

# BOMBAY BENCH

7/29/2001

approval / signature.

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~~V.C. / Member (J) / Member (A) (K.E.)~~

B. Orsini  
15/3/02

**Hon'ble Member (A) (K/S)**

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.749/2001

Date of Decision: 15.03.2002

Shri Ajay G. Ubale.

Applicant(s)

Applicant in person

Versus

Union of India & others

... Respondents

Shri P.M. Pradhan

Advocate for Respondents 1 & 2

Shri Y.G. Rege.

Advocate for R3 to 5

CORAM: HON'BLE BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not? |
- (2) Whether it needs to be circulated to other Benches of the Tribunal? | ✓
- (3) Library ✓

*Shanta K*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 749/2001

THIS THE 15TH DAY OF MARCH, 2002

CORAM:

HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Ajay G. Ubale, Zonal Director,  
Narcotics Control Bureau,  
3rd Floor, Exchange Building,  
Sprott Road, Ballard Estate,  
Mumbai-400 001.

.. Applicant

In person

Versus

1. Union of India & Others  
through the Secretary, Department of Revenue,  
Ministry of Finance,  
Government of India,  
North Block,  
New Delhi-110 001.
2. Shri Gopal Achari, Director General,  
Narcotics Control Bureau,  
West Block No.1, 1st & 2nd Floor,  
Wing No.5, Sector VI,  
R.K. Puram, New Delhi-110.
3. N.S. Sarawade, Superintendent of Police,  
Central Bureau of Investigation, ACB,  
4th Floor, Tanna House,  
11-A, Nathalal Parekh Marg,  
Colaba, Mumbai-400 039.
4. Shri Manoj Pangarkar,  
Deputy Superintendent of Police,  
Central Bureau of Investigation, ACB,  
4th Floor, Tanna House,  
11-A, Nathalal Parekh Marg,  
Colaba, Mumbai-400 039.
5. Director General,  
Central Bureau of Investigation,  
CGO Complex, Lodhi Road,  
New Delhi.

.. Respondents

By Advocate <sup>se. P. M. Pradhan</sup> Shri-M-I. Sethna for R1 & R2  
Shri V.G. Rege for R3 to R5.

O R D E R

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

The applicant in this case is aggrieved by his premature repatriation from deputation and his immediate relief thereafter vide order dated 03rd October, 2001 and 04.10.2001.

2.        The applicant belongs to the 1988 batch of direct recruits of Indian Customs and Central Excise Group-A. He was appointed as Zonal Director of Narcotics Control Bureau, (NCB) Mumbai Zonal Unit, on deputation basis for a period of four years vide order dated 17.11.1999 (Annexure (A3)) and he took over charge on 01.12.1999. The applicant has challenged the impugned orders on grounds of there being punitive, arbitrary, malafide and violative of the principles of natural justice and having been issued in violation of professed norms.

3.        The applicant who pleaded in person submits that he has impeccable and outstanding record. His performance as Zonal Director in Mumbai is outstanding and surpasses all previous performance of the zonal unit. In the year 2000 the applicant's performance was better than the performance of any other zonal unit. According to the applicant, no reason has been assigned for his premature repatriation and transfer.

4.        In normal course he would have completed his

...3.

tenure on 30.11.2003. The applicant was relieved forthwith and repatriated even before completing four years tenure. No notice was given to the applicant before repatriating him and transferring him. Whereas under the general terms and conditions of deputation it has been provided that advance intimation of reasonable period be given to the deputationist before repatriating him prematurely. Thus, the impugned order is in violation of professed norms of giving advance intimation before prematurely repatriating him from deputation. The applicant has relied upon the observations of the Supreme Court in the case of N.K. Singh Vs. Union of India 1994 (6) SCC 98. He has also relied on the judgment in the case of R.C. Trivedi Vs. Union of India 1995 (2) SLJ 206 in this support.

5. The applicant attributes his repatriation and transfer to a certain incident which took place around 13-14th July, 2001 and on 19.7.2001 and the further developments thereafter. The foundation of his repatriation and transfer was these developments. it is not a simplicitor repatriation and transfer, but a punitive one and would be revealed from the narration of the incident and the subsequent developments as given by the applicant in the OA.

