

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 322/2001

Date of Decision : 29th August - 2001

Smt. J.K. Chowdhury Applicant

Shri P.A. Prabhakaran Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R. Shetty for Advocate for the
Shri R.K. Shetty Respondents

CORAM :

The Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the reporter or not? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (iii) Library *yes*

S.L. Jain
(S.L. JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.322/2001.

Dated this the 29th day of August — 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Smt.Jayagowri K. Chowdhury,
R/o.201, Rakesh CHS Ltd.,
Agarwal Terrace,
Plot No.II, Sector-2,
Koparkhairne,
Navi Mumbai.

...Applicant

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India through
The Chief Engineer,
Southern Command,
Pune.
2. The Chief Engineer (Navy)
26, Assay Building,
Colaba, Mumbai.
3. Garrison Engineer (Naval Works),
Mankhurd, Mumbai.
4. Smt. Rajkumari R. Harchandani,
Stenographer,
O/o. GE (NW),
Mankhurd,
Mumbai.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

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P.L.M. -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the orders relating to the transfer of the applicant out of the office of the Respondent No. 3 with a direction to the respondents that posting of the Respondent No. 4 if continued shall not be at the cost of the applicant.

2. The applicant has challenged the transfer order No. 12640/2343/EIB(i) dated 3.2.2001 by which he has been transferred from GE(NW) Mankhurd to CE (Navy) Mumbai, (the Office Order No. 24 dated 24.2.2001) the Movement Order of Respondent No.4 to replace or uproot the applicant, Attachment Order of Respondent No. 4 in the Office of Respondent No. 2 based on which she has worked in the Office for four days dated 26.2.2001 and Office Order No. 68 dated 30.4.2001 Movement Order of Respondent No.4 to replace or uproot the applicant.

3. The applicant who was working as Steno Grade III at GE (NW) Mankhurd is transferred vide order dated 3.2.2001 (Exhibit-'AA') to CE (Navy) Mumbai. The applicant was working at GE (NW) Mankhurd since March, 1998. She has been transferred to CE (Navy) Mumbai when there was no transfer liability for the applicant to be transferred. The inclusion of the Stenographers

J.L. Jain

in the transfer list is on personal grounds and not as a policy matter. The Respondent No. 1 has either favoured the Respondent No. 4 or given vent to the prejudice against the applicant and in both the events, the orders deserve to be quashed. The "Turn Over" document Exhibit-'A-1' requires two documents, namely, the Station seniority position and "Turn over due" certificate, which have not been issued and the category is not at all liable or turn over/transfer.

4. On a further perusal of the OA., the applicant has narrated the past history of her entry in service, i.e. entering the service of the Union of India as a Stenographer Grade III in the Armed Forces medical College, Pune in April, 1978, in 1985 she married Shri Kailash N. Choudhury working in the Income Tax Department at Mumbai who is physically handicapped person, in 1986 the applicant was granted a compassionate appointment in Mumbai and posting in the Office of GE (P) later named as NW as Stenographer Grade III, in 1989 the post of Stenographer was abolished and as a result the applicant was transferred and posted to the Office of CWE (Suburbs) Bhandup, in 1996 the Headquarters, Southern Command Pune issued the transfer guidelines for the employees styled as "Turn Over of Staff from Sensitive Appts." (Exhibit-'A-1'). The applicant worked in Bhandup office till 1998. Meanwhile, the applicant was blessed with a daughter in June, 1992. She has to take care of her daughter and husband and she also suffer from chronic Gynaec

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problems. She was trying to secure a better/more or more convenient place of posting to reduce the strain. In March 1998, the post of Stenographer in the Office of GE (NW) Mankhurd was restored and she was attached there on 22.5.1998 by a subsequent order dated 15.6.1998 she was posted to Mankhurd Office.

