is not that the applicant had just been posted in the Publicity Division and was shunted off immediately thereafter to adjust respondent no.3. The applicant had already spent nearly four years in that post. He himself had initiated a move to transfer him from there to any unit in Trombay or BARC two years earlier i.e. 17/7/97. Therefore, it is evident that the applicant himself did not have much interest in continuing in the post of APO in the Publicity Division. Had he been transferred to a unit in BARC or Trombay he would have accepted the transfer. His only grievance is that he was transferred to Tarapur. According to him this transfer order was to affect the studies of his son who was then in the IXth standard, that is the sole reason given by him for cancelling of his transfer order. I also find that the respondents have also been considerate enough. Though he was posted to Tarapur, he was to operate from Trombay BARC. This was very much what he wanted. He was allowed to retain the accommodation at Anushaktinagar. Not only that the applicant was even called back for a period of two months to work in his old post in the Publicity Division, but he had proceeded on leave. Therefore, the transfer order of the applicant cannot even be said to be a punitive order. The respondents touched him only keeping in view the request which he had made earlier. As already pointed out by the learned counsel for the respondents, who should be transferred where is the matter for the appropriate authority to decide unless the order of transfer is vitiated by malafides or is made in violation of any statutory position, the

Court cannot interfere with it. While ordering the transfer, there is no doubt the authority should keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes a representation with respect to his transfer, the appropriate authority should consider the same having regard to the exigencies of the administration. It has been so held in Union of India V/s. S.L.Abbas(supra). In matters of transfer, the scope of judicial review is restricted. Interference is called only in case of malafides or violation of statutory position where career prospects remain unaffected and no detriment is caused; the challenge to the transfer must be eschewed. This is the observation made in N.K.Singh V/s. Union of India 1994 (28) ATC 246 (SC).

14. In my considered view, the applicant has not been able to establish any malafides nor that any statutory provisions have been violated in the present case. I am satisfied that the transfer of the applicant has been made in good faith in administrative exigencies. I therefore do not see any reason to interfere with the impugned transfer order. However, the respondents shall consider accommodating the applicant as per his choice whenever a future vacancy arises provided the applicant is still interested.

15. In the result, the OA is dismissed. No costs.

Shanta F

(SMT SHANTA SHAstry)
MEMBER(A)