

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 233 of 2000.

Dated this \_\_\_\_\_ the 6<sup>th</sup> day of November, 2000.

Mrs. Vijaya W/o. Anil Deshpande, Applicant.

Shri G. Jadhavrao, Advocate for the  
applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for  
Respondents.

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

- (i) To be referred to the Reporter or not ? } Yes
- (ii) Whether it needs to be circulated to other Benches  
of the Tribunal ? }
- (iii) Library. Yes

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(Smt. SHANTA SHASTRY)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 233 of 2000.

Dated this \_\_\_\_\_ the <sup>6<sup>th</sup></sup> day of November, 2000.

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

Mrs. Vijaya W/o. Anil Deshpande,  
R/o. 7/B, Usha Apartments,  
48-49, Tulshibaugwale Colony,  
Sahakarnagar No. II, Pune-411 009.  
Working as Section Supervisor  
(Officiating),  
C/o. Director (TR), Adm. Section,  
Savarkar Bhavan, Shivajinagar,  
Pune - 411 005.

... Applicant.

(By Advocate Shri G. Jadhavrao)

VERSUS

1. Union of India through  
The Principal Secretary,  
Ministry of Communications,  
Government of India,  
Sanchar Bhavan, Ashoka Road,  
New Delhi - 110 001.
2. Principal General Manager,  
Pune Telecom District,  
281/B, Bajirao Road,  
Pune - 411 002.
3. The Director (TR),  
Savarkar Bhavan,  
Shivajinagar, Pune - 411 005.
4. Assistant General Manager,  
C/o. P.G.M.T. 281/B, Bajirao Road,  
Pune - 411 002.
5. Mrs. Swati Kamat,  
Chairwomen (Women Cell),  
Mahadji Shinde Bhavan,  
Near Poona Club,  
Poona - 411 001.
6. Mr. N. J. Shakya,  
ACAO (TR),  
C/o. Director (TR),  
Savarkar Bhavan,  
Shivajinagar,  
Pune - 411 005.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

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

This application is made against the transfer order dated 24.03.2000 passed by Respondent No. 4 i.e. the Assistant General Manager, Telephone Bhavan, Pune. The applicant has sought the following reliefs :

- (a) Impugned Order dated 24.03.2000 be set aside and quashed as it is passed in violation of fundamental rights under the Constitution and violative of guidelines of Prevention of sexual harassment of women workers at work place of the Supreme Court of India given in Writ Petition No. (Cri.) 666 to 670 of 1992.
- (b) Respondent No. 1 be directed to take stringent action including criminal prosecution and transfer of respondent no. 6 from the present place and post.
- (c) Respondent Nos. 1 and 2 be held liable for non-formation of Women's Cell in stipulated time as per guidelines of the Supreme Court of India and circular issued by Ministry of Labour and Industries dated 02.11.1997 and Circular of D.O.T. dated 11.02.1998.
- (d) Respondent No. 6 be held liable for sexual harassment of the applicant and be punished and respondent nos. 1,2,3,4 and 5 be held liable for contempt of Court Order/guidelines of Honourable Supreme Court of India.

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- (e) The Respondent No. 2 be directed to regularise the leave of the Applicant from 14.08.1998 to 10.09.1999 and ban on her two increments be withdrawn and difference of salaries/benefits accordingly be paid to the applicant.

2. The facts in brief of the case are as follows :-

The applicant has been working in the T.R.A. Unit in Office of Respondent Nos. 3 and 6 at Pune, since 1985. Respondent No. 6 is her Superior officer. She is also a Branch Secretary of the National Union of Telecom Engineers Employees' Class-III, affiliated to I.N.T.U.C.

The applicant wrote a letter dated 14.05.1999 to Respondent No. 3 to form a 'Women Cell' as per the Supreme Court guidelines in the case of Vishakha & Others V/s. State of Rajasthan & Others [AIR 1997 (SC) 3011]. As no reply was received from the Respondents, she submitted a written complaint on 15.06.1999 regarding her own experience and sexual harassment by Respondent No. 6. She sent reminders about the formation of Women Cell through the Federation of All India S/C & S/T Employees, Post & Telecom Department. She received a letter dated 31.08.1999 from Respondent No. 2 informing her about the setting up of a committee to look into the grievance of women employees on 10.08.1999. The said committee called the applicant on 26.08.1999 vide letter dated 18.08.1999 to enquire into the complaint made by the applicant on 15.06.1999 and the enquiry was completed.

3. It is the case of the applicant that Respondent No. 6 continuously harassed her and gave physical and mental torture to her because of which she was compelled to go on leave. Her leave from 14.09.1998 to 10.09.1999 was still not regularised. Her increments are also held up. Respondents failed to take action on her complaint and instead protected Respondent No. 6. The Committee/Women Cell was not formed within the stipulated period but was formed after 18 months. The committee failed to take a decision on her complaint. Without a decision being taken, the applicant has been transferred to the office of Respondent No. 5, who has not conducted the enquiry as per the Supreme Court guidelines. She was on leave from 27.03.2000 and when she went to resume duty on 28.03.2000 she was given the transfer order. She made a representation against the transfer order but of no avail. So she has approached the Tribunal.

