

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.293/2000

DATE OF DECISION:
Friday, this the 21st Day of July 2000

Shri H.K. Sharma Applicant.

(By Shri S. Ramamurthy, Advocate)

Versus

Shri Union of India & Ors. , Respondents

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

CORAM

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

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.

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

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 293/2000

Friday, this the 21st Day of July, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

Shri H.K. Sharma,
Assistant Salt Commissioner
Exchange Building, 4th floor
Sprott Road,
Ballard Pier,
Mumbai 400 001.
Residing at:
Salt Bungalow,
Opp. DAV College,
Datar Colony Road,
Bhandup (E),
Mumbai 400 042.

.... Applicant.

(Applicant represented by Shri S. Ramamurthy, Advocate)

vs.

1. Union of India through
the Secretary,
Department of I.P.P.
(Industrial Policy & Promotion)
Govt. of India,
Ministry of Industries,
Udyog Bhavan,
New Delhi 110 011.
2. Shri R. Prakash,
Salt Commissioner,
Lavana Bhavan
Jhalana Doongri,
Jaipur (Rajasthan)
Pin. 302 004.
3. Dy. Salt Commissioner,
Exchange Building, 4th floor
Sprott Road,
Ballard Pier,
Mumbai 400 001.

... 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 O.A., Shri H.K. Sharma, is aggrieved by his Transfer to Tuticorin, and seeks the relief from this Tribunal, in substance that the Order dated 31.3.2000

...2/-

B.S.
..

transferring him from Mumbai to Tutucorin, and the further order dated 31.3.2000 transferring his post, similarly, be both quashed and set aside. He also seeks that the Respondent be permanently restrained from transferring the Applicant from Mumbai till he completes his tenure.

2. The facts of the case are that the Applicant is working as Assistant Salt Commissioner in Land Cell, in the Office of Dy. Salt Commissioner at Mumbai. He has been transferred, as mentioned above, to Tuticorin. The Applicant avers that he has been transferred a number of times in the last five years as succinctly explained in Ex. C and that the statement at Ex. D would show that he and Dr. Kashyap are the only ones who are made to suffer the distress of very frequent transfers. He then goes on to explain the adverse effects of his various transfers, and how his family is suffering. The Applicant also goes on to give details in the Application, regarding creation of Land Cell at Mumbai, for handling land cases in Maharashtra effectively, and states that the work of this Cell is of arduous nature. Lengthy pleadings are made on these aspects which will be considered, but are not being repeated here as not all details are relevant to the case.

3. The Respondents have filed a Written Statement in reply, denying all allegations, and stating that as Group A Officer of the Union Govt., the Applicant has an All-India transfer liability, and neither his status nor pay etc. are being adversely affected. It is averred that the lack of a post of Assistant Salt Commissioner, at Kakinanda (which post had been temporarily transferred to Mumbai) is effecting work at Kakinada,

...3/-

Bub
..

and hence the post is being transferred back. Respondents aver that the transfer is ordered after the academic session and a Government house will be provided to the Officer at his new posting. Respondents rely on the judgements cited in at page 3 of their Written Statement. They also deal parawise to the points made by Applicant and aver that the modification in transfer Order of Shri Kashyap in 1996 was made because of a genuine health problem faced by him. The point relating to land cases in Maharashtra has also been refuted.

4. The Respondents aver that the case of Shri Mukherjee mentioned is one where that Officer has been kept at the Headquarter Office, in view of his expertise and has not been transferred from Jaipur where admittedly he is working for very long.

5. We have considered all papers in the case and have heard Learned Counsels on both sides. Both Learned Counsels argued their case in detail. On both sides, the points made in written pleadings were restressed in oral arguments. These are not being repeated but have been carefully considered by us. The salient points made by the learned counsels on either sides are stated below.

6. Learned Counsel for the Applicant took the plea that the transfer order is malafide stating that the Applicant was singled out for this transfer. His main argument was that the continuation of Shri Mukherjee in Jaipur for 16 years and the fact of the case relating to the loan for housebuilding as an incident are some of the reasons why applicant has been singled

....4/-

Ans
..

out for transfer at short intervals. He pleaded that the applicant was an honest officer and this was not being liked. Learned Counsel went over the details of the pleadings.

7. Counsel for Applicant also took the plea that the Salt Commissioner does not have the right to transfer the posts from one place to another and that the mere use of the expression "Public Interest" cannot be used as the basis for justifying all transfer without reference to particular facts in a case. He cited the case decided by Ernakulam Bench of this Tribunal (OA.484/93 dated 28.10.1993) to make the point that the "Public Interest" must be genuine and not merely a magic word. Learned Counsel also referred to the order of the Calcutta Bench of this Tribunal, a copy of which he has appended at Page 89 of Paper Book in O.A. filed by R.S. Kashyap (OA 440/2000). Detailed arguments were also made regarding the need for the Land Cell at Mumbai and how in spite of work at Mumbai the transfer of the post was being made only to fulfill the malice against the Applicant.

8. The Learned Counsel for the Respondents in his arguments first made the point that Respondents organisation was very small in terms of manpower at higher levels, and there were only about 8 Assistant Commissioners, and four Deputy Commissioners. General transfers have been made covering about four or five persons as can be seen from the impugned orders, and there were no sigling out of the Applicant. Learned Counsel stated that there was no malafides involved and the point regarding House Loans, which was cited as one basis of malafide had no relevance at all.

M.S.

