

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 11 of 2001.

Dated this Friday, the 19th day of January, 2001.

Chandrakant Gangaram Shinde, Applicant.

Shri S. P. Kulkarni, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for
Respondents.

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

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


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

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ORIGINAL APPLICATION NO.: 11/2001.

Dated this Friday, the 19th day of January, 2001.

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

Chandrakant Gangaram Shinde,
Asstt. Director of Postal Services,
(BCR HSG-II), I.R. Sorting Mumbai,
G.P.O.

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Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
The Chief Postmaster General,
Maharashtra Circle,
Old GPO Building, 2nd floor,
GPO Complex, Near CST C.Rly.,
Fort, Mumbai - 400 001.

2. The Director,
Mumbai G.P.O. (Old) GPO
Bldg. 1st floor, GPO
Complex near CST C.Rly.,
Fort, P.O. Mumbai - 400 001.

3. Sr. Suptdt. of Post Offices,
Mumbai City East Divn.,
Dadar HPO Bldg.,
Dr. B.A. Road, 3rd floor,
South Wing, Dadar,
At P.O. Mumbai 400 014.

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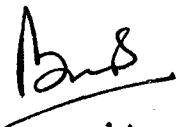
Respondents.

(By Advocate Shri V.S. Masurkar).

OPEN COURT ORDER

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

This is an application made by Shri Chandrakant Gangaram Shinde, seeking the relief in substance that the order through



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which he has been transferred (Annexure 'A', Page-14) should be declared as malafide, and should be quashed and set aside.

2. I have heard the Learned Counsel on both sides, Shri S. P. Kulkarni for the Applicant and Shri V. S. Masurkar for the Respondents and have carefully perused the facts of the case and considered the arguments made before me. As the subject matter of the case lies in a very short compass, and as there is a stay operating, this case is taken up for decision at the stage of admission.

3. The case made out by the Applicant in his written pleadings and by his Learned Counsel on his behalf during arguments, first raised the point that the ground on which the transfer is made is not sustainable, in that, a show cause notice was given to the effect that since he was found incompetent, he is being considered for transfer. The notice at page 15 dated 19.09.2000 was referred to, and the point made that there was a nexus between the background of his earlier penalties and this transfer. The background was discussed in detail by Learned Counsel for Applicant.

4. The second major point advanced on behalf of the applicant was that this transfer was not being made in public interest and was malafide. The case of Y.Kurikesu V/s. The Supt. of Telegraph Traffic, Trivandrum Div. & Others [1994 (1) ATC 71] was cited in this regard to make the point that public

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interest should be shown substantially and was not a magic word which could cover all action. Similarly, the Learned Counsel for the applicant also cited the case of J.D. Gupta V/s. Union of India [1993 (1) ATJ 476]. The second case related to the plea that a very short time was left before the Applicant retired, and hence on this count also, it would be unfair to transfer him out of Mumbai. The Learned Counsel also made the point that the fact that the Applicant was promoted in November, 2000 shows that he was competent, and that the plea of incompetence to work in Mumbai was not logical.

5. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri V. S. Masurkar, first gave the background of the notice issued and stated that the notice was issued for transfer, since the Division was sought to be changed from Mumbai to Thane, and that this was the normal position. Tracing the background of the facts of the case, the Learned Counsel stated that there was no nexus between the penalty awarded, and no malafide. This was clear, he argued, from the fact that the decision was taken at the highest level (Chief P.M.G.) whereas the penalty was awarded at a much lower level, as can be seen from the relevant records in the case.

6. In regard to public interest, Shri V. S. Masurkar, argued the Respondents' case with reference to the details at page 38 of the Paper Book to show that public interest was, indeed, affected

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by the manner in which the Applicant was working. He stated that J. D. Gupta's case was not relevant as the Postal Department was a Service Department. He concluded his argument by saying that only because the Applicant had less than one year when it was proposed to transfer him, a nearby Division has been given. But it would open to the applicant to apply for a more convenient posting in Thane Division, after joining.

7. In the first place, it is unusual that a show cause notice for a transfer should have been given, though there is some justification in the stand taken that this was done because normally inter-division transfers were not made at this level in the Postal Department. Nexus was alleged between the appeal filed on the penalty and the decision to transfer. It is true that consideration had cause and effect. But on consideration of all facts and arguments, it cannot be said that the relationship is of such a kind as would lead to a conclusion that there was malice or that this transfer was resorted to as an act of punishment. There is some justification in taking into consideration the background of what had happened in Wadala Post Office, as seen on page 38. Surely in a department with high public dealings, such working by officials cannot be ignored.

8. It would be desirable in the facts of the case and in the background of the law relating to the subject, as settled by the Apex Court, that we do not read too much in the very show notice that has been given. This show cause notice was irrelevant even if transfer outside was to be made and it would

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have been sufficient if a well considered noting was available on file. This certainly is available as a perusal of the file produced shows. Just because such a show cause notice was given, it cannot be concluded that an unfair nexus could be said to exist.

9. There is substance in the argument of the Learned Counsel for the Applicant that the Applicant was granted promotion as recently as in November, 2000. It would be relevant to note that once administrative considerations are behind the transfer, it cannot be said to be bad, even if it is proved that the officer was considered fit for promotion and was working well. These are things which the administration have to consider. The fact of the issue of notice or of the promotion in November, 2000, cannot thus form the basis of a right for cancellation of the transfer or holding the transfer to be bad in law.

10. It is true that less than a year's time was left for the Applicant to retire when the notice in question was issued. However, even in judicial pronouncements, including the one cited, the ratio stated are to the effect that this is to be avoided but no right can accrue to any Government Servant against a transfer, even made nearer retirement. The Counsel for the Applicant stated that the Applicant resides at Ulhasnagar and is being posted at Thane District at a place called 'Bordi'. The offer made for consideration of a request after joining is also something which is fair.



11. Considering all the facts and circumstances of the case and the law settled in regard to transfers, I find that the relief, as sought by the Applicant, cannot be provided to him and the application would, therefore, need to be dismissed. Suffice it to say that as stated above, the Applicant may make a representation to Respondent No. 4, i.e. Superintendent of Post Offices, Thane (W) Division for a more convenient posting within the Division which could be considered with due sympathy considering the short period left for the service of the Applicant. This can be done only after joining the new post. There will be no order as to costs.



(B. N. BAHADUR)
MEMBER (A)

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