6. On 13/14th July, 2001 the officers of the NCB searched the premises at Gala No.1 and 2, Powai

Filterpadia Pathanwadi, Aarey Road, Powai, Mumbai and seized 1.050 Kg of Mandrax Tablets from Gala No.1, 70 Kgs of Mandrax Tablets and 4.430 Kgs of Methqualone powder, tableting machine and other equipments from Gala No.2. Three persons present at the said premises and one Navin Chandra Dubey who came to the said premises on 14.7.2001 were suspected to be connected to the Mandrax factory and were detained. After the Panchnama, all the four suspects were taken to NCB Office for questioning. After preliminary questioning, three persons were arrested under NDPS Act, 1985 and the 4th person, Navin Chandra Dubey was allowed to leave. All the arrested persons were produced before NCB Special Court and were remanded to NCB Custody.

7. On 18.7.2001 Shri Navin Chandra Dubey filed a complaint with Respondent No.3 that the three officers of NCB had manhandled him, threatened him and demanded Rupees five lakhs. On the same day Respondent No.3 recorded the FIR at 2000 hours. FIR was received in the office of the NCB on 24.7.2001. On 19.7.2001 at about 6 pm CBI officers sent Navin Chandra Dubey the complainant to the NCB Office with some recording device to trap the three officers. However, the trap failed as the concerned officers had detected the same. Then around 08.30 pm CBI team of 15-20 officers including Respondent No.4 DSP and another Dy.SP came to the NCB office to make inquiry and recover the recording device. During

...5.

the entire search proceedings by the CBI, the complainant Shri Navin Chandra Dubey and his brother-in-law were present, besides the other three accused who were in the custody. A Panchnama was drawn up by Respondent No.4 and completed at around 07.30 hours in the morning on 20.7.2001. Before leaving the NCB Office the CBI officers gave a common single copy of the said Panchnama to the three officers and took their acknowledgment without allowing them to read the same. The applicant specifically asked to give him a copy of the Panchnama as he was the Head of Office and present during the entire search, but the same was refused to him. After the CBI officers had withdrawn from the premises along with Shri Navin Chandra Dubey, the applicant submits, that he read the Panchnama carefully. According to the applicant, CBI officers were trying to find the things, which the complainant had not mentioned in his complaint. The Panchnama was not trustworthy. More over the CBI has recorded false allegation against the applicant in their Panchnama which had potential for mischief and can harm his career. There was no complaint against the applicant and yet the CBI officers behaved in a most objectional manner with the applicant. After the CBI officers had left, there were some discarded, torn papers left behind. The applicant states that after the torn pieces were carefully collected and assembled, it was found, that it was the unsigned Panchnama. On comparing the same with the

final Panchnama, it was found that the CBI had fabricated the final Panchnama. In the Panchname the comments, "throughout the search proceedings Shri Ajay Ubale, Zonal Director, NCB, Mumbai appeared very non cooperative and obstructive", were added to the final Panchnama as an after thought. The CBI Officers issued a press note on 20.7.2001 blaming the entire NCB organisation. The applicant, therefore, brought the entire incident to the notice of Respondent No.2 vide his letters dated 20.7.2001 and 28.7.2001. Instead of taking any action against the CBI Officers, Respondent No.2 directed the applicant to furnish the details before making any arrest vide letter dated 27.7.2001 and further asked for explanation of the applicant vide letter dated 30.7.2001. According to the applicant, the tone and the language of the letters of Respondent No.2 showed that he was totally prejudiced against the applicant. Further letters were exchanged between them. Thereafter, based on a report given by Respondent No.2 to Respondent No.1 the applicant was repatriated and transferred. The applicant feels that he was being victimised for raising the issue of fabrication of Panchnama by the CBI Officers. The applicant submits that he had not disobeyed any instructions issued by Respondent No.3. None was arrested, in fact he had suggested that Headquarters itself could conduct the investigation by sending its own officers. This background would establish that his repatriation and



transfer were not in public interest but were motivated by the action of the applicant under the NDPS Act.

