

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:148/2001
DATED THE 2nd DAY OF April 2001

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Jawahar Singh, IPS,
Commandant State Reserve Police,
Force, Group II, Navi Mumbai,
Camp Goregaon.

... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
The Secretary,
Ministry of Home Affairs,
New Delhi - 110 001.
2. State of Maharashtra, Through
Chief Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai - 400 039.
3. Director General of Police,
Police Headquarters,
Opp.Regal Cinema,
Shahid Bhagat Singh Road,
Colaba, Mumbai - 400 039.
4. The Commissioner of Police,
Near Crawford Market,
Mumbai - 400 001.
5. T.K.Chaudhary,
Additional Director General
(Establishment),
Police Headquarters,
Opp.Regal Cinema,
Shahid Bhagat Singh Road,
Colaba, Mumbai - 400 039.

... Respondents

By Advocate Shri V.S.Masurkar

P.C. Shrivastava -

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

The applicant in this case has impugned the transfer order dated 22/2/2001 transferring and posting him to Pune in the capacity of Deputy Commissioner of Police. He has prayed to quash and set aside the aforesaid order and to post him as Deputy Commissioner of Police in Mumbai. He has also sought direction to respondents to follow job rotation or policy for job rotation.

2. The applicant is an officer of the Indian Police Service of 1986 batch and is of the rank of Superintendent of Police. He has been working as Commandant SRPF Group 11, Navi Mumbai having its headquarter at Goregaon, Mumbai since 28/6/98.

3. The respondent no.2 effected some general transfer orders involving 19 police officers of the rank of Superintendent of police vide orders dated 13/2/2001. The applicant was shown as having been transferred to Mumbai as Deputy Commissioner of Police. However, before this order could be implemented, there was another order issued on 14/2/2001 by Respondent No.3 transferring the applicant to Pune as Deputy Commissioner of Police. He was asked to join the posting at Pune immediately without availing joining time. The Applicant then filed OA 136/2001 against the transfer to Pune. Just when the OA was about to be decided, the applicant withdrew the OA on 22/2/2001 on the ground that the Impugned transfer order of 14/2/2001 had been cancelled by the Respondent No.3. The application was allowed to be withdrawn. The applicant submits that to his shock he received the same transfer order on the same evening transferring him from Mumbai to Pune, thus giving him a fresh cause of action.

S.L.Jain

4. The applicant is aggrieved by this Impugned order. According to him he is being subjected to unnecessary harrasment by the respondents continuously. The applicant has narrated how in the past he was issued a charge sheet and kept hanging for six years before the same was dropped. He had been forced to approach this Tribunal in OA 161/98 seeking a transfer to a cadre post which had been granted to him. Yet while posting him at Navi Mumbai, he was denied the cadre post and joined and continued there till the present transfer orders were issued. According to the applicant the respondents action is arbitrary, discriminatory. It has been passed for extraneous consideration and against public interest. There is no administrative exigency established in changing his transfer order and posting him to Pune. He has also alleged malafide stating that this transfer is mainly to accommodate someone else. Some interested person vehemently opposed the posting of applicant for reasons best known to them and got the applicant's transfer to Mumbai cancelled. The applicant has further alleged that some Officers who were transferred on the basis of a report of the Commissioner of Police, Mumbai outside Mumbai, have been posted back in Mumbai for the second time and one of them has been posted in the same zone where he had worked earlier. There are officers who have completed more than 5years and 4years in Mumbai. The applicant has further pleaded that as a matter of policy, direct IPS Officers should be given independent charge of District. But the applicant has been denied the same. He has been tossed from one place to another frequently and the respondents have abused and misused their powers.

J.L. Singh

5. The respondents admit that the original order of 13/2/2001 showed the applicant as having been transferred to Mumbai. However, this order was stayed on the very same night. The Government was of the view that the transfer of some of the Officers was required to be cancelled and modified. While this was under consideration, the Office of the Director General of Police issued a communication dated 14/2/2001 to the applicant on the assumption that the applicant would be posted at Pune. Since, there was no such order from the Government which is the competent authority, this order of 14/2/2001 came to be cancelled on 20/2/2001 by the Office of the Director General of Police. Thereafter, the order of 13/2/2001 was modified and in the process the applicant was transferred to Pune vide order dated 22/2/2001 communicated to the applicant through the Director General of Police's Office on 22/2/2001 which has been impugned by the applicant.

6..... The respondents state that the applicant is holding a transferable post and he is liable to be transferred anywhere according to administrative exigency and therefore no grievance can be made in this behalf. Transfers of Superintendent of Police level Officers and above are ordered by the Government as per the need of the administration and considering the suitability of the Officers. As far as the applicant is concerned, generally he was retained for a normal period while working in the capacity of Superintendent of Police on various posts. The respondents have denied that the Impugned order of transfer has been passed at the behest of some interested person for illegal purpose. It is neither against

P.L. Sharma - ...5.

public interest nor against good administration. No extraneous consideration was there nor is the transfer interest. Infact, the transfer order of 13/2/2001 was modified not only in respect of the applicant, but five other officers also. There was no malafide. The respondents have further informed that the applicant handed over the charge of the post of the Commandant, State Reserve Police Force Group-II, Navi Mumbai and Smt. Archana Tyagi has taken over from him, thus the transfer order has been implemented. The applicant is now on compulsory waiting at Mumbai due to the stay granted by the Tribunal.

6. The applicant also filed MP-213/2001 seeking the production of record pertaining to the transfer of the applicant.

7. The respondents were directed to bring the original record in this matter which was produced.

8. We have heard the learned counsel for the applicant as well as the respondents and have perused the original file relating to the transfer orders. We find that there is no ~~flouting~~ flouting of norms in the transfer of the applicant as alleged by him. There is neither any remark or observation against the name of the applicant indicating thereby that the applicant is being transferred to Pune on account of any adverse report or due to any pressure. It is a plain transfer order. The applicant's transfer order is not isolated one since there are five others also who were ^{re-}transferred on 21/2/2001.

