

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 56 of 2001.

Dated this Tuesday the 10th day of April, 2001.

Shri Hukam Chandra Goyal, Applicant.

Shri M.S. Ramamurthy, Advocate for the
Applicant.

VERSUS

Union of India & 2 Others, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents No. 1 & 2

Shri D. K. Ghaisas, Advocate for
Respondent No. 3

CORAM : Hon'ble Shri B.N. Bahadur, 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 ? Yes

(iii) Library. Yes

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

OS*

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ORIGINAL APPLICATION NO.: 56 of 2001.

Dated this Tuesday the 10th day of April, 2001.

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

Hukam Chandra Goyal,
Chief General Manager,
Telecom Factory, Devnar.
Residing at -
CGM Bunglow, Type V/1,
Telecom Factory Township,
Devnar, Mumbai - 400 088.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union of India through
The Secretary,
Ministry of Communications,
Department of Telecommunication,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.
2. The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.
3. Shri M.S. Sarma,
Chief General Manager,
Telecom Factory,
Richhai Jabalpur (M.P.)

... Respondents.

(By Advocate Shri V.S. Masurkar for
Respondents No. 1 and 2.
Shri D.K. Ghaisas for Respondent No. 3)

O R D E R

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

The Applicant in this case, Shri H.C. Goyal, is
challenging the impugned order dated 18.01.2001 (Exhibit 'A')

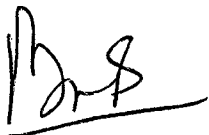
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through which he is transferred from his posting at Telecom Factory, Mumbai to Telecom Factory, Richhai - Jabalpur. He seeks the relief from this Tribunal for the quashing and setting aside of this impugned order and for a direction to continue the Applicant in his present posting at Mumbai.

2. The facts of the case, as brought out by the Applicant, are that he is working as Chief General Manager in Telecom Factory, (T.F.), Mumbai, and is working in the Sr. Administrative Grade in Group 'A' Service. He was transferred to his present post by order dated 31.07.2000 (Exhibit 'C') and joined on 10.08.2000. The Applicant is aggrieved that he is transferred only after five months of service in his present post. Another ground taken by him is that the factory at Richhai, Jabalpur, is under the administrative control of T.F. at Wright Town in Jabalpur for day to day operation. Further, that the Respondent No. 3 is junior to him, yet another that at the Richhai Factory he will have to work under the Chief General Manager (C.G.M.) of the Wright Town Factory, and not independently.

3. The Applicant further avers that a representation made by him on 22.01.2001 to Respondents has elicited no reply, and that the transfer is arbitrary and unsustainable in law.



4. The official Respondents in this case have filed a written statement of reply, resisting the claims of the Applicant stating that Shri M.S. Sharma (Respondent No. 3) who has been transferred in the same order from Richhai to Mumbai, has been relieved. So also, the applicant has been relieved. It is argued that Applicant carries an All India transfer liability, that no malafides are involved and no statutory rule has been violated. The order is made in public interest and hence, as per settled law, the grievance of the Applicant is not tenable.

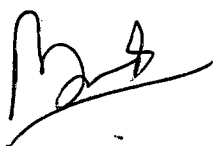
5. Further details in parawise reply are brought out in the Written Statement ahead, where the All India position of the Organisation is explained stating that there are five posts of S.A.G. level in Telecom Factory's Organisation, and that the post to which the Applicant stands transferred is in the same grade as the one he is occupying in Mumbai. Similarly, the C.G.M. of the Wright Town Factory is in the same grade and ^{presently} senior to both, Applicant and Respondent No. 3. It is also stated that for some staff, establishment and administrative matters, the Richhai Factory is controlled by the C.G.M. of Wright Town Factory but just because of this role as co-ordinating authority, it does not mean that the Applicant has to work under the C.G.M. of the Wright Town Factory. Hence, no

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inferior post has been provided to the Applicant, and that the Applicant had in fact agreed on a joining date (page 22 of the Paper Book)

6. Respondents also stated that the Respondent No.3 had been requesting for a posting to Mumbai from Jabalpur, on the ground of illness of his wife, and that he has been living alone at Jabalpur; also on account of the education of his children. The Respondents thus pray for the dismissal of the O.A.

