

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No. 105/2000

Dated: 30.8.2000

J.H.Joglekar, *Applicant.*

Shri G.K.Masand *Advocate for
Applicant.*

Versus

Union of India & Ors. *Respondent(s)*

Shri V.D.Vadhavkar for
Shri M.I.Sethna *Advocate for
Respondent(s)*

CORAM :

Hon'ble Shri D.S.Baweja, 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? ↗

D.S.BAWEJA
(D.S.BAWEJA)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 105/2000.

this the 30th day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A),

J.H.Joglekar,
Member (Technical),
Customs Central Excise and
Gold (Control) Appellate Tribunal,
Mumbai,
19B, Land's End, 29 D,
Dongersi Road,
Mumbai - 400 006.
(By Advocate Shri G.K.Masand)

...Applicant.

Vs.

Union of India, through
Secretary (Revenue),
Ministry of Finance,
New Delhi.
(By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna)

...Respondent.

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

The applicant is aggrieved by non-grant of transfer T.A. on being transferred from Delhi to Mumbai. The applicant joined in Customs, Central Excise and Gold (Control) Appellate Tribunal (CEGAT) on 22.2.1996 at New Delhi. The CEGAT has two Benches at Mumbai. One of the Members at Mumbai Bench was scheduled to retire in November, 1998. The applicant made an application for transfer to Mumbai on account of personal reasons. The application was forwarded by the President of the Tribunal under D.O. letter dt. 6.10.1998 recommending the acceptance of the request. However, subsequently, the President did not follow this recommendation and made alternate suggestions to the Ministry for transfer of some other Member from New Delhi. On

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the retirement of the President Justice Shri U.L.Bhatt, one Shri S.K.Bhatnagar, Vice-President, CEGAT was asked to look after the work of the President. Shri Bhatnagar on assuming charge at New Delhi, both orally as well as in writing advised Ministry not to accept the request transfer of the applicant to Mumbai Bench. However, the applicant was transferred to Mumbai as per order dt. 24.12.1998. This order did not mention whether the same was in public interest or the same was at the applicant's request and the applicant would not be entitled to any transfer benefits. The applicant, accordingly submits that in the understanding that transfer was in public interest, shifted his household goods and Car from Delhi to Mumbai, travelled by air and submitted T.A. Claim on 24.2.1999. There was some queries on the same by the New Delhi Bench and the same were replied on 9.6.1999. The Acting President wrote a letter to the Ministry of Finance that since the applicant's transfer was before completion of the tenure, on his own request the provision of S.R. 114 would be attracted and Transfer T.A. claim of the applicant would not be admissible. Since the applicant had come to know of such a reference made, he made representation to the Ministry of Finance by his letter dt. 29.6.1999 explaining the circumstances under which the applicant was transferred to Mumbai. In the meantime, a regular President took over charge and he through his D.O. letter dt. 18.8.1999 to the Secretary of Ministry of Finance indicated that the transfer of the applicant was not ~~in~~ ^{the} request and the transfer had been effected as the other two senior Members proposed for transfer expressed unwillingness for posting at Mumbai. However, as per Ministry's letter dt. 16.9.1999 the

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claim for Transfer T.A. was rejected. The applicant made a representation against the same on 11.11.1999 which was also rejected as per letter dt. 17.11.1999. Feeling aggrieved, the

2. The applicant has advanced the following grounds in support of his claim :

"a) there is no tenure laid down for the Members of the CEGAT Members (Recruitment and Conditions of Service) Rules, 1987.

b) It is admitted by the applicant that he had made a request for transfer on personal grounds, but though the President had initially recommended to consider the request of the applicant, but subsequently he changed his recommendation and wanted one of the Senior Members to be transferred to Mumbai. The two Senior Members, however, expressed their unwillingness to be posted at Mumbai. In view of this, the transfer of the applicant cannot be treated to be on his own request.

c) The Government is competent to deny the Transfer T.A. where the transfer is not in public interest and such an indication has to be given in the transfer order itself. In the case of the applicant, the impugned transfer order does not indicate that the transfer is on request of the applicant. The applicant has incurred heavy expenditure in transferring his household goods and car and also by travelling by Air. If the applicant had known that the transfer was on request, he would have been cautious in incurring of these expenditure."

2. The respondent have filed written statement opposing the OA. The respondent maintain that the transfer of the applicant has been effected on his own request and therefore in terms of S.R. 114 he is not eligible for the payment of Transfer T.A. A request transfer can be treated as a transfer in public interest only when the authority sanctioning the transfer for special reasons to be recorded in writing states that the transfer may be in the public interest. In the case of the applicant, no such recording of reasons has been done.

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3. The applicant has filed a rejoinder reply reiterating the submissions made in the OA while controverting the stand of the respondents.

4. I have heard the arguments of Shri G.K.Masand, the learned counsel for the applicant and Shri V.D.Vadhavkar for Shri M.I.Sethna the learned counsel for the Respondent.

5. It is an admitted fact that in the transfer order of the applicant dt. 24.12.1998 there is no specific mention whether transfer of the applicant is in public interest or on request and he is ^{not} entitled for payment of Transfer TA. The applicant has taken a stand that since nothing was mentioned in the order, the transfer is to be taken as in public interest. On this understanding he has travelled by Air along with his family and transported the household goods to Mumbai. The Respondents, on the other hand, have contended stating that the transfer has been made on the request of the applicant as per his application dt. 6.10.1998 and therefore, the applicant is not entitled for transfer TA.

