

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.423/2001

Dated this, _____, the 31st Day of July, 2001.

Shri Dharam Dass Applicant

(Applicant by Shri A.I. Bhatkar, Advocate)

Versus

UOI & Ors. Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

CORAM:

HON'BLE SHRI S.L.JAIN, MEMBER (J)
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. ✓

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(Smt. Shanta Shastri)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.423/2001

Dated this, _____ the ^{31st}~~th~~ day of July, 2001.

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

Shri Dharm Das, Presently
Working as Senior Administrative
Officer/Manager Administration,
Naval Dockyard, Lion Gate,
Mumbai residing at 12, Sabarmati,
Naval Park, LBS Marg,
Ghatkopar (W),
Mumbai 400 086.

..... Applicant

(Applicant is by Shri A.I. Bhatkar, Adv.)

vs.

1. Union of India, through
The Secretary, Ministry of
Defence, Sena Bhawan,
New Delhi - 110011.
2. The Chief of the Naval Staff
Naval Headquarters, DHQ P.O.
New Delhi 110 011.
3. The Chief Administrative Officer,
Dy. Director, Civilian Personnel,
Naval Headquarters,
New Delhi 110 011.
4. The Flag Officer Commanding-in-Chief
Headquarters Western Naval Command
SB Singh Marg, Mumbai 400 001.
5. The Adminiral Superintendent
Naval Dockyard, Lion Gate,
Mumbai 400 023.
6. Captain K.K.Singh,
Dy.General Manager (P&A)
Naval Dockyard, Lion Gate
Mumbai 400 023.
7. Shri C.G. Bangalekar,
Administrative Officer Gde. I
Indian Naval Distributing Authority
INS Angre, SB Singh Marg,
Mumbai 400 001.

.... Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

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O R D E R

[Smt. Shanta Shastri, Member (A)]

The Applicant in this case, is aggrieved by the order dated 12.4.2001 issued by Respondent No.3, whereby the Applicant has been transferred from Mumbai to Visakhapatnam, the Order dated 24.4.01 issued by Respondent No.4, notifying the aforesaid transfer Order and the Movement Order dated 12.6.2001 issued by Respondent No.5 relieving the Applicant w.e.f. 21.6.2001 for reporting for duty at the new station. The Applicant is a Group A Officer holding the post of Senior Administrative Officer in the Pay Scale of Rs. 10000-15200/- at the Naval Dockyard, Mumbai, working in the post of Manager (Administration). He was promoted to the post of Senior Administrative Officer Grade w.e.f. 28th October, 1992 and has thus completed 8 1/2 years in this Grade. The Applicant was expected to be promoted to the higher post of Chief Administrative Officer, Dy. Director (CP) in the Pay Scale of Rs.12,000 - 16500/-. The Applicant is agitating his non promotion separately.

2. The Applicant has assailed his transfer order on the following grounds:

(i) According to the Applicant he has been transferred from the Naval Dockyard, Mumbai to the Naval Dockyard, Vishakapatnam in the same capacity without any authority, powers and jurisdiction. The Respondent No.3 is not the competent authority. Only the President of India is the transferring authority for the Applicant

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because applicant is a Group A Officer. After the President of India, the hierarchy of the Officers in the Indian Navy is as follows:

(a) Chief of Naval Staff, (b) Vice Chief of Naval Staff, (c) Chief of Personnel, (d) Assistant Chief of Personnel and (e) Director of Civilian Personnel. No separate transferring authority other than the President of India has been prescribed anywhere. In fact the Respondent No.2 had put up a proposal to Respondent No.1 for delegation of Powers of the Appointing and Disciplinary Authority in respect of Group A to D posts in the Indian Navy. According to the draft proposal also, it was proposed to delegate powers of the appointing/disciplinary authority to Chief of Personnel (COP for short) and the powers of appellate authority to the Vice Chief of Naval staff and powers of reviewing authority to the Chief of Naval Staff. Even if the proposal had been accepted still the transferring authority in respect of the applicant would be the Chief of Personnel (COP), i.e. four steps above the Respondent No.3 who has issued the transfer order in respect of the Applicant.

