

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 828 of 2001.

Dated this Thursday, the 11th day of April, 2002.

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

V. P. Shashital,  
(Office Superintendent I.T.A.T),  
Resident at 37/1346,  
Sector-7, C.G.S. Quarters,  
Antop Hill,  
Mumbai - 400 037.

... Applicant

(By Advocate - Shri Suresh Kumar  
for Smt. S. D. Gulane)

VERSUS

1. Union of India represented  
by Secretary to Government,  
Ministry of Law, Justice &  
Co. Affairs, Department of  
Legal Affairs, New Delhi.

2. Vice-President,  
Income Tax Appellate Tribunal,  
Mumbai Bench,  
Mumbai.

3. Shri Kishan Rao,  
Deputy Registrar,  
Income Tax Appellate Tribunal,  
Central Government Building,  
4th Floor, M. K. Marg,  
Mumbai - 400 020.

... Respondents.

(By Advocate - Shri S. S. Karkera)

O R D E R (ORAL)

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



Since the matter lies in a short compass, it is taken up for final hearing at the stage of admission itself.

This is an application made by Shri V. P. Shashital,  
seeking the relief from this Tribunal for quashing and setting

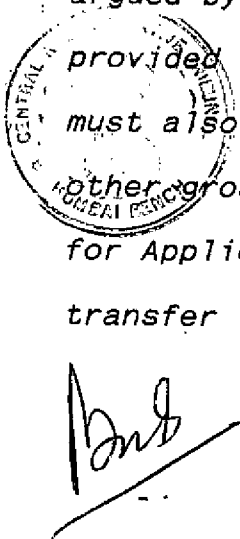
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aside of his transfer order dated 19.11.2001 (exhibit 'A'). Through this order, the Applicant who is working as Office Superintendent in the Respondents' Organisation, admittedly on basis of an ad-hoc promotion, has been transferred to Kolkata Bench.

3. The facts brought out in the case by Applicant, in short, are that after joining as L.D.C. in 1970, the Applicant is working on the basis of ad hoc promotion granted w.e.f. 01.06.1999 in the Mumbai Bench. The last extension in ad hoc promotion was provided to him vide order dated 13.09.2001 (exhibit 'B'). In fact, during arguments the Learned Counsel for the Applicant stated that another order has since been issued (not on record) dated 05.03.2002, continuing the Applicant on promotion, which has been refused by the Applicant. The Learned Counsel also informed us on query that Applicant, though relieved from Mumbai on 19.11.2001 has nevertheless not yet joined at the new place of posting.

4. It is further averred in the O.A. by Applicant that he cannot be transferred out of Mumbai since his is an ad hoc promotion to the post of Office Superintendent. The stand is taken both in the O.A. by Applicant (para 4.5) and strenuously argued by his Learned Counsel, that since the Government orders provided a right for refusal of regular promotion, this right must also accrue even in the case of ad hoc promotion. Certain other grounds are taken, as argued later by the Learned Counsel for Applicant, the important one being to the effect that the transfer is punitive in nature since it is dated 19.03.2001 and

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and comes in the wake of the memorandum issued to him (dated 13.11.2001) asking for his explanation on complaints received against him in regard to alleged activities not allowed under C.C.S. (Conduct) Rules.

5. The Respondents have filed a Written Statement of reply in which the claim of the Applicant is resisted. The following points are made (in gist) :

It is stated that the Applicant is, in fact; working on ad hoc promotion since 01.06.1999, that his is not an isolated case of transfer and others on ad hoc promotion, as detailed in para 5 have also been transferred out of Mumbai, and other places. It is stated that there is no rule or law to the effect that transfer of a person promoted on ad hoc basis cannot be made; that refusal of regular promotion entails debarment from promotion. In regard to the averments regarding punitive nature of transfer, it is denied that the transfer has anything to do with the memorandum referred to. The matter is under enquiry, consequent to the notice and reply. The Respondents go to length to point out that there is an order of Hon'ble High Court of Jharkhand, Ranchi, to form a Circuit Bench of the Tribunal in Ranchi and that the jurisdiction of the Kolkatta Bench supervises the Circuit Bench at Ranchi. It was in view of the administrative consideration the transfer was made. This matter is taken in detail in Written Statement.



6. I have heard the Learned Counsel on both sides at some length and have perused all papers in the case, including the

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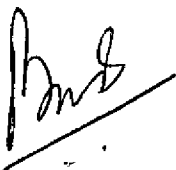
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case law cited by the Learned Counsel. The first point made by the Learned Counsel for Applicant, Shri Suresh Kumar, related to the aspect regarding rights of refusal of promotion, as already discussed. He argued that when the Government provides a right for refusal of regular promotion, this should automatically be available for ad hoc promotions. He expounded on this aspect at some length. In fact, Shri Suresh Kumar stated that this request has already been made to the authorities concerned, namely - the plea for staying on in Mumbai in the lower post has been made and it is rejected on the ground that the case is pending before C.A.T. and hence no decision could be taken.

