

INTERIM ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Registered A/D

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

TUESDAY, THE 15TH OF JULY, 1986

PRESENT

THE HON'BLE MEMBER (JUDICIAL) ... SHRI CH. RAMAKRISHNA RAO
THE HON'BLE MEMBER(ADMINISTRATIVE) ... SHRI L.H.A. REGO

IN

APPLICATION NO. 1456/86(F)

K. Ghante,
C/O Shri M. Raghavendrachar, Advocate,
No. 1074 and 1075, Banashankari I Stage,
Sreenivasanagar II Phase,
Bangalore.

... Applicant

VERSUS

1. The General Manager,
Telecommunications, Karnataka Circle,
Bangalore.

2. Sub-Divisional Officer,
Telephones, Dharwad.

... Respondents

ORDER

In the above application this Tribunal has passed the
following Order:-

Shri M. Raghavendrachar, Advocate for the petitioner,
present. After perusing the record and hearing Shri Achar,
the Application is admitted.

Shri Raghavendra Achar prays that interim orders of stay
of the impugned order dated 14-5-86 be issued in so far as it
relates to his client, since he apprehends that his client may
be transferred at any time, and this will cause his client
irreparable loss and hardship.

We are satisfied on the facts and in the circumstances of the
case, that this is a fit case to dispense with the requirements of
Section 24(a) & (b) of the Administrative Tribunals Act, 1985. We
accordingly do so, and grant interim stay of the impugned order
for a period of 14 days from today. Let notice issue to the
respondents, returnable in 14 days.

Application will be listed for further orders on 30-7-86.

Given under my hand and the seal of this Tribunal,
the 16th day of July, 1986.

17/7
8/C
REGISTRAR

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 2nd SEPTEMBER, 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)
Hon'ble Shri L.H.A. Rego - Member (A)(R)

Application No. 1456/86

K. Ghante
Hubli Phones Division
Dharwar - Applicant

(Shri M. Raghavendra Achar, Advocate)

and

1. The General Manager
Telecommunications,
Karnataka Circle, Bangalore

2. Sub-Divisional Officer, Telephones,
Dharwar - Respondents

(Shri M.S. Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before this
Tribunal today, Hon'ble Member (J) Shri C. Ramakrishna Rao
made the following

O R D E R

In this application the applicant prays for setting aside the impugned order dated 14-5-1986 passed by respondent 1 in case No. Staff/3-57/XXXII in so far as the applicant is concerned. The facts giving rise to the application are briefly as follows :

2. The applicant is a Junior Engineer ('JE') in the establishment of the first respondent. He was transferred to Dharwar from Hubli in Nov 82 at his request. The applicant

... was/

Chd

was working as JE (Electricals) at Hubli since 1982. After one year i.e. on 1.12.83 he requested the Divisional Engineer Telephones Hubli to transfer him to Dharwar since he had to travel daily from Hubli to Dharwar where his family was staying and due to domestic problems he could not shift his family to Hubli. The request of the applicant was acceded to on 29.8.1985 when he was transferred from the post of JE (Electricals) which he was holding at Hubli to the post of JE (Cables) at Dharwar vice Shri M.R.L.Kulkarni, JE, posted to Hubli (Annexure 'A'). Shortly thereafter on i.e. barely within 9 months ~~Gonikoppal~~ ^{14.5.86} the applicant was transferred to Madikere T.D. ~~Gonikoppal~~ ^{14.5.86} Aggrieved by this order of transfer the applicant has filed this application.

*Amended
vide order
dated 16/2/87
in Revision
Petition No. 1/87.*

3. At the threshold Shri M.S.Padmarajaiah, learned counsel for the respondents raised an objection that this tribunal has no jurisdiction to entertain applications involving orders of transfer. According to Shri Padmarajaiah transfer is not a condition of service but incidental to service and the government employees are bound by any order of transfer passed by the competent authority which is not liable to be questioned in any legal proceeding. In our view, transfer is essentially an administrative order ~~and~~ ~~and~~ ~~and~~ and courts will be highly reluctant to interfere with an order of transfer, except in cases where mala fides on the part of the authority transferring the particular officer is alleged or it is established that the action of the authority is contrary to the procedure prescribed by ~~the~~ Govt. We shall, therefore, proceed to examine whether the present case

(Signature) ... falls/

falls under any of the aforesaid exceptions.

4. Shri Achar, learned counsel for the applicant submits that his client who was working since 1982 as JE (Electricals) barely as posted as JE (Cables) at Dharwar on 20.8.85; that within two months of taking over as JE (Cables) i.e. 9.10.85, he was called upon by the second respondent to explain certain defects attributable to the work he was in charge; that since no reply was received to the aforesaid communication, the second respondent informed ~~his client~~ on 17.12.85 that "he was warned severely and an entry to that effect was made in the memo of his service"; that his client sent his explanation to ~~xx~~ the second respondent which however was not found acceptable by him. And these facts bear testimony to the mala fides borne by the second respondent towards his client. According to Shri Achar his client had explained in his reply dated 21.12.85 that the applicant was not responsible for the cable fault as the following extract from his reply would reveal:

"As known to you, I was present in the Auto Exchange Dharwar by 0700 hours on 9-10-85/10-10-85 and localised the fault with the Electronic Megger near about 10.75 kms from Dharwad. By about 0730 hrs your kindself also came to the exchange and we both waited for the Jeep Driver to come. The Driver came at 1000 hours on 10-10-85 and we both moved on the fault alongwith the staff.