(b) Apart from the competency of the authority to issue the transfer order, according to the

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Applicant the transfer is not at all made in public interest or on administrative grounds. He has been transferred in the same capacity. One Mr. C.G. Banglekar, A.O. Grade I has been transferred in place of the Applicant. No one has been posted in place of Mr. Banglekar and his post has been kept vacant. Mr. Banglekar has also been holding additional charge of the post of Senior Administrative Officer i.e. the post held by the Applicant. His transfer has been made with *malafide* intention and colourable exercise of power and for extraneous consideration. According to the Applicant he is performing his duties efficiently, sincerely and to the utmost satisfaction of the head of the organisation. The Applicant has been relieved even without waiting for a reliever to come. According to the Applicant his transfer is with *malafide* intention only with a view to take revenge on him for filing cases before the Tribunal for his rights. Earlier also the Respondents had issued a transfer order transferring him from Mumbai to Headquarters, Goa area in July 1993 and he was struck off from strength also w.e.f. 10.1.1994. The Applicant had challenged his transfer in O.A.No.42/94 on various grounds and the O.A. was allowed by the Tribunal on 29.4.1994 quashing the transfer

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order. He had also approached this Tribunal in O.A. 1235/96, against the action of the Respondents in advertising to fill up one of the posts of Dy. Director of Civilian Personnel on deputation when all the posts were required to be filled up 100% by promotion. The Applicant had again filed another O.A.No.357/98 alleging malafides against the then Director of Civilian Personnel (DCP), Commodore B.K. Alluwalia. However this O.A. was dismissed on 1.3.2001 and thereafter immediately the Applicant has been transferred by the impugned order dated 12.4.2001. This clearly goes to establish that the Applicant has been transferred for extraneous reasons. The Applicant has further alleged that his transfer is at the instance and hands of Respondent No.6 who is his immediate superior officer in the Naval Dockyard at Mumbai, from 19.3.1997. The Applicant belongs to the SC Community and according to him the Applicant is not liked by his immediate Officer and Respondent No.6 has been harrassing him by issuing various Memos though the Applicant has been carrying out ^{his} duties sincerely with dedication and to the utmost satisfaction of Respondent No.5. The Applicant has also cited that the Respondent No.5 appreciated the work done by the Applicant during the annual inspection take up by the Department.

He has been further harassed by Respondent No.6 by shifting the office premises of the Applicant to another place at a long distance. The Applicant, therefore, has prayed that there being no public interest involved or administrative exigency involved, his transfer order is malafide and deserves to be quashed and set aside. The Applicant has made a representation on 30.4.2000 addressed to Respondent No.2. At the time the O.A. was filed he had not received any reply to this representation. The Applicant has also prayed for Interim Relief in terms of para 9 of his O.A. and the Interim Relief had been granted by staying Movement Order dated 12.6.2001 (Annexure A.3) and the Tribunal has also directed the Respondents to dispose of the representation of the Applicant. Accordingly his representation was disposed of vide letter dated 27.6.2001 rejecting his request for cancellation of his transfer order. The Applicant has amended the O.A. by impugning this order and praying to quash and set aside the same.

3. The Respondents submit that the transfer order of the Applicant has been issued by the competent authority and it has been issued in public interest as the post at Naval Dockyard, Vishakapatnam was lying vacant and the applicant had been working at Mumbai since 1984 in different capacities. The

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Applicant's transfer is neither mala fide nor in violation of any statutory Rules. The Dy. General Manager (P&A) who is the superior Officer of the Applicant had been issuing the memos to the Applicant to improve his efficiency and respond to the directive issued. The Applicant's performance can at best be described "undistinguishable" and "average". He has been counselled both orally and in writing to improve his efficiency. It cannot therefore be stated that the Applicant has been performing efficiently. Though the Applicant belongs to the SC community, the Respondents have never made any attempt to put the Applicant in any disadvantageous position on the ground of cast. This is all the imagination of the Applicant^{ml}.

