

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.73/2000

Thurs Day, this the 10th Day of August 2000

Shri Suresh Prasad Choubey Applicant.

(Applicant by M.S. Ramamurthy, Advocate)

Versus

Union of India & Ors.... Respondents

(Respondents by R.R.Shetty, Advocate for Shri R.K.Shetty,
Advocate)

Shri V.D.Vadhavkar for Shri M.I.Sethna respondent No.1.

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 No
other Benches of the Tribunal?

(3) Library. No

B.N.
(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.73/2000

DATED: Thursday, this the 10 TH DAY OF AUGUST, 2000.

CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Suresh Prasad Choubey
employed in the Office of the
Director General of Shipping
as Deputy Director (D.L.)
Jahaz Bhavan, W.H. Marg
Mumbai 400 038.
and residing at
C.G.S. Colony, Sector 4,
Block No.154,
Flat No.1365,
Antop Hill, Mumbai 400 037 Applicant

(Applicant by Shri M.S. Ramamurthy)
vs.

1. The Union of India
through Secretary,
Ministry of Home Affairs,
Department of Official Language,
Govt. of India,
Loknayak Bhavan,
Khan Market,
New Delhi 110 003.

By Shri V.D.Vadhavkar for Shri M.I. Sethna.

2. The Secretary,
Ministry of Surface Transport,
Transport Bhavan,
Sansad Marg,
New Delhi 110 001.

3. Director General of Shipping,
Jahaz Bhavan, W.H. Marg,
Mumbai 400 038. Respondents.

(By Shri R.R.Shetty for Shri R.K. Shetty Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Shri Suresh Prasad Choubey, seeking, in substance, the quashing and setting aside of his transfer order from his present post to a post in the

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Department of Science and Technology at New Delhi. Certain allied reliefs are also sought, as detailed at para 8 of the O.A.

2. The Applicant states that vide O.M. dated 26.11.1999 from D.G. of Shipping (Ex.A), the Applicant who holds the post of Dy. Director (OL) in the Directorate General (DG) of Shipping, has been transferred, as mentioned above, and asked to handover charge to Assistant Director (OL) viz. Dr. Satish Chandra. The Applicant then describes that he had made certain endorsements on the transfer Order and noted certain objections, as explained in his O.A. and that he had also addressed representation to the Secretary to Govt. of India, Dept. of Official Languages, Ministry of Home Affairs, New Delhi (Ex. C) mentioning his difficulties on personal grounds and requesting for cancellation of the transfer. Further communications in this regard are also described, the Applicant also describes certain other details, which will be considered wherever relevant.

3. The Dy. Director General of Shipping has filed a reply statement on behalf of Respondents 2 & 3, dated 25.2.2000 (73) of Paper Book to which a rejoinder has been filed by the Applicant. Further, an additional written statement has been filed again by Dy. Director General of Shipping where it is stated, at the start, that the Dept. of Official Languages has requested the Directorate General of Shipping to defend the case on their behalf.

4. The Respondents, in their reply statement, have described the facts relating to the transfer orders of Applicant, and state that the Applicant has been relieved from the Respondents Office on 2.12.1999, and that Order of this date was handed over to the Applicant along with the Order of the Cadre Controlling Authority dated 18.11.1999 (R.1). The Respondents allege that Applicant

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has not acknowledged the receipt of these Orders, although he has taken out photocopies and subsequent copies of the order sent by Regd. Post had been returned as unaccepted. The Respondents further state that the applicant, who is a Group A Officer, has All India transfer liability, and that the order of transfer is made in public interest, and is not made with any malafide, nor by way of punishment.

5. In the remaining part of the reply statement, dated 25.2.2000, para wise replies have been given, and certain incidents are sought to be described relating to "the style of functioning of Shri Chaubey. It is stated that the Directorate had no alternative except to request the Ministry of Home Affairs to transfer the Applicant out of the Directorate, in view of the administrative situation created by the Applicant. Also, that the Transfer is in no way punitive. In the second reply statement, dated 16.3.2000, the point about the transfer Order not being from the Department of Official Languages but from D.G. Shipping has been explained. It has also been stated that certain irregularities of Shri Choubey are being enquired into and it would be desirable that he should be transferred out.

6. We have heard Learned Counsels on both sides and have perused the papers in the case including the copy of the letter dated 4.1.2000 addressed by D.G.Shipping to the Secretary, Dept. of Official Languages proposing applicant's transfer which was produced at the time of arguments. We have also perused the case law cited.

7. The learned Counsel for Applicant Shri R.Ramamurthy, argued the case in detail, and made the points reproduced in gist below. He alleged that the transfer Order was made purely at the

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behest of the D.G. of Shipping and, that the Cadre Controlling Authority, which is really the authority competent to transfer the Applicant had not applied his mind independently. He also stressed this argument to point out that no independent reply statement has been filed by respondent No.1, which has just casually asked the D.G.Shipping to defend its case. Shri Ramamurthy contended that an order of transfer should have been made and served directly on the Applicant by Respondent 1 directly, and the order made by Respondent 2 is not valid and that even a copy of MHA's order was not served on him. This was a serious shortcoming according to him.