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9. The learned counsel for the respondents relied on Para 23 & Para 24 of (1994) 28 ATC 246, N.K.Singh Vs. Union of India which is as under:

"Transfer of a government servant in transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personal management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

Challenge in Courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by Courts should be rare, only when a judicially manageable and permissible ground is made out."

10. Considering both the paras together, we are of the considered opinion that in case the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which can be scrutinised judicially, the matter needs to be interfered by the Tribunal. We agree with the learned counsel for the Respondents that in the impugned transfer career prospects of the applicant remain unaffected and there is no detriment to him. Hence, we have to examine only with an angle whether a judicially manageable and permissible ground is made out.

11. In para 18 of the said Judgment, the Apex Court has held as under:

"Shri Jethmalani rightly urged that the record is bound to show that nothing unusual was done and the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances. We have referred to the record only to mention that there is nothing therein to suggest that the transfer was unusual. No other suspicious circumstance is made out to permit the contrary inference. No roving enquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual."

12. The perusal of the same permits the Tribunal to refer to the record to arrive to a conclusion that whether malafides do exist or not and for that purpose reading between the lines and taking into account the attendant circumstance is permissible. Adopting the said principle, the Apex Court has referred to the record and arrived to a conclusion in para 19 of the said Judgment.

13. The learned counsel for the Respondents further relied on JT 1995 (2) SC 498 - State of Madhya Pradesh and Ors. Vs. S.S. Kourav and Ors. which lays down the proposition as under:

"It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation."

14. Thus, even in view of the said Judgment, the Tribunal has to examine the decision regarding transfer on ground of mala fide or extraneous consideration without any factual background foundation. On a further perusal of the said judgment, it is clear that the Tribunal cannot go into the question of relative

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hardship and it is for the Government to consider and take appropriate decision in this behalf.

15. The question of mala fides is to be decided on the test of probability and on their intrinsic worth. If an employee is transferred for accommodating another in his place, it is to be held to be arbitrary and discriminatory exercise of power as it amounts to extraneous consideration. Similarly, accommodating certain staff of choice and putting others otherwise amounts to mala fide exercise of powers. Even if, there is no mala fides but arbitrariness exists, the interference is permissible. (M.C. Barke Vs. Employees State Insurance Corporation {1992} 20 ATC 803 (Bombay)).

16. Keeping in view, the above principles, we have to examine the facts of the present case to arrive to a finding whether the order of the transfer dt. 22.2.2001 is mala fide/arbitrary/based on extraneous consideration.

17. On 9.2.2001, a proposal to transfer 19 officers was moved which was considered and accepted by the Government with a change of one officer's posting. On 13.2.2001, it was ordered by Additional Chief Secretary that ~~order~~ the orders should be given today itself immediately. Accordingly, the order was issued in the evening on 13.2.2001. However, as per a phone call from DGP to the concerned Joint Secretary at night on the same day, DGP informed that all the orders had been stayed immediately. However, the reasons for staying the transfer orders and at whose instance it was done is not on record.

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18. On 14.2.2001, after discussion with Principal Secretary (Home), the order dt. 13.2.2001 was allowed to stand in respect of eleven Officers, cancelled in respect of three Officers and changed in respect of five officers. It is worth mentioning that the reason to stay the transfer order dt.13.2.2001 and to reconsider the transfer on 14.2.2001 is not on record. What persuaded the government to reconsider the same, is within the special knowledge of the Government/Respondents. When none has moved the Government to reconsider the transfer order dt. 13.2.2001, to consider suo moto on 14.2.2001, to cancel the order of three officers and change the place of postings in respect of five officers, amounts to exercise of power in arbitrary manner and on extraneous consideration.

19. Normally, while taking a decision it was expected to take a considered decision, which appears to have been done by not accepting the proposal in toto and having not agreed in respect of one officer. Further, issue of the orders were directed and without any reason it was stayed on the same day mentioning the direction given on the evening of 13.2.2001, we are not aware at whose direction it was done. On 21.2.2001, the impugned transfer order was passed as stated above. Though, dates of posting in respect of officers including three officers whose transfers have been cancelled have been indicated but not indicated in respect of the officers who came from deputation and no reason for change in respect of applicant is mentioned.

19(a) We are not inclined to accept the plea that the applicant has completed more than three years at Mumbai, hence he is posted to Pune. The reason being that he was posted as Commandant, SRPF

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Mumbai while as per order dt. 13.2.2001 he was posted as Dy. Police Commissioner, Mumbai, another station. These are two different postings - one is at Navi Mumbai and the other is at Mumbai, secondly the first one is not a cadre post whereas second one is a cadre post and these things were all existing while a decision was taken on 13.2.2001.

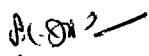
20. The issue of communication dt. 14.2.2001 by the Director General of Police by which the applicant was posted at Pune which was cancelled vide communication dt. 20.2.2001, may be by incompetent authorities to transfer the applicant or cancel the same, but in the above background, when the transfer is again at Pune, it can be safely inferred and concluded that it must have been at the instance of the Government.

21. In the aforesaid circumstance, we are of the considered opinion that order dt. 21.2.2001 transferring and posting the applicant to Pune is arbitrary exercise of power based on extraneous consideration and to accommodate others. Hence, it deserves to be quashed and is quashed. No costs.


(SHANTA SHASTRY)

MEMBER(A)

abp.


(S.L.JAIN)
MEMBER(J)