4. The Respondents No. 1 to 4 and R-5 and R-6 have filed their replies separately. The Learned Counsel for the Respondents 1 to 4 submit that the Applicant's transfer is in the interest of service. Besides it is within Pune, the same station. There is no dislocation of family nor of education of children. Her pay, seniority, promotion, are not affected by the transfer. She has been shifted in the same capacity. The applicant is liable to be transferred anywhere within the Maharashtra Telecom Circle.

5. Further, as per guidelines of the Supreme Court and the Telecom Department, a Committee was appointed under the Chairmanship of a Woman (Respondent No. 5) on 10.08.1999. The said Committee enquired into the complaint of the applicant and

submitted the enquiry report to the administration on 13.12.1999. It is, therefore, not correct to say that the Committee failed to give a decision. The Committee did not find any substance in the complaint of the applicant against respondent no. 6. However, the Committee recommended the transfer of both the respondent no. 6 and the applicant from their present place of work to avoid tension between the opponent and the complainant to help in improving the working atmosphere in the office.

6. The Learned Counsel for the respondents submits that the applicant has been transferred purely in the interest of smooth functioning of the administration with the intention of diffusing the tension. It is not a punishment.

7. The applicant has remained absent for 286 days on medical grounds on fifteen occasions. Her case was referred to the Superintendent of the Sasoon General Hospital, Pune, for fitness to retain her in Government service. The report was still awaited. Therefore, her leave application is pending and also her increments are held up. This has no relevance to her grievance about sexual harassment. In the past also due to her frequent absence on medical grounds, an adverse entry had been made in her A.C.R. for the year 1989-90. It is stated in para 24 of the written reply that the respondent no. 6 was also transferred. The applicant's name was struck off from the strength of T.R.A. with orders to report to Director (Installation), Pune-1. However, the applicant did not report there. She is transferred at the same station at other area without any dislocation.

8. The respondents have thus opposed the O.A. and have urged to dismiss the same.

9. I have heard both the Learned Counsel and have given careful consideration to the pleadings. At the outset, I find that the applicant has claimed multiple reliefs not consequential to each other. Such multiple reliefs are not maintainable according to Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. I, therefore, proceed to deal with the main relief of quashing and setting aside of the transfer order dated 24.03.1999. The respondents have frankly admitted that the transfer has been made with the purpose of diffusing the tension in the office and to ensure smooth functioning. In view of the background narrated by the applicant and in view of the recommendations of the Women's Committee, the respondents are within their rights to transfer the applicant. I find that the transfer is also not such as would affect her family or the education of her children. It cannot, therefore, be said that the transfer is malafide. Also the change of place of duty within the same station does not really amount to a transfer within the meaning of S.R. 2(18). The applicant's transfer is not contrary to statutory rules either. The transfer has been ordered to establish peace and is in public interest. It is neither arbitrary nor malafide. It has not affected the applicant's emoluments or her rank. I, therefore, see no valid reason to set aside the impugned order of transfer or to interfere with the same. It has been held in the case of Sachidananda Swain V/s. Union of India & Others [1987 (2) ATC 950 .. Cuttack Bench] that transfer within the department to a different post without affecting the emoluments is valid.

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Similarly, reliance is also placed on the case of Neena Diwan V/s. Union of India & Others [1987 (5) ATC 444] where it has been held that when transfer is ordered to establish peace and is in public interest, such transfer is neither arbitrary nor malafide but in public interest and hence, valid.

10. In the facts and circumstances of the case, the O.A. is dismissed. I do not order any cost.

*Shanta*

(Smt. SHANTA SHASTRY)  
MEMBER (A).

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The applicant had initially come to the Tribunal in O.A. 233/2000. The grievance was against the applicant's transfer order dated 24.03.2000. This was heard by Mrs. Shanta Shastri, Member (A) and the O.A. was dismissed. The applicant, Mrs. Vijaya Anil Deshpande, had gone to the High Court in Writ Petition No. 2707/2001 in which order was passed on 04.06.2003 where the order of the Tribunal was upheld and writ petition dismissed. After that, the applicant <sup>came before the Tribunal</sup> in M.P. No. 177/2004 which was filed on 25.02.2004 stating that the averment made by Respondents No. 1 to 4 in the affidavit which was filed on 20.04.2000 that

Respondent No. 6, Mr. Shakya, was also transferred is incorrect and, therefore, it was prayed that the Registry be directed to file a criminal complaint against respondents for adducing false evidence before the Tribunal. Two separate M.Ps. 384/04 & 524/04 were also filed by the applicant for directing the respondents to produce indicated documents. Another M.P. 385/2004 was filed on behalf of Respondents 1 and 2 to delete their names as party respondents, as no relief was sought from them. After hearing both the parties, M.P. No. 177/2004 along with M.P. 384/2004 and 524/2004 filed by the applicant were rejected by me. M.P. 385/2004 filed by Respondent No. 1 and 2 to delete them from the list of private respondents was allowed.

