

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.488/2000

Dated: 21.8.2000

Thakare Ganesh Dasharath

Applicant.

Shri U.Warunjikar

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri B.N.Bahadur, Member (A),

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

BnB
(B.N.BAHADUR)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.488/2000.

Monday, this the 21st day of August, 2000.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),

Thakare Ganesh Dasharath,
P.W.D. Compound,
Alibag,
Raigad.
(By Advocate Shri U.Warunjikar)

...Applicant.

Vs.

1. The Comptroller & Auditor
General, Bahadurshah Jafar Marg,
New Delhi - 110 002.
2. The Accountant General (A & E) I
Maharashtra, M.K.Road, Churchgate,
Mumbai - 400 020.
3. Shri D.G.Bhatwadekar,
Sawantwadi Public Works Division,
Sindhudurg.
(By Advocate Shri P.M.Pradhan)

...Respondents.

: O R D E R (ORAL) :

{Per Shri B.N.Bahadur, Member (A)}

This is an application made by Shri Ganesh Dasharath Thakare serving as Divisional Accountant in the Organisation of Respondents, currently posted at Alibag, District Raigad. The applicant is aggrieved by his transfer order dt. 17.7.2000 transferring him from his present posting at Alibag to Kalwa (District Thane). The applicant seeks the relief of quashing and setting aside of this transfer order pertaining to him.

2. The facts of the case are that the applicant was transferred less than two months earlier vide transfer order dt. 26.5.2000 (page 17 Ex. 'B') from Pune to the present posting at Alibag and states that he took over the charge at Alibag on 17.6.2000. He

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has now been transferred again barely within six to seven weeks and contends that this greatly inconveniences him and his family. The applicant alleges that the Respondent No.3 (R-3), who had been posted out from Alibag to Sindhudurg by the same ^{order of Board} earlier date, has managed to come back by using pressure tactics and that this posting back of R-3 has inconvenienced him. The applicant states that R-3 was already working in Alibag for 5 years prior to his aforesaid transfer.

3. The learned Counsel for the Applicant in his arguments made in detail reiterated these points taken in the application and further made the following points. The plea taken regarding the guidelines by the Respondents is not justifiable, as it has been clearly stated by the Respondents in para 4 of their reply that a representation was received from R-3 after issue of the orders. The learned Counsel states that it is surprising how R-3 made the application on the same day, as orders were issued in Mumbai. He also drew my attention to page 40 of the paper book which is written statement filed by R-3. (R-3 is not present today, despite notice and this is confirmed by a representative present on his behalf that he will not be able to come as he is busy). The counsel for the applicant states that it is clearly stated by R-3 himself that he had made a oral request in the month of May. Obviously, this was not considered. The counsel for the applicant took me over to few other statements to say that the stands taken are contradictory and that the R-3 would have put in 6 1/2 years at Alibag if allowed to stay there now.

4. Strong stress was also made by the learned Counsel for the Applicant to the fact that once having been posted, a shift within a period of few weeks is arbitrary and would cause him

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hardship, as also to his family. He alleged that the transfer is made on grounds other than public interest and is malafide.

5. The learned Counsel for the Respondents rested his case ¹⁻⁵ mainly on the ground that R-3 is being brought back to Alibag because of the guidelines which allow a person to serve out the last three years of his career at the place of his choice, even if this results in the overstay at one particular place. The learned counsel brought to my notice the instructions issued by the Comptroller and Auditor General of India (Ex. 'A' page 37). He denied that there was any other reason or object in the mind of the respondents or that there was any malice or external pressure for ordering this revised transfer. He also highlighted the fact that R-3 had obediently handed over charge and had R-3 not represented, there was no reason to have changed the transfer order. To a query by the Tribunal about any other vacancy in Raigad District, the learned counsel stated that at present there is no such vacancy. He concluded by saying that a very convenient place like Thane has been provided to the Applicant, and this was one of his choices made when options were called for earlier.

6. As I analyse the facts of this case, I am conscious of the law settled in the matter of transfers, and the limitation of Tribunals in deciding on transfer matters. The main ground here, and, in fact, the main fact that strikes one in the face is that after an order transferring the applicant to the present place viz. Alibag was issued on 26.5.2000, another order of transfer has been served on him on 17.7.2000 i.e. barely after about 7 to 8 weeks and after 4 weeks or so after he took charge at Alibag. It does not need any argument to convince anybody that this kind

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of transfer order will definitely cause hardship and is prima facie arbitrary unless strong grounds are shown to exist for such an action. I have carefully considered this aspect to examine whether strong grounds indeed exist for re-transferring R-3 to Alibag, as has been done.

7. The main ground of support of the respondents refers to the instructions issued vide the Circular dt. 19.4.2000, a copy of which has been filed and is available at page 37 of the paper book. These are comprehensive instructions of norms, and states that a uniform and transparent policy of transfer of DAOs/DAs being considered necessary, these "broad parameters for transfer and postings of DAOs/DAs" have been laid down. Indeed it has been mentioned at para 'g' therein as under :

"an officer should normally allowed to serve the last three years of his service life at a place of his choice even if it results in his stay in the same place etc. beyond the normal tenure;"

The policy lays down a number of guidelines and in fact, it is seen that in the first sub-para (a) itself it has been stated as under:

"(a) transfer and posting should normally be made only once in a year and annual transfers should be timed properly so that these may not disturb the academic session;"

So even on the ground of the instructions, the guideline regarding the last posting before retirement cannot be read in isolation. Perhaps, this question could have been considered before the transfer of the Applicant and R-3 was made in May, 2000. Indeed, as stated by R-3 himself, in his written

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statement, he had made an oral request for his retention. Even if he had not made such a request, the Respondent organisation is expected to be aware of the basic facts like when a person is retiring etc. and can see if guidelines in this regard are to be followed. The respondents who are so assiduously following the point regarding guidelines would certainly have seen this earlier and it cannot but be held that their action has caused great hardship to the present applicant and in the sense that his postings are changed twice within two months and that it brings back the officer earlier transferred (R-3), the action of the Respondents can certainly be termed as ^{an} arbitrary *exercise of power*.

8. It has been held that a transfer made only with a view to making way for continuance of another official cannot be held to be in public interest. I also take notice of the case of B.Vardharao Vs. State of Kerala (1986 SCC (L&S) 750), where it has been settled that frequent and unscheduled and unreasonable transfers cause irreparable harm to government servant and drive him to desparation. In the facts and circumstances of the present case, this transfer of applicant can certainly be described as unscheduled as no one can be expected to get another transfer order after a few weeks and in that light, the transfer is certainly an arbitrary exercise of power.

9. In view of the facts and circumstances of the present case, I am of the opinion that the transfer order of the applicant ordered on 17.7.2000 posting him from Alibag to Kalwa (Thane) is arbitrary and in fact can be described as suffering from malice in law. The order, therefore, deserves to be quashed and set aside.

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10. This OA is therefore allowed and the transfer order No.Admn.I/WM Cell/Genl.Tr./20000-01/78 dt. 17.7.2000 is hereby quashed and set aside to the extent that it relates to the applicant Shri Ganesh Dasharath Thakare. Shri Ganesh Dasharath Thakare shall be allowed to continue in the present posting at Alibag for his normal tenure (unless his transfer becomes necessary for some valid subsequent reasons). This Order will not come in the way of the respondents providing R-3 with a posting in any other division in Raigad District, should they deem it appropriate, on their own judgment. There will be no order as to costs.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

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