5. The respondents have resisted the claim of the applicant and alleged that Colaba & Mankhurd constitute two local areas within the same station called Mumbai which is controlled by Chief Engineer (Navy) Mumbai. S.R. 2(18) defines transfer as the movement of Government servant from one Headquarter Station in which he is employed to another such station to take up the duties of a new appointment or in consequence of a change of his Headquarters. There is no transfer at all of the applicant from one station to another station. The conditions of service of the applicant remain un-altered. The case of the applicant is one of deployment in public interest and therefore the applicant cannot have any justifiable grievance. The applicant has a transfer liability to any part of India. Even the husband of the applicant who is a physically handicapped person travels everyday from Vashi at New Mumbai to Aaykar Bhawan at Churchgate. In such circumstances, the applicant cannot complain against the order of deployment which is in public interest. The applicant has almost completed 3 years at Mankhurd. The transfer is an incidence of

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service. The Tribunal is forbidden from interfering with orders of transfer unless there is any malafide intention on the part of administration. The Respondent No. 4 had already resumed her duties at the office of Respondent No. 3 on 30.4.2001 where only one post of Stenographer exists. Hence, prayed for dismissal of the OA. along with cost.

6. The Respondent No.4 has separately filed a written statement affirming her joining at new station on 1.5.2001 and the stand taken by the official respondents.

The applicant has filed the rejoinder.

7. The learned counsel for the applicant on the basis of Annexure-'A-1', the policy decision of the respondents "Turn Over of Staff from Sensitive Apptts." argued that the post of Stenographer is not included in the said policy decision and hence the applicant is not liable to be transferred. It is suffice to state that the policy does not include the post of Stenographer but relates only to Sensitive Appointments and on the basis of which it cannot be said that the applicant is not liable to be transferred at all. Every Government servant is liable to be transferred.

8. In JT 1995 (2) SC 498 State of Madhya Pradesh & Ors. vs. Sri S.S.Kourav & Ors., the Apex Court has held that the Courts or Tribunals are not expected to interdict the working of administrative system by transfer of officers to proper places

Signature

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Decisions of administration shall stand unless they are vitiated either by malafides or extraneous consideration. It is further held that it is for administration to mitigate cases of relative hardship in interest of good and efficient administration. On

9. On perusal of the pleadings, I am of the considered opinion that the applicant has not made out any case for malafide or extraneous consideration. The vague allegations regarding favouring the Respondent No.4 or prejudice against the applicant without any facts holds no water. It is suffice to state that even none of official have been added by name. The malafides even in absence of the official being arrayed as respondents can be judged on the basis of pleadings but as stated I do not find any substance in such plea.

10. The learned counsel for the applicant argued on the basis of Movement Order and Attachment Order, subsequent in time, that the alleged transfer order is passed as the official respondents are interested in posting the Respondent No. 4 in place of the applicant. After transfer order, Movement Order is a necessity and when one transferred employee does not obey the Movement Order or is not inclined to join the new place of posting, for efficient working of the office even Attachment becomes necessary. By the said orders, no inference of malafides or prejudiced can be drawn.

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11. The learned counsel for the applicant relied on Swamy's News January, 2000, the case of S.S.Tunge & Ors. vs. Union of India & Ors. decided on 5.3.1999 by CAT, Mumbai Bench and argued that if a decision to transfer has been motivated with a view to confer undue benefits on a particular person, the same cannot be sustained. Law applies when the facts to the said effect do exists. In absence of the facts, the principle cannot apply to the present case.

12. Regarding guidelines on transfer as stated above, the said guidelines do not apply to the applicant's case and in view of Union of India & Ors. vs. S.L.Abbas, AIR 1993 SC 2444, it has been held that guidelines do not confer upon employee legally enforceable right. The order of transfer might without following guidelines cannot be interfered by the Courts unless it is vitiated by malafides or is made in violation of statutory provision. Thus, the scope in case of transfer matter is limited to the case of malafide or violation of statutory provision. Such a case do not exists.

13. As stated in case of S.S.Kourav & Ors., if on account of the said transfer any hardship is caused to the applicant, it is for the administration to mitigate it in the interest of good and efficient administration. The applicant has preferred representation which has been rejected.

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14. The applicant has not come to the Tribunal with clean hands for the reason that she has filed the OA. on 3.5.2001, OA. came for hearing on 4.5.2001, The applicant was guilty of suppression of fact that Respondent No. 4 has joined the new place of posting.

15. In the result; I do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

dt 29/8/01
Order/Judgement despatched
to Applicant/Respondent (s)
on 07/9/01
h

mrj.