7. The applicant has also relied on case law on transfer, they are as follows:

- (i) AIR 1986 (1) CAT 308 - K.K. Jindal Vs. General Manager, Northern Railway.
- (ii) Kamlesh Trivedi Vs. Indian Council of Agriculture Research - 1987 (7) ATR 253.
- (iii) B. Vandana Rao Vs. State of Karnataka 1986 (4) SCC 131.
- (iv) E.P. Royappa Vs. State of Tamil Nadu AIR 1974 SC 555.
- (v) Management of Syndicate Bank vs. Workmen AIR 1966 SC 1238.
- (vi) Shivaji Rao Nilangekar Patil Vs. Mahesh Madhav Gosavi 1987 (1) 227
- (vii) A.D. Dhule Vs. State of Maharashtra & Others AIR 1997 (1) SC 3067.

In K.K. Jindal's case, the Tribunal held that an arbitrary transfer in the circumstances, only means that it was ordered malafide or for extraneous considerations or in colourable exercise of power. In that since it would be arbitrary and violative of Article 14 (para 16).

8. In Kamlesh Trivedi (supra), the Tribunal held that "an innocuous transfer order may be penal in nature, may be arbitrary, may be actuated by malafides or may be the result of colourable exercise of power. It may be ordered to favour someone else or teach the

applicant a lesson". There was further observation in this judgment that a finding of misconduct, which attaches a stigma to a public servant cannot be arrived at without enquiry and any order of transfer based upon such a finding would be bad. If a finding of misconduct is arrived at without observing the principles of natural justice and that is the operative reason for transfer, it is liable to be quashed (para 14 and 21).

9. In E.P. Royappa's case, the Supreme Court held that "where the operative reason for state action as distinguished from motive inducing from the ante chamber of the mind is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to malafide exercise of power and that is hit by Articles 14 and 16". Similar view was taken in the Management of Syndicate Bank judgment, that if the order of transfer is made for some ulterior purpose like punishing an employee for his trade union activity, the Industrial Tribunal should interfere and set aside such an order of transfer.

10. The applicant thus urges that his repatriation and transfer are founded on certain incident and the developments thereafter, resulting in respondent No.2 being prejudiced against the applicant. It is a punitive order to teach the applicant a lesson and therefore, the impugned orders are liable to be quashed and set aside.

11. The respondents have filed their reply. Shri P.M. Pradhan arguing for Respondents 1 and 2 submitted that the order of repatriation of the applicant has been passed in the interest of administration. It is not for the Tribunal to interfere with such an order. He further submits that the Director General of NCB being the head of the Organisation responsible for the purpose of the functioning assigned to the NCB in terms of notification dated 17th March, 1986. The role of the other officers posted in the Bureau is to assist the Director General in the discharge of his functioning. He is thus, responsible and answerable for the functioning of the Bureau including any investigation being carried out by any officer posted in the Bureau, he has to closely monitor. The Deputy Director General of the NCB had visited Mumbai and had detailed discussion with various officers and has submitted a report indicating that the Zonal Director could be asked to furnish the details of further investigation in the case under reference before taking any action based on the said investigation. The office of Respondent No.2 had also received a report about certain citizens being implicated falsely and therefore directions were issued to the applicant to furnish the details of the evidence collected in further investigations in the case to the Headquarters before making any further arrests. Knowing fully well the arrangements in the NCB as specified in the Notification dated 17th March, 1986 and knowing his