4. The Respondents admit that Applicant is a Group A Officer and the President is the Appointing Authority for Group A Officer. However, the powers have been delegated to the Officers in the Naval Hierarchy. In the instant case, the Naval Headquarters is the Cadre Authority and the order of transfer issued is valid and lawful. The Applicant has also raised the plea that he has been posted to Vishakapatnam under employees who are junior to him. The Respondents deny this and say that the Officers in Vishakhapatnam have already been promoted to higher post in the Grade of CAO. Therefore they are not junior to the Applicant. The Applicant is a Group A officer and is liable for All India Transfer. He cannot, therefore, claim immunity in this matter. It is nowhere stated that the SC Community candidate should not be transferred though there are guidelines of the Govt. of India that they should be

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transferred rarely and for strong reasons. The Applicant in the past had made submissions for adjusting him at least in Mumbai or in New Delhi on other personal grounds. His main intention is to avoid transfer. However, it is upto the competent authorities to transfer people anywhere as per administrative exigencies and in public interest. The Respondents are relying on the judgement of the Hon'ble Supreme Court in the case of *Laxmi Narayan Mehar vs. UOI* [1997 (1) SCSLJ 461] Further the Respondents are also relying on the following judgements in support of the right of the Respondents to transfer the Applicant:

- (a) UOI vs. S.L. Abbas AIR 1993 SC 2444.
- (b) Full Bench Judgements Vol. 1 Page 80, Kamlesh Trivedi vs. ICAR
- (c) Rajendra Roy vs. UOI AIR (1993) SC 148.
- (d) Srichand vs. UOI (1192) 20 ATC 474.
- (e) Abani Kanta Roy vs. State of Orissa, 1995 (8) SLP (SC) 687
- (f) Arun D. Veer vs. State of Maharashtra 1994 (4)\ SLP (Bom) 125.

5. The Learned Counsel for the Applicant is not prepared to accept that the transfer order has been issued by the Competent Authority. He insists that no delegation has been made to the Respondent No.2 to transfer the applicant. He also, therefore, requests to call for the records to ascertain whether the competent authority had approved his transfer before it was communicated to him by Respondent No.3. The learned Counsel is drawing the support from the judgement of the Supreme Court in

the case of *Dr. Ramesh Tayagi vs. UOI and Ors* [1994 SCC (L&S) 562. In this case it was clearly held that an order issued by subordinate authority having no delegation of power at the relevant time was invalid and nonest. In that case, the Secretary of the Department was the competent authority whereas the transfer order was issued by the Director General claiming to be the delegated authority. The court held otherwise. The learned Counsel for the Applicant maintains that neither the transfer order nor the reply to the representation dated 27.6.2001 is passed by the competent authority.

6. As the Applicant has challenged the competency of the authority transferring him, the Respondents were directed to make the position clear regarding the competent authority and also to produce the relevant records to see whether the transfer order had been approved by the competent authority or not. The Respondents have produced some documents including the recorded Note under which the Applicant's transfer was effected. The Respondents submit that the Vice Chief of Naval Staff (VCNS) has issued a Memo No.23/91 on 30th September 1991 in regard to the management of Civilian Personnel at Naval Headquarters with a view to rationalise the same. Accordingly, the Asst. Chief of Personnel (ACOP) will be the Nodal Agency for all matters pertaining to the Civilian personnel in the Navy with DCP/Controlling/Professional Directorates responsible for detailed management of aspects pertaining to civilians. The Director of Civilian Personnel is responsible for policy formulation, recruitment, statutory functions, financial powers,