7. Respondent No. 3, Shri M.S. Sarma, has also filed a separate statement in reply to the Application, making the point that the Applicant has made baseless allegations and dragged him into litigation with ulterior motives. Giving the facts of the set up of the factories in the country, Shri Sharma, also gives details of the seniority position of the four Chief General Managers as stated [in para 4 (b)]. It is stated by Shri Sarma further that he has been posted in Jabalpur since 1994, and has been facing immense problems of health in respect of his eldest daughter and his wife who had to be hospitalised. Details of these difficulties are provided through annexures, and also expounded in the Written Statement. It is also stated by Respondent No. 3 that the Applicant is most suitable for the type of work undertaken at the Richhai Factory in view of relevant training abroad.



8. ^{12/9} We have gone through the various papers in the case and have heard the Learned Counsels viz. Shri M.S. Ramamurthy for the Applicant, Shri V.S. Masurkar for Respondents No. 1 and 2 and Shri Ghaisas for Respondent No. 3. Taking us over the facts of the case in detail, with the help of Annexures and other papers, Shri M.S. Ramamurthy first made the point that this transfer was made barely after the officer had stayed at Mumbai for four to five months and alleged that it was made only to accomodate Respondent No. 3. The point regarding the inter se relationship of the Wright Town - Ricchai Factory at Jabalpur, was stressed at some length by the Learned Counsel. While details in this regard are reproduced above, Shri Ramamurthy argued that the Applicant would not be independent in his charge at the Richhai Factory, as admittedly, (exhibit 'H') the Ricchai Factory continued as a part of T.F., Jabalpur Circle for staff, establishment and administrative matters. In fact he contended that the post of the C.G.M., Richhai, was upgraded. The same point was made on the basis of other details in the matter.

9. Shri Ramamurthy further took the point that the transfer was not in public interest, and that there was no justification at all for transferring the Applicant in a short period of five months. Thereby, he was disturbed unnecessarily and the transfer was a motivated transfer, as admittedly it was done to

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accomodate another person. All this amounted to malice in law. He stated that in the letter cited, from him to Respondent No. 3, he had not committed himself, but had in fact also stated that he had made a representation.

10. .Learned Counsel cited the following case law in his support :

- (i) D.R. Sengal V/s. Chief Postmaster General reported at 1991 (15) ATC 36 (para 10).
- (ii) Vinod Sahi V/s. Union of India reported at 1996 (34) ATC 255.
- (iii) B. Varadha Rao V/s. State of Karnataka & Others reported at 1986 ATC 558
- (iv) Y. Kurikesu V/s. Sr. Supt. of Telegram Traffic, Trivandrum Div. & Others reported at 1994 (1) ATJ 71
- (v) Ved Bajaj V/s. Union of India & Others reported at 1997 (35) ATC 109.

11. Arguing the case on behalf of the official Respondents, Shri V.S. Masurkar drew ^{B.S.} ~~our~~ attention to the two communications cited at pages 27 and 28 of the Paper Book, where in the first one, the Applicant had indicated his intention to move over to Richhai on a particular date. The second communication which is the letter of Mr. M.S. Sarma, also discusses the same programme.

B.S.

And in these circumstances, the O.A. was filed virtually two days later. The Learned Counsel stated that the Government has limited options at its command of transferring the officers at such high levels, since there are only five persons in the country of this level. He placed before us the extracts from the relevant file (photo-copy of file no. 10-5/2000-TFS..Pages 1/N to 9/N). He stated that perusal of these extracts will show why a transfer at short interval was necessary in the case of the Applicant. This was the point made in response to the argument on behalf of the Applicant that the Applicant was transferred after a very short interval of 4/5 months at Mumbai. B.B.

