

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 222 of 2000.

Dated this _____ the 17th day of November, 2000.

S. K. Iyengar, _____ Applicant.

Shri G. K. Masand, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri P. M. Pradhan, _____ Advocate for
Respondent No. 1.

Shri R. K. Shetty, _____ Advocate for
Respondent No. 2.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

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

Shanta Sh
(Smt. SHANTA SHASTRY)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 222 of 2000.

Dated this _____ the 17th day of November, 2000.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

S. K. Iyengar,
Director General of Police,
Residing at 10-N, Dilwara,
8, Queens Barracks,
M. K. Road,
Mumbai - 400 021.

...

Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. State of Maharashtra through
The Additional Chief Secretary,
Home Department,
Government of Maharashtra,
Mantralaya,
Mumbai - 400 032.

2. Union of india through
The Secretary in the Ministry
of Home Affairs, North Block,
New Delhi - 110 001.

...Respondents.

(By Advocate Shri P.M. Pradhan for
Respondent No. 1 and Shri R. K. Shetty
for Respondent No. 2)

O R D E R

PER : Smt. Shanta Shastry, Member (A).

The applicant has approached this Tribunal against the Transfer Order dated 25.02.2000 by which he has been transferred from the post of Director General, Anti-Corruption Bureau, Maharashtra State to the post of Commandant General, Home Guards.

2. The applicant belongs to 1966 batch of the Indian Police Service borne on Maharashtra Cadre. The applicant was working as Principal Secretary, Home Department (Special) when he was

...2

promoted to the rank of Director General of Police vide letter dated 11.02.1999 and was posted as Commandant General, Home Guards and Director, Civil Defence, Maharashtra State, vice one Shri S. C. Malhotra. Shri S. C. Malhotra was holding cadre post of Director General, Anti-Corruption Bureau from 11.02.1999 to 04.01.2000. On his being appointed to another cadre post of Director General of Police, the applicant was posted to the cadre post of Director General, Anti-Corruption Bureau, vide letter dated 04.01.2000. The applicant took charge. He had hardly been in the said post for less than two months when he was transferred back to the post of Commandant General, Home Guards, which is an ex-cadre post. The applicant handed over charge to Shri M. N. Singh on 28.02.2000. Being aggrieved, he gave a representation dated 26.02.2000 to withdraw or defer the transfer order and to retain him in the said post. There was no response. In the meantime, he was again served with a fresh order dated 03.03.2000 posting him to an ex-cadre post as Managing Director, Maharashtra State Police Housing & Welfare Corporation by upgrading the said post to the level of Director General of Police.

3. According to the applicant, a disinformation campaign was being spread to malign the applicant. Transfer within less than two months to make way for posting a junior officer on selection is bad in law. No administrative exigency can be said to be there in being posted to an ex-cadre post while junior was posted in cadre post.

4. The respondents while admitting the facts, have stated that the transfer has been made in the interest of administration. There are two cadre posts and two non-cadre posts in the rank of Director General of Police. Administration

is taking all steps either transferring from cadre post to non-cadre post depending upon administrative exigencies.

5. I have heard the Learned Counsel for both the sides and have carefully considered the pleadings.

6. The facts are not in dispute. Also by the aforesaid orders, applicant's status as Director General of Police is not affected nor are his emoluments affected. Therefore, in normal circumstances, there should be no cause for concern. However, it is seen that the post of Commandant General, Home Guards, and the post of Police Housing Corporation are not regular cadre posts. They are upgraded and downgraded time and again to suit the incumbents and convenience of Administration. Thus, they are not exactly on the same footing as the cadre post. The cadre post has an edge. Had the applicant been continued as Commandant General, Home Guards, perhaps he would have had no grievance but having shifted him to a cadre post and thereafter shifting him from there only to accomodate a junior officer, certainly appears to be arbitrary. No satisfactory explanation has been given for such abrupt transfer within a period of two months of joining the post. Again the order has been modified within a week to post him to another ex-cadre post by upgrading the downgraded post. If the sole reason for transfer is administrative exigencies and if one is to believe that there is no other motive in the said shifting, then it certainly cannot be accepted because the respondents have failed to establish convincingly that there is

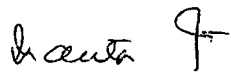
any administrative exigency or that it is being made in public interest. This also goes against the policy of the State Government in respect of transfers. The officer is to retire in another one year. It therefore appears to be colourable exercise of power.

Transferring an employee for accomodating another in his place, has been held as discriminatory and arbitrary in the case of D. R. Sengal V/s. Chief Post Master General [1991 (15) ATC 36 (Ahmedabad)]. Not withstanding protection of salary, such transfer is held arbitrary, stigmatic, unfair, unjust and violative of Article 311 of the Constitution of India.

Similarly, in the case of Amar Nath Bhatia V/s. Union Of India [1986 (1) ATC 313 (Delhi)] it has been held that mere assertion by the Government that transfer is in public interest does not validate the order unless there are specific grounds to support it.

7. In the facts and circumstances of the case, the transfer order is liable to be set aside. Accordingly, I quash and set aside both the impugned transfer orders. The applicant should be restored to the post of Director General, Anti-corruption Bureau immediately.

8. The O.A. is accordingly allowed. No costs.


(Smt. SHANTA SHASTRY)
MEMBER (A).