role as a Zonal Director, the applicant started raising objections about the jurisdiction of the Headquarters to supervise the investigation and terming such supervision as ultravires and interference with the power conferred on the investigating officer under section 41 and 42 of the NDPS Act. According to the respondents, the applicant wanted to manage the affairs in accordance with his own whims and fancies. He did not want to obey the orders of the superiors nor he wanted to follow the procedure laid down. After the receipt of the report from Respondent No.2 in respect of various actions indicating the acts of insubordination on the part of the applicant, the applicant's order of repatriation <sup>4</sup> order was passed and he was relieved immediately. This action was required to be taken solely in the interest of administration and could not be said to be punitive in nature in any manner whatsoever. With a view to the smooth running of the NCB the order was passed with the approval of the Union Finance Minister. Since the repatriation order is purely of administrative nature, the question of giving any reason for premature repatriation does not arise in this case. More over the post held by the applicant is a sensitive post. Therefore, in view of the conduct of the applicant as brought out by the Respondent No.2 in his report about the applicant being insubordinate and giving misleading and contradictory statement and creating ill-will between different investigating agencies has ultimately

led to the passing of the impugned order. The respondents have further stated that there is no bias whatsoever and no merit on record which can be said to indicate such bias calling for the interference by the Tribunal. The order cannot be interfered with only on the baled allegation of bias and malafide made by the applicant.

12. In the affidavit filed by respondents 1 and 2 on 31st December, 2001 again it has been reiterated that the applicant had started writing letters to Respondent No.2 which were insubordinate both in tone and content and criticised the directions issued to him as ultravires. This was a clear case of insubordination which would vitiate the functioning of the Bureau and the position of its Director General. It was also clarified by Respondeat No.2 that though he came from CBI where he was working as Special Director, this fact has no relevancy to his functioning as Director General, NCB.

13. The learned counsel for the respondents argued at length to show that the applicant cannot claim any vested right to remain on deputation. There is no attempt on the part of the respondents to protect any illegal activity. According to the respondents, this is a case of simple repatriation to the parent department. The deputation was to an ex-cadre post. No doubt, the

applicant's term was of four years. The learned counsel for the respondents cited the judgment of the Delhi High Court in the case of Geetha Ram Gupta Vs. Union of India 1979 SLJ 727. It was held in the judgment that "provisions of Article 311 are not attracted where an officer, who has been enjoying, on his deputation to another department, greater emoluments and higher status and rank, is repatriated before the expiry of the specific period to his parent department in lower rank and with lesser emoluments. It was observed that the letter dated 12th February, 1972 issued by the Headquarters does not cast any stigma on the petitioner but merely states that it has been decided to revert the petitioner to Delhi Police with immediate effect. Clearly this order has been passed on the administrative ground. The motive behind the order is irrelevant more so on the facts of this case. The maximum the petitioner can claim is, his right to hold the post for the full tenure of three years i.e. upto 31.3.1974. In this case though the petitioner was directed to be repatriated with effect from 28.2.1974 yet admittedly he was granted 60 days leave by the CBI which goes beyond the fixed period of three years. The petitioner thus received greater emoluments and higher status and rank during the entire tenure period of three years. The

tenure period of three years. The repatriation of the petitioner to his parent department does not entail any punishment to the petitioner, or any loss of emoluments or any avile consequences and has to be upheld".

14. The learned counsel has further relied on the judgment in the case of Kunal Nanda Vs. Union of India 2000 SCC (L&S) 705. The Supreme Court held the view in this case that the depute has no right to continue on deputation or to claim permanent absorption in borrowing department unless his permanent absorption is covered by a statutory provision. This mainly refers to the absorption of the deputationist in the CBI. The learned counsel has also referred to the judgment of Rameshwar Prasad vs. Managing Director, U.P. Rajakiya Nirman Limited 1999 (8) SCC 381 in this connection.

15. While admitting that the applicant's tenure was four years and that FR SR Appendix 5 does call for giving prior intimation before repatriating the depute prematurely, the learned counsel for the respondents submits that this provision has no force of rule it is only by way of a guideline. FR 9 (25) gives definition of special pay. Appendix 5 Rule 8.1 talks about reasonable expectancy, it is between lending and the borrowing department. The entire object in giving prior intimation is to see that no department is unduly embarrassed. These instructions are purely suggestive