7. The next argument taken by the Learned Counsel relates to the allegation that the transfer following as it does upon the issue of Show Cause Notice (exhibit 'B') is clearly a punitive order. This point was also elaborated upon. The point about difficulties in mid-term transfer has also been raised.

8. Arguing the case on behalf of Respondents, their Learned Counsel, Shri S. S. Karkera, reiterated the points in the Written Statement stating that firstly the Applicant is on ad hoc promotion since, 1999; that the order is issued purely in public interest in view of the developments as described in para 15 of Written Statement; that it is not an isolated transfer and finally, that the transfer has no relationship with the Show Cause Notice referred to. In this regard, the Learned Counsel for Respondents, went into the contention and stand stating that even if the transfer order came as a consequence of the Show Cause Notice on the alleged misdemeanour, it cannot be treated as

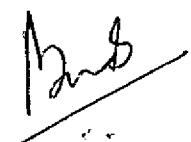
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punitive. He sought support from the case decided by the High Court in the matter of Arun Damodar Veer V/s. State of Maharashtra reported at 1999 (4) SLR 125. This point was expounded at some length by the Learned Counsel.

9. Learned Counsel, Shri Karkera, mentioned that the further request for staying on in Mumbai in a lower post has also been considered and rejected.

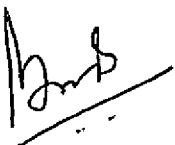
10. In the first place, let us deal with the point about mid-term transfer. Even though a right to refuse a transfer in mid-term does not accrue automatically, the issue is largely infructuous now as we are already in April and the Applicant has admittedly not joined the new post in pursuance of the transfer order. I next come to deal with the punitive nature of order. Admittedly, there is a show cause notice to the applicant issued. A copy of this notice is available at page 13 (exhibit 'D') of the Paper Book. The Applicant has been asked to show cause as to whether any permission was taken from competent authority to carry on private business while in service and other details. The Respondents have filed a copy of the letter dated 15.11.2001 which he has sent in reply stating that the facts has nothing to do with activities of recruitment or otherwise and explaining the circumstances under which the fax was received. Be that as it may, the facts are that the matter is being perused by the Respondents and will take its own course. It is not an issue before us in the present O.A. except to assess as to whether this results in our coming to the conclusion that the transfer is



punitive in nature. I have considered all aspect of the case law in the case of Arun Damodar Veer (supra) and cannot come to the conclusion that the transfer order is punitive in nature. The circumstances described about the Administrator's need in Kolkata cannot be disbelieved, nor the fact that certain other persons are also being posted out. No ground in regard to malice or arbitrariness which, are the important issue on which transfer orders can be interfered with, have been brought to our notice or proved. In regard to the argument about punitive nature of transfer, I am willing to accept the argument raised by Shri Karkera that even assuming that this transfer order was a consequence of the show cause notice, it cannot be ipso facto taken to lead to the conclusion that it was punitive in nature. The reasoning taken in Arun Veer's case need not be reiterated, as I respectfully agree with it. In fact, a point was also made in a case of Chief Engineer, Tamil Nadu Electricity Board V/s Raman reported at 1985 (1) LLJ 164. Thus, the transfer cannot be struck down as being punitive in nature.

11. I now come to the aspect about the point regarding promotion. Here, indeed, what has happened is that the Applicant was on ad hoc promotion since June, 1999 and has been granted extension in September, 2001 for another six months. In the middle, his transfer order comes. Although this point has been raised in para 4.5 of the O.A. and argued at length, the rules/instructions regarding refusal, its being a right or otherwise, or the conditionalities attached are not impugned. I am not convinced that any right can accrue for refusal of the transfer order, merely by the stand that the Applicant, once

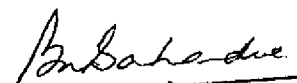
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transferred, could escape the transfer by stepping down one rung in the hierarchical ladder. No case law has been brought out by the Applicant. This is an important issue and unless it is raised as an issue, and Government orders/instructions challenged, it cannot be dealt with in any greater detail. In the facts and circumstances of the case, I cannot come to the conclusion that this alone will provide a right for the Applicant to get the relief of quashing of transfer order. No quashing of the order can be made on this count.

12. In view of the above discussions, I am not convinced that the relief sought can be granted to the Applicant. The O.A. is, therefore, dismissed with no order as to costs.

We must mention here that an M.P.No. 185/2002 has been filed for arraying the President of the organisation, which is resisted by the Respondents. Since the matter has been disposed of on merits, I am not going into the legal aspects raised in this M.P., which is deemed to be disposed of.

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

Order/Judgement despatched  
to Applicant/Respondent (s)

on 23/4/2002