....5/-

9. Learned Counsel for Respondents stated that there was no representation made regarding the malice of Salt Commissioner and that the Applicant had come directly to the Tribunal. A representation could have been made to the Govt. first. As regards the point relating to transfer of posts from Mumbai, the point taken in written pleadings were reiterated. It was argued that it was for the Respondents to take care of public interest vis-a-vis the protection of lands at Mumbai. Learned Counsels cited the case of *N.K. Singh* decided by the Hon'ble Apex Court (1994) (28) ATC 246]. He drew attention to para 25 of the judgement, and argued that the jurisdiction of the Tribunal in matters relating to transfer was limited. Here, in this case, he argued, there was no malafide involved and a routine transfer had been made. Learned Counsel also stated that insinuations of malafide are contained only in rejoinder. It was argued that the judgement of Calcutta cited (in O.A.440/2000) was not of any relevance; in fact, the Learned Counsel for Respondents later produced a copy of judgement of Calcutta Bench in a later O.A. No.516/2000 filed by Shri R.S. Kashyap, since despite query from the Bench, Counsel for Applicant said that he could not produce the copy of the Order disposing of Shri Kashyap's case, finally in a later O.A.

10. Learned Counsel for Respondents depended on a number of judgements cited in support of his contentions to argue that the powers of Tribunals in the case of review of transfer cases of Govt. employees was limited and made the point that this was a routine transfer involving no stigma on the applicant and that malafide was not proved. The Applicant had a right to make representations on grounds of personal difficulties after he had joined the place of his new posting.



...6/-

11. We are conscious, as we analyse the present case, of the limitation of Tribunal in reviewing the cases of transfer of Govt. Officers. And therefore, will keep our focus to examining whether there has been any arbitrariness or perversity or violation of Rules in the Orders made. Also we shall examine the point relating to malice. In the first place, we do find that in para 1, and in certain other portions of the original applications, it has been asserted that the order of transfer of the applicant to Tuticorin is malafide. However, we also find importantly that no facts regarding malice have been specifically detailed nor any incident or facts related ^{any fact} in detail against Respondent No.2 personally or anyone. No details regarding malice. It is only at the time of the arguments, that the learned counsel for Applicant crystalised the issue of malice with a clear focus, and also referred in detail, to Respondent No.2, being prejudiced and acting out of malice. Normally, the law expect a separate statement from Respondent No.2, as is usually done in such cases, but given the above facts, we cannot view the non filing of a separate statement by Respondent No.2 as a breach. We shall decide the issue on the basis of the reply statement filed by Respondents, in the absence of clear allegations of facts regarding malice in O.A.

12. From the statement cited at Exh. C & D, it is seen that the Applicant has been subjected to transfer at nearly seven stations between 1984 and now. Most of his postings have been of two years duration. It is also true that the incidents of transfers in the case of Applicant and Dr. Kashyap is of higher frequency than others. This may have caused him greater instability in personal terms and inconvenience compared to others. But on this ground alone, it is difficult to conclude

Bud

....7/-

any malice on the part of Respondents, specially in the background of the rather small Cadre and the fact that the transfer comes as a part of the general transfers. Similarly, it may be undesirable in administrative terms not to transfer a particular individual from Jaipur for 15/16 years but this Tribunal cannot rush to draw conclusions only on this basis and judicially determined matters either concluding malice or discrimination. It would certainly be open to administration, specially the Respondent Ministry of the Union Govt. to look into this or even consider the request of Applicant if made on personal grounds, on merits and as per Rules.

13. We are also not convinced that a direct relationship can be established between the action taken regarding the incident of obtaining of loan for housing by the Applicant and the transfer or of the involvement or prejudice of Respondent No.2 as a result of this incident. Similarly, whatever be the facts and need for the handling of the problems relating to Land cell in Mumbai, we do find substance in the argument of learned counsel for Respondents that it would be for the Respondents to take care of the problems in Mumbai. We would not make it our business to analyse the administrative requirements of the Mumbai Office to determine whether the post was needed at Mumbai or otherwise.

14. In regard to the questioning by applicant of the powers of the Salt Commissioner in transferring the post of Assistant Commissioner from one place to another, this would not entitle him to the cancellation of this transfer even if this was true. This is a matter which cannot enable us to provide him relief as sought. It would be for the Respondent Ministry to decide these issues. Although the Learned Counsel for the Applicant laid great stress on the point relating to the need for ...8/-

Bul

the post at Mumbai in view of the needs of Land Cell, and although this point has been extensively covered in the O.A. we cannot determine and decide on this matter since it is purely administrative.

15. We must refer to the Orders of the Calcutta Bench cited. There are two Orders. The first is dated 24.4.2000 in O.A. 440/2000 where the learned Bench had merely provided opportunity to the Applicant Shri Kashyap to make a representation to Respondents and for Respondents to dispose of it on by a speaking order. Thereafter in the second order of the Calcutta Bench which is made in O.A. 293/2000, on 5.6.2000, the Application of the same applicant Shri Kashyap, has been disposed of without interference in the order of transfer. However, liberty is provided to Respondents to consider the requests of the Applicant Shri Kashyap for a transfer to Tuticorin. We note that the present Applicant is being posted to Tuticorin. We are providing liberty here to the Applicant, if he is so advised, to make any representation regarding change in transfer Orders on grounds that he perceives are relevant. If such a representation is made, it shall be disposed of by the Respondents, in reasonable time, on merits and in accordance with Rules and a reply be sent to to the Applicant intimating him of their Respondents decision. However, for the reasons discussed above, we are not convinced of justification of any interference in the matter for provision of reliefs sought.



....9/-

16. In the consequence this Application is hereby dismissed
with no orders as to costs.

S.L. Jain
(S.L.Jain)

Member (J)

SJ*

B.N. Bahadur
(B.N. Bahadur) *21/7/00*
Member (A)