

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 65/2001

DATE OF DECISION: 12/04/2001

Shri A.B.Waghmare

Applicant

Shri K.R.Yelwe

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri R.R.Shetty

-----Advocate for
Respondents.

Coram:

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

1. To be referred to the Reporter or not? /x
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. ✓

Shanta
(SHANTA SHASTRY)
MEMBER(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 65/2001
DATED THE ^{24th} DAY OF APR. 2001**

CORAM: HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Shri A.B.Waghmare,
Helper, Regional Training Centre,
(Western Region),
Mumbai residing at
Bldg.No.68, Room No.2920,
Sector VII, Antop Hill,
Mumbai - 400 037.

... Applicant.

By Advocate Shri K.R.Yelwe

V/s.

1. Union of India, through
The Secretary to the Government of India,
Ministry of Industries,
New Delhi.
2. The Director,
Regional Testing Centre(Western Region),
Kurla Andheri Road,
Saki Naka, Mumbai - 400 072.
3. Shri P.K.More,
Helper S.I.S.I. Aurangabad,
(through Respondent No.2)

... Respondents

By Advocate Shri R.R.Shetty

(ORDER)

Per Smt.Shanta Shastri, Member(A)

In this application made under section 19 of the Administrative Tribunals Act 1985, the applicant who is a helper in the Office of the Regional Testing Centre, Mumbai has challenged the office order dated 17/1/2001 by which he has been transferred to the Office of the Small Industries Service Institute, Aurangabad in place of Shri P.K.More, Helper transferred to Regional Testing Centre, Mumbai.

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2. The applicant has been working since 1980 in the Regional Testing Centre, Mumbai i.e. with respondent No.2. It is the contention of the applicant that his transfer has been made to accommodate another person and also the transfer order has been issued by a person not competent to issue the order. There is no administrative exigency. Moreover, the transfer order has been issued in the mid term of the academic year. This would have adverse effect on the education of his children. The applicant has therefore prayed to set aside and quash the aforesaid impugned order dated 17/1/2001 and to award him costs. Though the applicant had prayed for interim relief, the same was not granted.

3. The applicant has argued that his transfer is against the transfer policy. This order was issued by one Shri Gajbiye^h who was only acting Director. The transfer was effected by Shri Gajbiye^h just one day before he handed over the charge to the new Director.

4. The respondents have filed their reply. In the reply, the respondents have stated that the transfer has been made in Public interest. According to the appointment order of the applicant, he is liable for transfer anywhere within the state of Maharashtra. He has been working since 1980 in Mumbai and he has been transferred in public interest. Therefore the order cannot be faulted with. The applicant has not given any details while attributing malafides to the earlier acting Director Shri Gajbiye^h. The respondents have further submitted that the applicant was transferred in view of a letter dated 20/12/2000

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from the Director of the Regional Testing Centre addressed to the Deputy Director in charge of Small Industries Service Institute, Mumbai, stating that it had become necessary to change the place of posting of the applicant alongwith some other staff with suitable replacement posts. The reason given is that to have better working atmosphere in the office it was necessary to change the posting of some of the staff that is those not attending to the specified requirements of the office working procedures with respect to the laid down rules and regulations.

Accordingly, the applicant has been transferred to Aurangabad and for better and effective working.

5. The applicant has pleaded that being a group 'D' post, persons holding such posts are not liable for transfer. He has in support cited the recommendations of the 5th Central Pay Commission in regard to the transfer policy which recommends that transfers should not be made in mid term nor should they be premature. Also no transfer of group 'D' employees from one station to another should normally be resorted to except in very exceptional circumstances. The applicant has also relied upon the judgement of the Calcutta High Court 1972 SLR 914 and SC 1994(1)SLR 838, AIR 1986 SC 1955, the judgement of the Hyderabad Bench of Central Administrative Tribunal 1993(4) SLR 160 etc in support that transfers made on the basis of suspicion as regards conduct have to be treated as punitive in nature and in colourable exercise of power. The applicant has also pointed out that the real reason is the letter from the Regional Testing Centre which has called for the transfer of certain persons.

6. In this letter from the RTC transfer was suggested of three persons, namely one Shri M.K.Brahmachari, LDC, Shri O.K.Kamal, Hindi Typist and the applicant. However, the respondents have transferred only the applicant who is an helper and lower in rank to the other two. This is discriminatory. It is very clear from the action of the respondents that the applicant's transfer is not a routine transfer but is a motivated transfer. If the conduct of the applicant was not satisfactory proper enquiry should have been conducted and an opportunity should have been given to him. This has not been done. It is against principles of natural justice.

7. I have heard the learned counsel for both sides. As long as a transfer is in public interest without any malafide or not in violation of statutory rules or laid down transfer policy it is really not for the Tribunal to interfere with such transfer orders. Also the respondents are free to transfer a person in the interest of smooth working in the office. In the instant case however I find that the applicant's transfer is not a routine transfer made in public interest or due to administrative exigencies. The real reason is the letter from the Director, R.T.C. clearly showing misconduct of the applicant. There is a stigma behind the transfer order. In my considered view I agree with the applicant that the proper course would have been to enquire into his conduct rather than transfer him.

8. The transfer is also discriminatory. When the letter from the Director, R.T.C called for transfer of three persons

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only the applicant was singled out for transfer and the other two were not transferred.

9. I therefore hold that this being a punitive transfer, the impugned order is not sustainable. The same is quashed and set aside. OA is allowed. No costs. h

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

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