

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.345/2000

DATE OF DECISION:

This Eleventh Day of July 2000

(11/7/2000)

1. Shri Raghnath Shankar Wagh Applicant.

(By Shri P.A. Prabhakaran, Advocate)

Versus

General Manager, Cen. Rly, & Others, Respondents

(By Shri. V.S.Masurkar, Advocate)

CORAM

Hon'ble Shri B.N.Bahadur, 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.

B.N.Bahadur
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.
Original Application No. 345/2000
Dated this EL ELEVENTH Day of July 2000. 11.07.2000
Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri Raghunath Shankar Wagh,
Railway Quarter No.39/F,
Near Raja Tractor,
Dooth Federation Road,
Talegaon.
Employed in the office of
The Station Manager,
Jalgaon Railway Station,
Jalgaon, as Office Porter
under orders of
transfer to Nandgaon. Applicant

(Applicant represented by Shri P.A. Prabhakaran, Advocate)

vs.

1. General Manager, Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai 400 001.
2. Divisional Railway Manager,
Central Railway, Bhusaval.
3. Shri Pratap Singh, Station Master,
Jalgaon Railway Station,
Jalgaon. Respondents.

(Respondents represented by Shri V.S. Masurkar, Advocate)

O R D E R
[Per B.N.Bahadur, Hon'ble Member (A)]:

The Applicant in this Case, Shri Ragunath Shankar Wagh seeks the quashing and setting aside of the Orders of transfer and duty pass dated 17.5.2000(Ex.A). Through this Order it is being intimated to the Station Manager, Nandgaon, that the Applicant is being relieved from Jalgaon on 17.5.2000 and has to take over duties at Nandgaon Rly. Station w.e.f. 18.5.2000. Relevant details of the transferred employee has been indicated.

2. The Applicant states that he entered service, as Khalasi, under Bhusaval Division on 9.8.1979. In 1989, as a result of impaired vision due to an injury, he was posted as office porter and

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posted in Bhusaval Office of Chief Yard Master (CYM). The Applicant mentions that the Assistant Yard Master was Shri Pratap Singh, (Respondent No.3) and also describes an incident which, as alleged by him later, led to the said Shri. Singh develop animosity towards him. In 1997, the Applicant was transferred to Jalgaon, where the said Shri. Pratap Singh was later posted as Station Master.

3. The Applicant further states that Shri Singh asked him to fill up the Register of Licenced coolies without noting dates. He started filling this but later realised that these orders of Shri Singh were wrong, and thereafter refused to do this work. Applicant alleges that he was placed under suspension on 18.8.1998, at 5.30 p.m. without reason by the said Mr. Singh (R.3) who, nevertheless did not take further action on his orders for the next five days. He thereafter told the Applicant to submit leave Application for these five days, and forget about the suspension order (A.III). The Applicant then goes on to describe certain incidents in para 4.6 of the O.A. and also states that he had himself made a written complaint to DRM Bhusaval, bringing out the irregularities as mentioned in para 4.6. The Applicant alleges that Respondent 3 started abusing him and that the Applicant has made a Police Complaint also on 14.6.1999. A criminal case was filed under the SC/ST Atrocities Act.

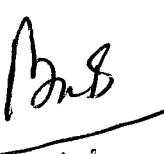
4. The above incidents and certain others are made to highlight the point that the transfer orders of the Applicant under challenge have been issued as a result of the personal animosity that Respondent No.3 bears against the Applicant. Thus malice is attributed to the transfer made. Attention is also drawn to the fact that duty pass was given as being valid only for one day (18.5.2000) which was unreasonable.

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5. The Respondents no.1 and 2 have filed a Written Statements of reply. Respondent No.3 has also filed a separate reply. There is also a rejoinder filed by Applicant.

6. ~~The~~ The official respondents (R.1 & R.2) defend the action of transfer as being part of the transfer liability of the Applicant and over that the transfer has not entailed any lessening of pay or status of the Applicant. It is stated that the transfer is made in administrative interests, and for the maintenance of decorum and efficiency at the important Rly. Station of Jalgaon. The decision to transfer the Applicant was taken by the Addl. Divisional Rly. Manager (ADRM) and there is no malice or malafide involved. The respondents further state that there were complaints against the Applicant from various quarters as detailed in para 7 of their reply, and hence an Inquiry was ordered wherein it was found that the Applicant is irregular in his duties and that the complaints had firm basis. The said report of Inquiry was placed before ADRM who had ordered the transfer along with the post. It is stated that Nangaon is a big yard, and hence the transfer of an additional post was also a decision taken in administrative interest.

7. Respondent No.3 (Shri Pratap Singh) Station Master Jalgaon has stated, in his written reply, that all allegations made are false and baseless, and the facts have emerged from the detailed investigation made by the Rly. Administration. He states that he had no hand in the decision relating to the transfer of the Applicant, and that the said decision was taken at the higher level. The allegations of the incident during 1989 to 1992 at Bhusaval Yard are denied, as also the contentions regarding


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Official records being wrongly filled in. Respondent No.3 denies all these allegations and states that, on the contrary, complaints against the Applicants made by other people have been verified and found true.