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discipline and vigilance cases etc. and finally DGAS, DLS, DNA, DOS(E), DOS (E), DOS(L), DW, DNAI, DNE and DCP are classified as the Controller Directorates in respect of different categories of Civilian employees of their Cadres and are responsible for implementation of policies and career planning etc. Further, directions have been issued by Office Acquaint No.01/2000 in regard to the format of correspondence mentioning therein that in supersession of the earlier orders it has been decided that the use of 'for Chief of Naval Staff' in the format of correspondence issued from Naval Headquarters will be discontinued. The Respondents have also produced some previous orders of promotions in respect of the Applicant dated 26th October, 1992 and 27.5.1994. The order of 26th October, 1992 promoting the Applicant in the Grade of P.M./A.O. is signed by Director, OSD to ACOP (Civ), for Chief of Naval Staff. The order dated 27.5.1994 regarding promotion and posting orders in the Grade of upgraded CGO and PM/AO again is issued by the Assistant Director of Civilian Personnel for Chief of Naval Staff. Thereafter the draft Gazette Notification dated 22.7.1993 promoting the Applicant w.e.f. 20th October, 1992 issued by the Dy. Director of Civilian Personnel. A note in which the Applicant's transfer was approved is also produced. It is seen from there that the proposal was approved at the level of the Assistant Chief of Personnel. In view of the reorganisation introduced in September, 1991 it cannot be said that the Applicant's transfer was not approved by the competent authority as can be seen further. When the applicant was promoted on 27th May 1994 the orders have been issued by the

Assistant Director of Civilian Personnel, for Chief of Naval Staff. The Applicant had accepted this though the Assistant Director of Civilian Personnel is much lower in the hierarchy. Similarly, the order dated 26th October, 1992 by Director and OSD to ACOP (Civ) for Chief of Naval Staff. Here again the authority who issued the letter appears to be lower than the ACOP who approved the present transfer proposal of the Applicant and the Applicant had accepted the earlier orders of promotion. A perusal of A.1 (O.A.page 32 and 33) clearly suggests that the applicant is transferred by Chief Administrative Officer, Deputy Director of Civilian Personnel, Naval Headquarters, New Delhi. CAO-DDCP cannot be said to be Assistant Director of Civilian Personnel but as it is approved by Assistant Chief of Personnel, the order can be said to have been passed by ACOP. Thus the said order is passed in view of Memo No.23/91 dated 30.9.91 in regard to the management of civilian personnel at Naval Headquarters. We are, therefore, inclined to hold that the transfer order cannot be said to be illegal or invalid or vitiated just because it is not signed by the President of India or the Chief of Naval Staff as claimed by the Applicant.

7. Coming to the other grounds taken by the Applicant, in our considered view, the Applicant being a Group A Officer is liable for transfer anywhere in India. The pleas taken that he has been transferred to Vishakapatnam to work under his junior officers and that he has been relaced in Mumbai by a much junior officer, according to us do not hold any water in view of the

position explained by the Respondents in their Written Reply. The malafides alleged by the Applicant against Respondent No.6 also seem to have been the subject matter in the O.A. No.357/98 which was dismissed by this Tribunal. There are no such further heads which can lead us to conclude on the ground of *malafides* is made out to the applicant. Further, the Respondents have denied that the Respondent No.6 had any hand in the transfer of the Applicant. He had not approached any authority for transfer of the applicant. It was decided independently at NHQ by the competent authority. There are Civilian Officers belonging to SC/ST community in the Personnel and Administrative Division headed by the DGM,(P&A) at the HOD, who are functioning efficiently and have come up for praise not only orally but the same has been reflected in their ACRs. It cannot, therefore be said that the Respondent No.6 is discriminating in respect of the Applicant because he belongs to the Scheduled Caste Community.

8. The Applicant has not been able to produce any convincing material before us to be persuaded to interfere with the impugned transfer order. In our considered view, therefore, O.A. deserves to be dismissed and we Order accordingly. No Costs. Interim Relief Granted on 21.6.2001 and continued from time to time stands vacated.

Shanta
(Smt. Shanta Shastri)
Member (A)

S.L. Jain
(S.L.Jain)
Member (J)

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