6. On careful consideration of the material brought on the record, I am inclined to take a view that the transfer of the applicant was in the public interest and not on his request. This view is supported by the reasons as follows and emerging from the documents on ^{the} record. a) The transfer order does not mention whether the transfer is in public interest or at the request of the applicant. If nothing is mentioned in the order specifically, then the normal interpretation is that the transfer is in public interest. b) The President of the Tribunal Justice U.L.Bhatt as per his letter dt. 6.10.1998 at page 42 while forwarding the request transfer, brings out that even before

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the applicant made a request for transfer to Mumbai on personal grounds, he had sent a proposal to the Ministry to create one Single Member Bench at Mumbai and post Shri Joglekar against the same. He further recommended that since one vacancy has taken place at Mumbai on retirement, Shri Joglekar may be posted at Mumbai, so that the work of the Tribunal does not suffer there. This letter from the President clearly indicates that the President had an intention to consider the transfer of Shri Joglekar even before the request for transfer on personal grounds was made by him. Shri Bhatnagar who had subsequently taken over as acting President on retirement of Justice Shri U.L.Bhat, had in fact opposed the transfer of Shri Joglekar to Mumbai and ^{made} a suggestion that one of the senior Members from New Delhi Bench may be transferred to Mumbai. On going through the notings of the file brought on the record by the Respondents along with the written statement, it is noted that the first noting dt. 18.12.1998 brings out the proposal of Shri Bhatnagar for transferring one of the two members viz. S/Shri Lajja Ram and G.R.Sharma considered for posting at Mumbai. This would imply that the administration wanted one of the Senior Members at Delhi to go on transfer to Mumbai. However, the applicant has brought out that both the senior Members were reluctant for transfer and had given their unwillingness both in writing and as well as orally. This position is confirmed ⁱⁿ the D.O. letter dt. 18.8.1999 written by the new regular President Justice K.Sreedharan, while recommending the case of the applicant for grant of transfer T.A. Justice Shri K.Sreedharan has clearly brought out that the senior Members who ^{were} proposed to be transferred had refused for being posted at Mumbai and thereafter

only, the name of Shri Joglekar was proposed for transfer, since Shri Joglekar had also asked for transfer on personal grounds, the same is to be taken as his willingness. This position is confirmed from the noting dt. 18.12.1998. In this noting after noting the recommendation of the acting Vice-President for transferring one of the Senior Member, the matter was discussed and then the name of Shri Joglekar was indicated for transfer to Mumbai. From the noting of the Additional Secretary dt. 8.12.1998, it is noted that he had suggested the name of Shri Joglekar for transfer to Mumbai based on his representation. The proposal, as such has been finally approved by the Finance Minister, But this recommendation has to be seen in the context of the noting dt. 8.12.1998 of the Joint Secretary wherein the need for transfer the Member (Technical) from New Delhi to Mumbai has been highlighted in view of the fact that there is unbalance between the Judicial and Technical Members at Delhi. The Technical Members ~~were~~ more than the Judicial Members and even after transferring of Mr.Joglekar, ~~the~~ effort was being made to post Additional Judicial Members to ~~making~~ the balance at Delhi. This noting clearly reveals that the Administration was keen to fill up the vacancy at Mumbai.

7. From the above observations made from the various documents, it is quite clear that the ~~decision of~~ the Administration was keen to fill up the post at Mumbai. Initially, the proposal was to fill up the post by transfer of one of the Senior Members inspite of the fact that Shri Joglekar had made a request for transfer, but since the senior Members declined for being posted at Mumbai, the request made by Shri Joglekar was then utilised to transfer him to Mumbai. Therefore,

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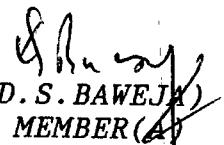
the administration was equally interested in transfer of the applicant to Mumbai and not only on the request of the applicant. Under these circumstances, the transfer cannot be termed purely as request transfer as transfer of the applicant ^{as} ~~was~~ the interest of the administration was equally involved in transfer of the applicant to Mumbai Bench. The request for transfer of the applicant is to be treated more as willingness for transfer indicated to the Administration.

8. As already brought out, the Transfer Order does not indicate whether it is on the request of the applicant. In the noting dt. 8.12.1998 as brought out earlier, it is indicated that the ~~proposal made~~ for transfer can be allowed on request. But it is not further stipulated that the applicant will not be entitled for any benefit of Transfer TA. The letter from the President Justice Shri K.Sreedharan brings out the correct position with regard to the transfer of the applicant. In fact, the issue regarding ineligibility of the T.TA was not required to be raised since once the order does not specify the 'request transfer'. However, the Acting Vice-President made a reference to the Ministry as per letter dt. 9.6.1999. It appears thereafter only the Ministry relooked at the matter and the Ministry took the decision to declare the transfer on request. Such a decision should have been taken at the time when the proposal for transfer was made.

9. Keeping in view of the above observations, I am of the considered view that the transfer of the applicant was not on request, but in public interest. Therefore the applicant cannot be denied the T.TA to compensate for the expenditure which he has

incurred on the understanding that the transfer was in public interest.

10. In the result of the above, the OA is allowed with the direction to the respondents to make payment of Transfer TA to the applicant as admissible as per the extant rules. The payment will be arranged within a period of three months from the date of this order. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)

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