12. Further points made by the Learned Counsel for Respondents were that there was no change in the status of applicant because of his transfer to Richhai and that the Superintendence in administrative matters by the C.G.M. of factory at Wright Town also did not affect the status, or further career prospects, of the Applicant. There was no malafide on behalf of anybody in the case, and all allegations of malafide are vague. The Learned Counsel for the ^{Respondent} Applicant ~~7~~ sought to draw our attention to the sur-rejoinder filed by him, specially with reference to the point made at para 7 at page 79 of the Paper Book to reiterate the points made above. Similarly, the Learned Counsel stated that the arguments made by him have been clearly set out in the rejoinder, specially at para 13 and 14, (page 82 of the Paper Book). B.B. Bhatnagar

13. The Learned Counsel for the Respondents sought to draw strenuous support from the judgement of the Hon'ble Supreme Court in the matter of N. K. Singh V/s. Union of India [1994 (28) ATC 246]. The relevant portions of this judgement were gone through and support sought on a number of counts. The Learned Counsel also sought support from the judgement in the matter of State of M.P. V/s. S. S. Kourav reported at 1995 (2) SC 498.

14. The Learned Counsel for Respondent No. 3, Shri D.K. Ghaisas also argued the case and made out certain points apart from stating, at the outset, that he adopted the argument of the Learned Counsel for official Respondents. In regard to the transfer of the Applicant after five months, he stated that Respondent No. 3 had put in six years at Jabalpur and had genuine problems, as have been detailed out in the separate written statement filed by him (Mr. M.S. Sarma). The Learned Counsel also took the point regarding the limitation of Courts and Tribunals in matters relating to transfer as settled by the Hon'ble Supreme Court. It was stated that there was no malafide proved, nor could it be said that the transfer was made on the sole objective of providing for a position for Respondent No. 3. Under these circumstances, the Tribunal could not intervene on behalf of the Applicant.

15. The Learned Counsel for Respondent No. 3 further made the point that the seniormost Chief General Manager, Shri Roop Narain, was not made a party and it was, therefore, not proper to insinuate anything against him, as was being done.



16. In a short rejoinder argument, Shri M.S. Ramamurthy stated that Applicant's letter at page 27 did not imply acceptance or that his right for representation was being forfeited and this cannot assist the case of the Respondents. He stated that there was no real health problem now to the family members of Respondent No. 3 and that Applicant had also worked in Jabalpur for a period of 12 years at various times during his tenure.

17. The papers in the case have been carefully considered, as also the arguments made on behalf of the Applicant, the official Respondents and the private Respondent. The case law cited by the rival parties have also been perused. The main points on which the applicant seeks to find fault with the transfer order can broadly be seen to relate to the arbitrary nature of the transfer made barely four to five months after the Applicant's transfer to Mumbai, the lack of there being a public/administrative interest involved and the concomitant charge regarding the intention to accomodate Respondent No. 3, *malafide on the part of Respondents B.S.* and the arguments relating to the status of the factory at Richhai especially viz-a-viz the factory at Wright Town.

18. Of the above, the most important clearly appears to be the aspect relating to the transfer being made within four to five months of the Applicant's being posted to Mumbai. It must be said, given the total background of the case, *that B.S.* I find this to be the strongest point in the arguments and contentions made

on behalf of the Applicant. It must be stated that it cannot be the stand of any Tribunal that a second transfer within a short time cannot ^{at all} be made by Government. This indeed is not the stand per se that I would like to take. If public interest or some development even within a short period requires that a transfer should be made, there is no doubt that it can be done. However, does any such purpose exist here. In this regard, I seek to depend primarily on the notings in the file, photocopies of which (pages 1/N to 9/N) has been provided for my perusal, as mentioned above. While I do not consider it desirable or necessary in the interest of administration to reproduce details of the notings, suffice it will to say that a transfer to Mumbai was considered and ordered in July. These were approved at all levels. In January 2001, a proposal is made for the posting of Shri M.S. Sarma from Richhai to Mumbai in place of Applicant. The only point mentioned is that Shri Sarma has been representing for posting in Mumbai. The fact of Shri Goyal having joined Mumbai five months ago has been brought out but the transfer is nevertheless ordered on 18.01.2001 and the transfer order issued the same day. It is important to note here that no reasons are recorded beyond the fact in the originating note in one line that Shri Sarma has been representing for a transfer to Mumbai. Now this is a point on which the case of the Applicant has some strength and in the absence of any reason and the mere fact of a request within a few months, ^{the transfer} certainly can be termed as arbitrary specially in

the background of the case law cited. In this regard, I have carefully gone through the judgements made in the case of B. Vardha Rao and V. Kurikeysu. The case of Vardha Rao, while pointing out the limitations of the Tribunal in the matter of transfers has nevertheless deprecated frequent unscheduled and unreasonable transfers.

