

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO: 492/2000

DATE OF DECISION: 6/10/2000

Shri Vijay Shankar Lakeshri Applicant.

Shri S.R.Atre
Advocate for
Applicant.

Versus

Union of India & 3 Ors. ----- Respondents.

Shri S.S.Karkera for Shri P.M.Pradhan
Advocate for
Respondents.

CORAM:

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

1. To be referred to the Reporter or not? No
2. Whether it needs to be circulated to No other Benches of the Tribunal?
3. Library. Yes

Shanta Shastray
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:492/2000
DATED THE 6th DAY OF OCT. 2000

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri Vijay Shankar Lakeshri,
presently residing at Kanchan Apartment,
Room No.1, Ground Floor, Rajendra Nagar,
Swami Vivekanand Road,
At-Post, Taluka and District - Ratnagiri and
presently working as
Divisional Accountant, in the office of
the Executive Engineer, North Ratnagiri
Public Works Division, Ratnagiri,
At-Post, Taluka and District - Ratnagiri - 415612.
Maharashtra State ... Applicant

By Advocate Shri S.R.Atre ..

V/s.

1. The Union of India,
through the
Accountant General (A&E)-I,
Office of the Accountant General (A&E)-I,
101, M.K.Road, Mumbai - 400 020.
2. The Senior Accounts Officer/W.M.Cell,
Office of the Accountant General,
(A&E)-I, 101, M.K.Road,
Mumbai - 400 020.
3. The Executive Engineer,
North Ratnagiri Public Works Division,
Ratnagiri - 415 612.
4. Shri K.V.Nambiar,
Divisional Accounts Officer-I,
Thane Creek Bridge Dvn.No.II,
Chembur, Mumbai. ... Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan for Respondents 1 to 3.

...2.

(ORDER)

Per Smt. Shanta Shastry, Member(A).

This application is preferred against the office order dated 18/7/2000 passed by the Respondent No.2 transferring the applicant from Ratnagiri to Chiplun within a period of two months of his having joined at Ratnagiri. The applicant has therefore sought to quash and set aside the order of transfer in relation to the applicant and to direct the respondents to continue him at his present place of posting at Ratnagiri in North Ratnagiri Public Works Division.

2. The applicant is working as Divisional Accountant in the Office of Executive Engineer in the North Ratnagiri Public Works Division on deputation. He was initially working as a Divisional Accountant, Minor Irrigation Division, Oros, Taluka Kudal, District Sindhudurg. He represented to respondents to transfer him to Ratnagiri on account of various reasons, the major one being of his health ^{the} and ^{the} need to be under continuous attention of the Physician. He had made representation on 28/2/2000. His request was considered and he was transferred on 26/5/2000 to the North Ratnagiri Public Works Division, Ratnagiri. However, after he had put in about two months in that place, the impugned order dated 18/7/2000 was issued by the respondents transferring him from Ratnagiri to Chiplun.

3. It is the contention of the applicant that the transfer order being issued within just two months of his joining at Ratnagiri is arbitrary and malafide. The applicant also claims that the Minor Irrigation Division of the Kokan Region has

already advised the Executive Engineers about the closure of certain divisions and sub divisions among them is the Agricultural Development Sub Division No.VIII Chiplun where the applicant has now been transferred. The applicant represented on 19/7/2000 pointing out that he was a Heart Patient. Chiplun is 100Kms away from Ratnagiri and it is not possible for him to commute daily from Ratnagiri to Chiplun. His wife is also serving in Ratnagiri and children are studying there. He has to leave family members and again live alone in his present condition of bad health. The applicant has also cited the case of one Shri A.L.Dhargave who also had been transferred to Distribution Division No.II of Mangaon but had to be retained at his original posting because the division to which he was transferred was closed. Further the applicant has also alleged that Respondent No.2 seems to have acted under some pressure from Respondent No.4. The Respondent No.4 had sought transfer to Mumbai. However, he has been transferred to Ratnagiri and to accommodate him, the applicant is being shunted out. The applicant therefore is aggrieved by the Impugned order which has disturbed his settled life at Ratnagiri.

4. The applicant has also relied on the judgement of the Tribunal in a similar case of one Shri G.D.Thakare in OA No.488/2000 decided on 21/8/2000 a copy of which has been produced. The OA was allowed.