8. I have heard learned counsels on both sides. Learned Counsel for Applicant, Shri Prabhakaran, stresses the point of malice against the Respondents, specially against Res.No.3 alleging that it was he who was behind the transfer. He sought support from the various instances, and allegations, as described above for this purpose, specially regarding the desire of the respondent No.3 that Applicant should make false entries. The point relating to the need by him to file a criminal case was also stressed, and the fact that no joining time was allowed was also also stated to be indicative of the prejudice of the Respondents.

9. Learned Counsel for Applicant also mentioned that the Applicant has a problem in the eye, as can be seen from document at page 64, and that he has need for a posting at a place where good treatment for the eye/s is available.

10. Arguing the case on behalf of the Respondents, there learned counsel Shri V.S. Masurkar, stated that no malice was involved in the transfer of the Applicant. There were number of complaints against the Applicant, as described in detail, and an Inquiry was conducted and only on receipt of the report it was decided, in administrative interest, that Shri Wagh should not be kept at Jalgaon. Learned Counsel specifically made the point that Respondent No.3 had no hand in the transfer of the Applicant and sought support from the case of Arun Veer (1999) (4) SLR Bom 125 and other citations at page 46 of paper book

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11. Learned Counsel for Respondents strenuously denied any motive or malice by Official Respondents or Resp. No.3 and made the point that the incidents generally cited like those of suspension and an earlier incident of 1989 to 1992 were very much old in time to be directly linked, in logic, to any malice at this stage. He also sought support from Rajendra Roy's case [AIR 1993 SC 1236]. Counsel for Respondents stated that joining time could be given to the Applicant as per rules.

12. Rearguing the case briefly, learned counsel for Applicant Shri Prabhakaran, stated that the fact of suspension was not denied. He reiterated that the transfer was a collusive action of all senior Officers.

13. I have considered arguments made on both sides and seen all papers in the case. The ground of malice in the ordering of the transfer has been taken against the Respondents and specifically against Respondent No.3 viz. Shri Singh. The main focus of the analysis of this case will be on this point, and the facts and circumstances cited in furtherance of the allegation of malice. In this ^{PrnB} I follow the well-settled principles laid down by the Hon'ble Apex Court, in a number of judgements, to the effect that Tribunals should not sit in judgement over transfer Orders as if they (Tribunals) were an Appellate authority but should confine their analysis to determining whether any malafide action, arbitrariness or perversity was involved in the transfer being ordered by the concerned authorities.

14. Official Respondents and Respondent No.3 have clearly denied all allegations of malice. Respondent No.3, who has filed a separate statement has, among other things, stated that he has no

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hand in the order of the transfer of Applicant being issued, as it is ordered on the independent judgement of the Senior Officers. The point made by Official Respondents about their being complaints against Applicant and the fact that only after complaints were investigated was the transfer order issued by ADRM i.e. higher levels, has weight. This is important and discounts the allegation that Respondent No.3 only and maliciously is behind the transfer. ^{The} transfer is made by ADRM. Counsel for Applicant has strenuously pointed out some incidents which have been recorded above, which lead to Respondents being prejudiced against him. For one, it is rightly argued by Counsel for Respondents that these incidents are of earlier duration, some being an year old and others dating to the period between 1989 to 1992. This is a plausible argument, specially when weighed against the specific recent incidents of complaints, investigation into complaints and a systematic follow up as per usual procedure.

15. On a careful consideration of the above facts, and the other points of allegation made in the Application, as also during the arguments I cannot find any strong connection that clearly leads to the conclusion of malice. It is of course not possible, nor the function of this Tribunal to analyse every incident cited like an Appellate Authority. The point of duty pass being given for one day cannot be construed as enough reason either. I also cannot analyse the fact of the post being shifted to Nandaon as arising out of malice in ^{the} ~~face of~~ ^{the} administrative judgement made by the Administration. As regards the criminal case which has been mentioned, this is a matter which the Tribunal cannot and would not go into, as, in fact, agreed even during arguments.



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16. Learned Counsel for the Applicant had stressed the point that even though transfer has been ordered at higher levels, the action was one of collusive action by all Respondents. This is an argument that cannot be accepted. It cannot be imagined that the entire Administration, specially the higher level at which the order was made was all set against the Applicant.

17. Learned Counsel for Applicant has cited some cases to draw support for his cause. I have gone through these. The case of Arvind Dande (1997 SCC L&S 1437) cannot help the cause of the Applicant. This ^{is} a judgement delivered on specific facts and circumstances where the Hon'ble Apex Court found that the transfer was the case of victimisation of an honest officer "at the behest of aggrieved complainants carrying on the business in liquor and toddy." Similarly the case of Najamal Hussain [1997 SCC L&S 166] is also one which does not apply to the present case before me. On the other hand the settled law of the Supreme Court in matters relating to transfer is clear as already stated in para 13 above. In view of the detailed discussions above, and considering both the facts and circumstances of the case, and the settled law, I do not find any cause for interference in the matter.

18. In the result, this Application is hereby dismissed with no orders as to costs.



11-07-2000
(B.N. Bahadur)
Member (A)

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