

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 598 of 2001.

Dated this Monday, the 15th day of October, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

G. S. Rathore,
Project Manager (Elect.),
22, Railway Officers' flats,
Grant Road (West),
Mumbai - 400 007.

... Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union of India through
The Secretary,
Railway Board,
Rail Bhavan,
New Delhi.

2. General Manager,
Western Railway,
Churchgate,
Mumbai.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R (ORAL)

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

The Applicant in this O.A. comes up to the Tribunal challenging the impugned order dated 10.08.2001 (Annexure A-1) through which he has been transferred and posted at Dahod, Western Railway. The Applicant also seeks a direction to the



Respondents to maintain status quo in regard to his posting. The facts of the case are in a short compass, in that, the Applicant who is a Group 'A' Officer of 1985 Batch, is working under overall control of Respondent No. 2 (General Manager, Western Railway, Churchgate, Mumbai) as a Project Manager (Elect.). The Applicant states that he has been victimized by as many as 13 transfers in 14 years of his service, since he joined in 1987, after probation. The Applicant gives a detailed description in para 4.4 of the transfers he faced, and alleges that they were all done to humiliate him and to disturb him ^{sub} frequently. He also makes the point that when he was posted at his present post, he had not indicated his willingness and that, such posting is wrong, as it was an ex-cadre post.

2. Respondents have filed a Written Statement in reply, where it is stated that transfer to Dahod is made on administrative grounds, and exigencies of service, since the present post was declared to be surplus, on account of a review taken as per directions of the Railway Board. The point that he is an officer liable to serve anywhere in India has been made. Importantly, the respondents have provided facts in respect of Applicant's postings since 05.06.1989 in a self-contained chart at para 6 of their reply. This chart provides useful information and will be referred to ahead. Importantly, the point is made that the applicant is now working in Mumbai in two capacities for a total period from 07.07.1994 till date i.e. about seven years.

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3. It is further stated in the Written Statement of reply that Ministry of Railways had directed all Zonal Railways in May, 2001 to carry out a detailed review of the workcharged gazetted posts in operation, with a view to effecting economy in establishment expenditure. Accordingly, such review was carried out by the Western Railway, and a total of 40 gazetted workcharged posts were identified for surrender. As a result of this surrender, it has become necessary to relocate some of the officers. It is also stated that "since the applicant was requesting for a post with independent charge, where he could shoulder higher responsibilities, he was transferred and posted as Divisional Electrical Engineer (W) at Dahod." The further part of the Written Statement seeks to provide parawise replies to the averments made in the O.A.

4. We have seen all papers in the case and have heard the Learned Counsel on both sides, namely - Shri D. V. Gangal for the Applicant and Shri V. S. Masurkar for the Respondents. We have also seen the rejoinder filed by the Applicant. At the outset, we may state that there is a M.P. No. 798/2001 seeking to place one document on record, which is hereby allowed, in the interest of justice.

5. Learned Counsel, Shri D. V. Gangal, took us over the facts of the case, at length, and strenuously argued that the order of transfer in respect of the Applicant was illegal, arbitrary and malafide. In regard to the contention of malice, he clarified that he was not alleging malice against any



particular individual and hence, had not arrayed anyone as party-respondents. However, he alleged general malice, which we take to mean "malice in law". Learned Counsel then took us over the details of the posting order of the Applicant to make the point of his frequent transfers. He went over the details of the transfers made to Allahabad where he had to return without taking over, and subsequent transfer to Swaimadhopur and later to Baroda and Mumbai. It was alleged that this was clear proof of malice on the part of the railway administration.

6. Learned Counsel also referred to a previous O.A. filed by him, being O.A. No. 45/95, which was disposed of on 13.08.1999. This O.A. challenges the posting of the officer from Mumbai to Ujjain. His argument was that the dismissal of this O.A. as infructuous, in view of the railway administration cancelling his order of transfer, proved the point of malice asserted by him in this O.A. He made certain other points on the working of the railway administration, which we are not elaborating.

7. Learned Counsel for the respondents highlighted the fact that the applicant was a Group 'A' officer with All India liability of posting and had been in Mumbai for the past seven years continuously. He also relied on the grounds taken in the Written Statement of Respondents.



8. The first aspect that would be relevant in any case of transfer is wanton frequency of transfer. We have carefully looked at the points made and the facts of the case, which are comprehensively focused at page 28 (para 6 of the Written Statement and find that there is some truth in this aspect, in regard to the posting of the Applicant between June, 1989 and June, 1994. Unfortunately, that is far too back a distant past. Well as the Applicant may have approached the railway administration or have come up in a previous O.A., the important point that strikes immediately in this regard is the fact that right from June/July, 1994 till the present, the Applicant is posted at Mumbai, i.e. for about seven years. Well and truly, the applicant is a Group 'A' officer with full liability of transfer and it does not lie in his mouth to argue arbitrariness, much less illegality of an order once he has stayed at Churchgate, Mumbai, for seven years.

9. The fact that the post being an ex-cadre or the argument made to the effect that he did not have work or that his superiors were not working in a proper fashion, as highlighted by the Learned Counsel for Applicant, /Shri D. V. Gangal, is totally irrelevant to the facts of transfer or to the reliefs that he sought in the O.A. The point was also made to the effect that the dismissal of the O.A. No. 45/95 on 13.08.1999 in the face of railway administration cancelling the transfer showed that all allegations of malice were true. This meaning cannot be read into the order dated 13.08.1999. What has happened

is that the Applicant came up truly with certain allegations but the railway administration cancelled the order.

Accordingly, the O.A. was dismissed as infructuous. No meaning can be read in this order to the effect that it implies an automatic confirmation of the allegation contended in that O.A.

10. We are not impressed that any of the principles of settled law in regard to transfers allow the applicant to justify his case. He has stayed in Mumbai for about seven years and has been transferred to a post where he can be transferred, admittedly, as per rules. We, therefore, find no justification for interfering in this matter.

11. Consequently, the O.A. is dismissed with no orders as to costs. The interim orders made in this O.A. are hereby vacated.

B. N. Bahadur

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

B. Dikshit

(B. DIKSHIT)
VICE-CHAIRMAN.

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Real Vakalatnama

From Sh. V. S. Masurkar

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