

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 435 of 2000.

Dated this Monday, the 11th day of September, 2000.

Kewalram Shamraoji Kagate, Applicant.

Shri A. Y. Kagate, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for
Respondent Nos. 1 & 2.

Shri Abhay Sambre, Advocate for
Respondent No. 3.

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

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



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

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Dated this Monday, the 11th day of September, 2000.

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

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

Kewalram Shamraoji Kapgate,
Resident of
C/o Executive Engineer,
Minor Irrigation (Local Sector)
Division, Gondia.

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Applicant.

(By Advocate Shri A. Y. Kapgate)

VERSUS

1. Comptroller & Auditor
General of India,
Bahadurshah Jafar Marg,
New Delhi.
2. The Accountant General
(A & E)-II, Civil Lines,
Nagpur.
3. The Executive Engineer,
Minor Irrigation,
(Local Sector) Division,
Gondia.
4. A. K. Kokude,
Divisional Accountant,
Ramtek Remodelling Division,
Bhandara.

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Respondents.

(By Advocate Shri V.S. Masurkar for
Respondent Nos. 1 and 2.

By Advocate Shri Abhay Sambre for
Respondent No. 3)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

This case is being heard by a Division Bench, as there is
no Single Bench available today.

2. This is an application made by Shri Kewalram Shamraoji
Kapgate, in grievance against his transfer from the post of

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Divisional Accounts Officer, Grade-I in Minor Irrigation Department at Gondia, made vide order dated 29.05.2000 (Annexure-I). The Applicant seeks the relief of the quashing and setting aside of this impugned order, and for a direction to Respondents to retain the Applicant at his present place of posting till the completion of his tenure. He also seeks the alternate request to post him in another Division in Gondia.

3. The facts of the case are simple, in that the Applicant was transferred to his present place of posting in July, 1998 at his own request, and has been transferred out, as described above, after about two years. The averments and grounds taken in the application and those argued in detail before us by the Applicant's counsel, Shri A. Y. Kapgate, has been carefully considered.

4. The first point that is made is that the Applicant has been transferred without allowing him the completion of the prescribed three years tenure at Gondia. It is argued that in the guidelines issued by the Comptroller & Auditor General (Annexure-6), it is envisaged that transfers will be made normally after the officer has completed three years in a particular Division, and six years in a particular station. The Learned Counsel strenuously brought to our notice the various points contended in this circular letter, as also in the letter dated 26.05.1999 at page 22 regarding the categorisation of Divisions.

5. It was further argued by the Learned Counsel for the Applicant that the stand taken by the Respondents in their

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written statement about change in gradations being the cause of his transfer was not convincing. The Learned Counsel cited the fact that the person coming in his place at the Gondia posting, which was categorised 'medium' was just an ordinary level Divisional Accounts Officer. Learned Counsel also argued that no exceptional reasons have been recorded in his transfer.

6. The Learned Counsel for the Applicant referred to a few cases of officials transferred from Gondia to Osmanabad and contended that in these cases the representations made by these officials were considered favourably, and the orders in their case were either cancelled or substantially modified. His grouse is that his representation is rejected.

7. We have carefully gone through the detailed replies in the written statement filed by the Respondents, and also heard the arguments made by the Learned Counsel, Shri V.S. Masurkar. The Learned Counsel took support from the facts and averments made in the written statement and took us over these, making in gist, the following points :

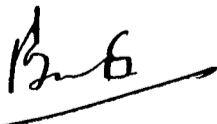
- (a) The applicant is a Grade-I officer and liable for posting anywhere in the State as a Grade-I Officer.
- (b) The transfer of the Applicant was made in view of the change in categorisation of the Division where he was posted and has been done as per the settled procedure of the Department, as could be seen from the guidelines cited.

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(c) The transfer and postings are made on a systematic basis after being considered by a Committee, as laid down in the guidelines and no discrimination is made in the case of the official concerned. Only a few changes that have been made are on merits of individual cases.

8. The Learned Counsel produced the file relating to the Annual General Transfer (Year 2000) for our perusal, and we have seen the notings thereon. He also made the point that the law settled by the Apex Court laid restrictions on Tribunals in matters relating to Transfers.

9. ^I~~We~~ note that the Applicant has completed almost two years stay in Gondia, where he got posted because of a request made by him since, as stated by the Learned Counsel, he belongs to that District. It is not as though he has been transferred within an unreasonably short time. Well and truly, he may have justifiable personal reasons for staying at Gondia, but these have to be limited by considerations of administrative interest, as per well settled law in this regard. In regard to the point made about the guidelines and the relevance of the gradations while making postings in this Department, we find that it is indeed right that the necessity of a three years stay has been stipulated as one of the guidelines. However, there are other guidelines like consideration by Committee and consideration of the gradations of the Division, posting that have also to be taken into account. From the perusal of the file, as also the averments in written



statement, it is clear that, overall, the guidelines have been taken into consideration. There are detailed notings in the file on the basis of which transfers have been made and after careful perusal of the file, we are convinced that it is not a case where applicant has been transferred in an arbitrary fashion or through an action which could be called legally malice either. A relief cannot be given by this Tribunal merely on the count that he the Applicant has not completed three years. Even here it is not as though the transfer is made unreasonably soon. Two years have elapsed.

10. Similarly, the aspect relating to change in gradation has been brought out in the statement by Respondents. It is not for this Tribunal to conduct a fishing enquiry and find as to who was more suitable for posting where. Learned Counsel for the applicant has cited names of various officials, who in his view are less deserving than the applicant, vis-a-vis guidelines and Counsel for other side has tried to meet these contentions. But, it is not for this Tribunal to go into the matter, as we have stated above, and to sit in judgement overall, in the matter.

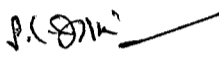
11. As per the law settled by the Supreme Court, we have carefully considered whether any malice in fact, or malice in law is involved or whether the action of the Respondents can be termed as arbitrary. We do not find any such infirmity in the matter, and therefore cannot be convinced of any reasons to interfere in the case.


12. Before parting with the case, we may state that well and truly the Applicant may have personal difficulties. This order

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will not come in the way of the his representing once again to the authorities and the authorities considering it on merits in their own judgement and as per rules and providing relief to him; as deemed fit. However, no directions in this regard can be given.

13. The application is, therefore, dismissed with no order as to costs. The interim orders made on 28.06.2000 and continued from time to time are hereby vacated.


(S. L. JAIN)
MEMBER (J).



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

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