and not binding. On question about legitimate expectancy of the applicant about prior notice on account of such provision being made in the FR, the learned counsel took us to the judgment of the Supreme Court in FCI Vs. Kamadhenu Cattle Feed Industry AIR 1993 SC 1061. In para 27 legitimate expectation has been discussed. It was held that there was nothing justified in reasonable expectation on the part of the deputationist. Reasonable expectation depends on the facts of each case, public interest is to be seen. The learned counsel cited similar judgment in the case of M/s. Kasturilal Lakshmi Reddy Vs. State of Jammu & Kashmir 1959 SC 896. Here it was ruled that where Government action fails to satisfy reasonable expectation, it cannot be interfered with if public interest is involved AIR 1980 SC 1992. The learned counsel drew our attention to three more judgments as follows: (a) R.Abdulla Rauthar Vs. State Transport Appellate Tribunal, Madras & Others, S.Gopalan Nair Vs. K. Damodaran Nair & Ors AIR 1959 SC 896, in support of the contention that the executive instructions issued for the guidance are not in the nature of statutory rules having the force of law. Since the Government order contains merely executive or administrative direction their breach even if patent would not justify the issue of a writ of certiorari. Such orders do not confer any legal enforceable rights on any persons and impose no legal obligations on the subordinate



authorities for whose guidance they are issued. Even if any of the directions contained in the order is found to have been ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari. According to the learned counsel for the respondents since Rule 9 (25) of the FR only gives definition of special pay and the appendix 5 rule 8.1 mentions about giving advance intimation they do not have the force of law and therefore, it was not necessary to issue a notice to the applicant in the present case before repatriating him and relieving him. Again the learned counsel cited the judgment of the Tribunal in UT of Chandigarh Vs. Dinbag Singh & Ors 1993 (23) ATC 431. It was observed therein that even if reasonable expectation may be there but the person cannot have any vested right. In the case of the applicant, even the vested right is not there. The learned counsel for the respondents concluded that there was no malice or bias, it is purely based on the report of the Respondent No.2 that the applicant was recalled/repatriated from deputation.

16. Respondents No.3 to 5 represented by Shri V.G. Rege have also filed their reply. While adopting all the arguments of Respondent No.1 and 2, the learned counsel pointed out that the prayers (b) & (c) do not relate to service condition and therefore, they do not

come within the jurisdiction of this Tribunal. It is an evidence under the NDPS, it is ancillary to the dispute. The learned counsel also dealt with some details in regard to the incident on 19.7.2001. Also he refuted that the Panchnama was changed fabricated.

17. The learned counsel for the respondents 1 and 2 again reiterated that from 21st July, 2001 onwards when correspondence was exchanged calling for explanation of the applicant in regard to investigation that was being conducted, the applicant was fully aware that something was wrong with the manner of his investigation. He directed repatriation of three of the investigating officers realising that something had gone wrong in the case. He had even obstructed the investigation by CBI, behaved in a manner to create unnecessary rivalry instead of cooperation. He was asked to answer certain queries which he did not answer satisfactorily and he suggested ~~the~~ <sup>the</sup> to superior officers to take over the investigation by themselves (letter dated 19.9.2001). No right or no principle of reasonable expectation can be claimed by the applicant. The Supreme Court holds that all actions of Government are deemed to be bonafide and therefore, the burden lies on the person concerned to prove otherwise.

18. The applicant repeated the points already made out by him and he also tried to show the discrepancy in

the factual position relating to Navin Chandra Dubey. He persisted with his contention regarding fabricating of the Panchnama. The applicant also reiterated that even administrative instructions though not having the force of rules if not followed will lead to violation of Articles 14 and 16 of the Constitution. According to him the judgment in Kunal Nanda (supra) does not apply to him because that referred to a person being on deputation for too long. He also repeated that the performance of the Bombay Zonal Unit under his leadership has been the best. The applicant therefore, expressed that his premature repatriation without giving him advance intimation is against the principles of natural justice. The transfer is in violation of all statutory norms and the very fact that his repatriation is based on the report of the Respondent No.2 goes to show that his repatriation is not without stigma. The entire background points the finger to a stigma being cast on the applicant. It cannot be said to be routine repatriation or transfer order.