2. Now the applicant, Mrs. V.A. Deshpande, has come in Review Petition 22/2005 against the order in the four M.Ps. The grounds taken by the applicant are that the opinion of the Tribunal that the applicant has to prove <sup>her</sup> case is not correct on the face of the record and it is a matter of investigation and without the documents produced before the authorities no Court shall proceed with the matter as per provisions of IPC, CRPC and Evidence Act and the Tribunal had to pass a detailed reasoned order as to why documents were not required to the Tribunal for justification of the claim of the applicant and it is a mistake on the face of the record. Another alleged mistake committed by the

Tribunal is the conclusion that the signature of N.G. Shakya as ACAO (TR) Pune Telecom is a typographical error. It has been detailed out <sup>why to</sup> ~~that~~ this cannot be termed as typographical error. It has also been contended by the applicant that deleting the names of Respondent No. 1 and 2 from the array of respondents is a apparent mistake as Respondent No. 1 and 2 have consented to the reply filed. For these reasons, the applicant wants a review of the order passed by the Tribunal on 16.03.2005 on the four M.Ps. In the oral submissions, Shri Vinod Joshi, Counsel for the applicant, reiterated the written pleadings. He contended that reply has not been filed by all the respondents which have been named in the M.Ps. filed by him. The original reply was issued on 17.04.2000 whereas the transfer of Shri N.J. Shakya was effected only <sup>eleven to</sup> ~~one~~ months thereafter.

3. In the reply filed by the respondents it has been stated that Shri N. J. Shakya, ACAO (TR), Input Cell was transferred as ACAO under G.M. (Finance) vide P.G.M.T. Pune order dated 24.03.2000. Shri N. J. Shakya was struck off from the strength CAO (TR) on 17.04.2004 with instructions to hand over charge to another officer and accordingly charge was handed over and the same afternoon Shri N.J. Shakya took over the charge of ACAO under General Manager (Finance) Pune. Later he was promoted as officiating CAO and posted as CAO (TR) West and Input Cell vide CGMT Mumbai order dated 16.03.2001 and PGMT Order dated 16.05.2001 and

took charge as CAO (TR) West on 02.04.2001. Thereafter, Shri N. J. Shakya, CAO (TR) West was posted as CAO (Cash) vide PGMT order dated 04.12.2001. Therefore, the allegation of the applicant that Shri N.J. Shakya, ACAO was never transferred from TRA Unit until 04.12.2001 and only after 12 months the transfer order was effected is not correct. A separate reply was also filed on behalf of Respondent No. 5.

4. In the oral arguments, Shri V.S. Masurkar, Counsel for the respondents, reiterated the written pleadings and contended that the situation which was prevailing as on 20.04.2004 has to be seen for deciding the question whether any perjury has been committed by the respondents. As regards N.J. Shakya, he retired on 30.09.2002. A separate reply has also been filed by Shri N.J. Shakya.

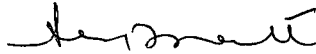
5. I considered the review petition. An application for review could be considered on discovery of new and important matter of evidence, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The applicant has not claimed discovery of any new evidence. What the applicant has averred cannot be termed as error apparent on the face of record but he is challenging the conclusion drawn by the Tribunal and, therefore, he has come before us for correcting the allegedly erroneous judgement. A review is by no means an appeal in disguise whereby an erroneous decision is reheard

and corrected but lies only for patent error, as has been held by the Apex Court in AIR 1964 SC 1372 [Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh]. Similarly, the Apex Court in AIR 1995 SC 455 [Meera Bhanja Vs. Nirmala Kumari Choudhury] has held that "error apparent on face of record" means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivable be two opinions. The applicant has contended that for drawing the conclusion, as has been drawn in the M.P., it was necessary for the Tribunal to call for the records, as was requested by the applicant. However, the Tribunal in para 6 of the said order dated 16.03.2005 have discussed how on the basis of the documents which were filed by the respondents along with the reply the contention of the applicant does not hold water. Therefore, it cannot be said that the conclusion of the Tribunal is not based on any document. Right or wrong, a decision has been given by the Tribunal in the M.P. and if the applicant is not happy with the said order on the M.P., he cannot raise the grievance within the limited scope of a review petition.

6. The applicant had claimed that perjury was committed by the respondents in their reply dated 20.04.2000. However, in the order of the High Court dated 04.06.2003 in W.P. No. 2707/2001 there is not a whisper about the said contention of the applicant. In any case, whether a perjury

has been committed or not, is a matter between the Court and the person/s who have allegedly committed perjury and it is the discretion of the Tribunal/Court to decide how to arrive at this satisfaction.

7. To sum up, the R.P. is dismissed in circulation <sup>having no force to</sup> No costs.

  
(ANAND KUMAR BHATT)  
MEMBER (A)

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