5. The Learned Counsel for the Respondents while admitting that the applicant was transferred to Ratnagiri Division at his own request vide order dated 26/5/2000 submits that the applicant was transferred from Ratnagiri to Chiplun for Administrative

reasons. The applicant was not due for transfer from Sindhudurg yet on account of the representation made by him on 20/2/2000, he was posted to Ratnagiri. The Learned Counsel for the Respondents states that the applicant belongs to the State Government and his services are transferable. Transfers are made as per the set of guidelines prepared by the department for the said purpose. While making transfers, the authorities competent & transferring the personnel also take into consideration the seniority of the Divisional Accountants and the work load of the Division to which the Divisional Accountants are proposed to be posted. The cadre of Divisional Accountants is categorised in 4 grades, according to their seniority, the Divisional Accountants on deputation fall under the last category. Further some divisions like Public Works Division, National Highway Division is categorised as very heavy division and as far as possible the Divisional Accountants having appropriate grade are posted to such divisions. Therefore, when the respondents received the representation from Respondent No.4 that he had not been given division as per his seniority, the orders were modified and fresh orders were issued on 17/7/2000 posting Respondent No.4 to Ratnagiri and shifting the applicant to Chiplun. The Learned Counsel further avers that all the representations received at the time of general transfer of Divisional Accountants in May 2000 were considered and that is how the applicant had come to be posted at Ratnagiri. However, due to changed circumstances, these orders had to be modified. The Learned Counsel for the Respondents vehemently denies any arbitrariness or malafide as alleged by the applicant. The applicant has been transferred to Chiplun which is in the

district of Ratnagiri and is not far away from Ratnagiri. Also proper health facilities are available in Chiplun. The Impugned transfer orders have been issued as per the extant guidelines and in the interest of service. In regard to the closure of the unit where the applicant has been transferred, the respondents deny any knowledge about it. However, the respondents have taken up the matter separately with the authorities and if the closure is confirmed, they would post the applicant to some other division appropriate to his grade taking all the facts into consideration.

6. I have given careful consideration to the pleadings by both the parties. I do appreciate that the respondents have to go by the guidelines laid down for transfers and that they have to take into consideration various representations received before general orders of transfer are issued in the month of May. In the instant case, the respondents did consider the representation made by applicant in February, 2000 and have admitted that by virtue of this representation, the applicant was given a transfer to Ratnagiri. However, the respondents have changed the transfer order after receiving representations from Respondent No.4. Respondent No.4 has made a representation after the general transfer order of 26/5/2000. The respondents admit that Respondent No.4 had actually sought transfer to Mumbai though they have denied that Respondent No.4 had brought in any pressure on them to transfer the applicant from Ratnagiri to Chiplun so that he could be accommodated at Ratnagiri. Since the department was not in a position to accommodate respondent No.4 at Mumbai, they modified the transfer orders and posted

Respondent No.4 at Ratnagiri disturbing the applicant from there. The stand of the respondents is not convincing. Nothing prevented them from following the guidelines before the general transfer orders were issued on 26/5/2000. After the applicant had represented that he was a Heart Patient, the Respondents could have thought of either not transferring him from Oros or they could have given a lighter division. ^{to him} But the respondents did consider the applicant's grounds for transfer and transferred him to Ratnagiri knowing fully well that it is a heavy division. Just because Respondent No.4 has made a representation after the aforesaid transfer orders were issued and because Respondent No.4 could not be accommodated in Mumbai as per his request, it is not proper on the part of the respondents to take the pleas of seniority and heaviness of the division and to disturb the applicant and put Respondent No.4 in his place. I cannot accept the explanation given for transferring the applicant within two months of his earlier transfer. The guidelines should have been followed while doing the general transfers and not after that. I am not convinced by the arguments advanced by the respondents. Had they really been assiduously following the guidelines, that should have been done so earlier and not after the general transfer orders had been issued and certainly not just because another representation was received thereafter. It has been so held in the case of Sujit Kumar Singh V/s. Union of India, 1991 17 ATC 893, that where the transferee had joined the new place, the transfer order cannot be modified. So also in the case of B. Vardharao V/s. State of Kerala, 1986 SCC (L&S) 750 where it has been clearly laid down that frequent and unscheduled and

uncertain transfers cause irrevocable harm to Government servant and drive him to desperation. Therefore a transfer made within a short period of two months of the earlier transfer only with a view to post another person cannot be said to be in Public interest. I also have perused the judgement relied upon by the applicant in the case of G.D.Thakare in OA-488/2000 (Supra). The applicant's case is similar to the case of the applicant in the aforesaid OA. The ratio^l of the case applies in the present case also.

7. In the facts and circumstances of the case, I quash and set aside the transfer order dated 17/7/2000 to the extent it relates to the applicant transferring him from Ratnagiri to Chiplun and direct the respondents to continue the applicant at Ratnagiri. This order will not come in the way of the respondents providing Respondent No.4 with a posting to any other division should they consider it appropriate. ^{OA, b, allowed} I do not order any costs.

Shanta F
(SHANTA SHASTRY)
MEMBER(A)

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