19. We have heard the applicant in person and the learned counsel for the respondents and have given our careful consideration to the rival contentions. We have perused the original documents produced by the respondents. We have also perused the relevant judgments cited on both the sides.

20. According to us two main issues emerge for our consideration (i) whether it was necessary for the respondents, to have given advance intimation to the applicant before repatriating him and to give an opportunity of being heard (ii) whether the impugned orders dated 03.10.2001 and 04.10.2001 repatriating and relieving the applicant are mere simplicitor orders issued on administrative grounds or they are punitive.

21. According to the applicant, he should have been given prior notice about his repatriation as provided for in Appendix 5 of FR SR. Para 8 under section<sup>1</sup> speaks of tenure of deputation. The period of deputation shall be subject to a maximum of three years in all cases, except of those posts where a longer period of tenure is prescribed in the recruitment rules. Para 9 talks of premature repatriation of a person to parent cadre. It reads as follows: " Normally when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of reasonable period to the lending Ministry/Department and the employee concerned". The applicant is relying on

this. The learned counsel for respondents has however, argued at length that it is not binding on the respondents to give any intimation to the applicant as the repatriation was ordered on administrative grounds. The main idea behind this provision is that intimation is to be given to the lending Ministry or Department in order not to embarrass them. This provision is only by way of guideline, merely executive instruction having no legal force. If that is so, it is equally right that the applicant has no vested right to continue on deputation, if the borrowing department does not need his services. All the same in our view he is governed by the terms and conditions of deputation given to him and it is laid down therein that prior intimation be given in case of premature repatriation. Therefore, the applicant had an expectation to that extent.. The learned counsel for the respondents had again emphasised that when there is no vested right, there can be no legitimate expectation either. All the same, for all practical purposes, since the applicant is governed by the terms and conditions as given to him, he certainly could not be prepared to be repatriated prematurely without prior intimation. What is important is time. Though he may be aware that he can be repatriated at any time during his tenure of deputation, he would not know the exact time and therefore, when such an order of premature repatriation is issued, it is bound to come as a jolt. In our considered view therefore, as provided

under para 9 of Appendix 5 of FR SR in such a case, prior intimation ought to have been given. We therefore, hold that the impugned order has the infirmity of not advance intimation to the applicant and not giving him an opportunity of being heard before repatriating him prematurely.

22. Now coming to the nature of the impugned order, the respondents have not disclosed any reasons for premature repatriation of the applicant in the impugned order. It is not even mentioned therein that it is on administrative ground or in public interest.

23. The respondents while claiming that it was a pure administrative decision to repatriate the applicant prematurely have, all the same, averred in their affidavit that it is on account of reasons other than mere administrative ground that the applicant was repatriated. A perusal of the narration of the facts and the developments that took place shows clearly that there was a foundation for promoting the respondents in taking the impugned action. It is revealed that the applicant's premature repatriation and transfer were not simplicitor repatriation or transfer. The material based on which the applicant was repatriated goes to show that misconduct of the applicant was the basis for the impugned orders. This is amply evident from the

report which was made by Respondent No.2 in his letter dated 21.9.2001 addressed to Respondent No.1. It has also been clearly averred in the affidavit of Respondent No.2 that the applicant's action and behaviour amounted to insubordination and led to creating ill-will between different investigating agencies, the applicant had been misleading and giving contradictory statements. He had also questioned the competence and ability of Head Office to direct him in the on-going investigation. He averted clear replies and his behaviour was highly reprehensive one. Therefore, Respondent No.2 had recommended his repatriation forthwith. This admission itself is enough to indicate that a stigma has been cast on the applicant implying misconduct on the part of the applicant and therefore, the respondents themselves having categorically asserted that the applicant was repatriated because of his misconduct, the impugned order has to be held as punitive as well as the result of colourable exercise of power. Premature repatriation and transfer based on misconduct attaching stigma to the applicant is punitive and cannot be ordered without affording reasonable opportunity of representation and enquiry. We therefore, hold that the impugned orders are not sustainable and need to be quashed and set aside. Accordingly, we quash and set aside the impugned orders dated 03.10.2001 and 04.10.2001. The applicant