8. Learned Counsel for Applicant then took me over to page 39 relating to endorsements made raising objections by the Applicant on the Office Memorandum dated 26.11.1999. He further alleged that there was no public interest really involved, and that because of certain prejudices that were being entertained by the Dy. D.G. of Shipping, Shri Joy Valentine, against Applicant the recommendation for his transfer had been made. Learned Counsel referred to these incidents with reference to the pleadings to substantiate this point, and asserted that the Shri Valentine had become severely prejudiced. He argued that allegations were now being levelled against the Applicant by citing old incidents, and if this is the case of Respondents then the transfer is a punitive transfer, and hence invalid as per settled law. Shri Ramamurthy cited the following cases in his support.

a) 1993 (2) ATJ 321 Avinash Chander vs. UOI

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- b) *O.A. No.484 of 1993 of Ernakulam Bench - Y. Kurikeshu*
Vs.
Senior Supdt. of Telegraph Traffic & Ors.
- c) *1996 (2) ATJ 96 Shri Hem Chand and Anr. vs. UOI & Ors.*
- d) *AISLJ 1988 (1) page 162 Arvind D. Dhande vs. St. of Maha.*
& Ors.
- e) *1994 (27) ATC 40 T. Abdulkader vs. UOI*

9. Arguing the case on behalf of Respondents No.2 and 3, their Learned Counsel Shri. Shetty took me over the facts of the case by pointed references to the written statment/s and referred to the fact that the order of the Cadre Controlling dated 18.11.1999 had been provided to the Applicant, but that the Applicant had refused to accept it and also refused its acceptance when a copy was sent subsequently sent by Registered post. He stated that this shows the attitude of the Applicant. Countering the argument made by the Applicant to the effect that the then Director General Shri Saha was prejudiced against him, the learned Counsel drew my attention to para 18 of a letter written by Applicant to the MHA, where he had praised the said D.G. vis-a-vis promotion of use of Hindi. (Page 53 of Paper Book).

10. Referring to malafide alleged against Shri Joy Valentine, the Learned Counsel, Shri Shetty, contended that impleading of the concerned parties was absolutely necessary when malafide was alleged. He took support of settled law to contend that neither Shri Shah nor Shri Valentine had been made parties, and hence the allegation of *malafide* had to be discarded on this count alone.



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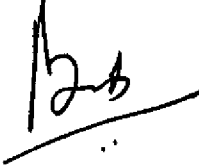
11. It was argued that the D.G. Shipping had recommended the transfer of the officer in public interest, and that certain irregularities by the Applicant are being investigated. Some original records were produced. Learned Counsel cited a number of cases in his support.

12. Learned Counsel for the Respondent No.1 stated that the Department of Official Languages does not serve transfer Orders directly on officers and pleaded that the original record produced by the other Respondents may be seen.

13. I have gone through all the records in the case and considered the arguments made by either side. At the outset, I must record that in such a case, the Respondent No.1 should have filed a separate reply statement, especially when some allegations, right or wrong are being made against Respondent No.2 and 3. It would have been more appropriate to have filed a separate reply.

14. One argument repeatedly made was that this transfer order did not show application of mind on behalf Cadre Controlling Authority viz. Respondent No.1. The overall facts and documents provided do not lead to me this conclusion. Whether transfer orders are to be directly served or through D.G. Shipping cannot prejudice the case of the Applicant. In fact, the action of applicant in not accepting copies of orders and also endorsing his objections on the transfer order leave something to be desired, by way of propriety in conduct. The grievances made in regard to personal difficulties by applicant can certainly be made in any officer's case, and it is quite in order for the Applicant to make a representation in this regard. But to question the point as to who should take over charge or to take a

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view as if the Applicant is the only person who should worry about the status of use of official language is not correct. There are senior Officers in the Directorate General who can take care of these important matters, and in any case, it is not for the Applicant to make this point the basis of a right that would accrue to him for cancellation of his transfer.

15. Learned Counsel for Applicant argued that Applicant had performed well, and that this transfer is not made in public interest, but an order which suffers from *malice in law*, among other things. I have carefully examined this aspect and cannot come to the conclusion of *malice in law* in the case. Even assuming that the developments of complaints (at least in the original file shown) is of later genesis, it has to be considered that the Applicant is working in Mumbai for long years and does have an All India transfer liability. Incidentally, I have gone through this file relating to complaints, and would not like to go into them *per se* as it is for the Department to take a view and in any case no conclusions are yet reached for any comments to be made at all. The other file submitted viz. that of the Department of Official Languages, shows that the matter regarding this transfer has been considered at the level of Secretary, and that it cannot be said from a perusal of the file that application of mind is lacking. The matter has been examined in detail there.

16. Strong allegations of prejudice/malafide were made against the Deputy D.G. We agree with the argument of Counsel for

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Respondent that it was necessary to make the concerned persons parties in the case since specific *malafide* has been alleged. Considering the facts and circumstances of the case I find no reason why this shortcoming can be overlooked in the present case.

17. I have gone through the case laws cited (see para 8) quite carefully and find that none of the cases will come to the help of the Applicant. The facts and circumstances are peculiar in those cases, and it cannot be said that any general ratio has been laid down, as can apply to the present case. On the other hand, the Hon'ble Apex Court has laid down in several cases that orders of transfer should not be interfered very lightly by Tribunals, except in circumstances of *malice*, or the orders being contrary to law or the Orders emanating from a background of circumstances that can be said to make the Orders clearly arbitrary. No such infirmity can be discerned in the present case, and hence I am not convinced that any grounds has been made for interference by the Tribunal in the present case.

18. In view of the above discussions this Application is hereby dismissed with no orders as to costs.

19. Interim Order dated 4.5.2000 is hereby vacated.

B.N. Bahadur
(B.N. Bahadur) ..
Member (A)

sj*

10/08/2000