19. The judgements in the matter of Ved Bajaj and Vinod Sahi referred to above in the judgement, are also relevant. It is again nobody's ground that a request of an employee cannot be considered for a particular place on grounds of difficulty, but it is the manner in which it is done that is important and in this case, the manner in which it is done can certainly be termed as unreasonable in the facts and circumstances of the case. It must be stated in this connection that, had the transfer order of Shri Sarma been made in the normal transfers made at the time when Applicant was transferred to Mumbai, perhaps the matter would not have been termed arbitrary and unreasonable. Similarly, in cases of normal transfers it is not expected that detailed reasons be recorded for every transfer. But when a transfer is ordered after a person is in position only for a short span of five months, the requirements of reasons assumes importance. But in the background of a transfer made within five months with no strong reasons and with the stated reason of accomodating another person, arbitrariness can certainly be seen to have come into play.

Brs

Brs

20. I have also seen the judgements made in the case of N.K. Singh and S.S. Kourav from which support was sought by the Learned Counsel for Respondents. In fact, this Tribunal is more than conscious of the settled law in regard to transfers. But at the same time, the same law settled also enables the Tribunals and Courts to go into the aspects of arbitrariness, unreasonableness and infirmities like the one discussed in the above case. The specific ratios decided in these two matters are not being lost sight of, and, indeed cannot be. The specific point of arbitrariness on account of a transfer within very short time without any stated reasons is not the core issue in these cases.

21. ~~Now~~ I must comment on the other grounds on which the transfer is challenged by the applicant. On malafide, it is clear that no malafide on anyone's part is discernible and no evidence has been adduced to prove malafide. Similarly, the ground about the "lower" status of the Richai factory or of the superintendence of C.G.M. of Wright Town Factory holds no support to the case of the applicant. The main ground for the case of the applicant is as discussed in the paragraph above. In fact ~~it~~ it can be concluded in the facts and circumstances of this case that the action of the ~~Applicant~~ ^{Respondent} suffers from legal malice. The manner in which the above transfer has been effected, can certainly be termed as Legal Malice. It is indeed true that such kind of transfers, besides causing personal distress are also detrimental to the morale of officers. In the



CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

90/0/June

~~XX2~~./C.P./~~XXXX~~No. 33/2001.

IN

ORIGINAL APPLICATION NO. 56/2001

Shri H.C. Goyal.

... APPLICANT

V/s

Deptt. of Telecommunication & 2 Ors.

.. respondents

coram: HON'BLE Shri Justice A. Agarwal Chairman.

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

TRIBUNAL'S ORDER:

DATED: 18/6/2001.

On an application made by shri Ramamurthy
learned counsel appearing for the applicant leave is
granted to withdraw CP 33/2001 as also MPs 445 & 446/01.
3/01 and M.P. 445/01 & 446/01 are disposed of
accordingly. No order as to costs.



Certified True Copy
Date .22/6/2001

Bray
Section Officer
Central Admn. Tribunal,
Bombay Bench.

CAT/MUM/JUDL/OA 56/2001/ 48308
4837

DATED : 22/6/07

Copy to :

1. Shri R. Ramamurthy, counsel for the Applicant.
2. Shri V.S. Masurkar, counsel for the Respondents.

Balam
22/6/01
VINAY S. MASURKAR
Govt. Counsel.

Bray
Section Officer.

Despatched on 22/6/01
DESPATCHER

Ramamurthy
For R. Ramamurthy
22/6/01
Despatch