"The joint near the repeater No. 6 was opened by the Cable Splicer Shri Shaikh, and the joint was found faulty. It was revealed that about 30 feet of 100 pairs/ 20 pounds cable was to be replaced due to water entering in the cable. We moved to Hubli to get the cable. We moved to Hubli to get the cable. By then it was 1430 hours. And it was found at Hubli that 100 pairs/20 lbs cable was not available.....

"In fact, it may not be exaggeration to say that the Junction cable fault was right within one day only for the FIRST TIME in the past. Periodic information about the progress of the fault was given to you both by



"me and also by Shri M.R.L. Kulkarni, J.E. Hubli (under whose supervision the fault had developed)."

Shri Achar submits that his client was not in any way responsible for the cable fault and he was justified in requesting the second respondent to delete the adverse entries in his service memo. Instead of doing so or conducting any further probe into the matter his client was transferred within hardly four months of the adverse entry which leave no doubt that the respondents acted with mala fides in transferring his client in issuing the order of transfer on 14.5.86 (Annexure 'B'). Shri M.S. Padmarajaiah submits that the adverse entries in the service memo of the applicant were occasioned by ^{his} poor performance; that it was open to him to represent against the same in the manner provided; that the transfer of the applicant was in the interest of service and as he was given sufficient warning earlier the transfer from Dharwar to ~~Medikere~~ was justified.

** As amended
vide order dt 16/2/87
in Review Application
no. 1/87*

5. After giving careful thought to the matter we are satisfied that the adverse entries in the present case made by the second respondent in the service memo of the applicant barely within 4 months after the applicant took charge as JE (Cables) prima facie established the prejudice that the second respondent ~~nurtured~~ ~~XXX~~ against the applicant. It is surprising that a month after issuing the letter calling for explanation a reminder was issued and a month thereafter the adverse entries were made in the service memo, though no reply was in fact received from the applicant. It is not as though the explanation called for brooked no delay or it was to be sent within a time prescribed under the RULES. We are not

...inclined/

inclined to treat the adverse entries in the present case as being in the nature of adverse entries made in the annual confidential reports which are communicated after they are made and in respect of which a set procedure is prescribed for getting the same expunged. We have no doubt in our mind that the second respondent had not watched the work of the applicant in the post of JE(Cables) for a sufficiently long and given him the requisite measure of guidance, so as time to come to any conclusion about the latter's performance. Suffice it to say that a period of two months is wholly inadequate for assessing the performance. It should also be noted that the applicant had experience only as JE(Electricals) and, perhaps, needed more time to get acquainted with ~~as~~ the duties attached to the post of JE (Cables) but this was not afforded to him.

6. Viewed in any light, severe warning and adverse entries seem to have operated on the mind of the second respondent in effecting the transfer of the applicant from Dharwar to Madikere. We are constrained to remark that the allegations made against the second respondent in the reply dated 21.12.85 of the applicant ~~suggest~~ ~~the~~ indicate that the fault had developed during the period when Shri M.R.L. Kulkarni was working as JE(Cables), Hubli. The communication, throughout referred to the inspection of site 'S' by the second respondent and the applicant as also to the fact that the fault had developed during the period when Shri Kulkarni was working at Hubli. The relevant portions of the said letter have been extracted above. In view of this it was incumbent on the second respondent to have conducted a thorough probe



....before/

enviseage an opportunity to be given to the applicant before effecting the transfer.

Q. Shri Padmarajaiah averred that since the applicant had ^{a good} not given account of himself in the post of JE(Cables) at Dharwar, it became imperative to post him to an alternative assignment as JE (Electricals) at Madikere. In the course of the hearing Shri Achar informed us, that such a post was available at Dharwar itself and therefore, there was no reason to transfer his client to as distant a place as Madikere, specially when he had requested for a posting at Dharwar at his own cost and he had not even completed a year as JD(Cables) at Dharwar. He informed us that alternative posts of JEs(Electricals) were available at Dharwar, where he could be easily accommodated. We, therefore, direct, that the applicant be posted in any of the alternative posts available at Dharwar, within one month.]

Q. In the result the application is allowed. No order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)

Member (J)

Deo
(L.H.A. Regd) 2-10-86
Member (A)(R)

Registered

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

1. APPLICATION No. 1/87
in Application No. 1456/86 (P)
(WP. NO.)

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 20-4-87

APPLICANT

Genl. Manager, Telecom. in.
Karnataka Circle and
TO

Vs

RESPONDENTS

1. C. Girante,

1. The General Manager,
Telecommunications,
Karnataka Circle,
B'lore.

4. Sh. C. Girante, Junior Engineer
Hubli Phones Division,
~~OR~~ Dharwar.

2. Sub-divisional Officer,
Telephones, Dharwar.

5. Sh. M. Raghavendra Acharya
Advocate

3. Sh. M. S. Padmarajiah,
Sr. central Govt. Standing
counsel
High court building,
Bangalore.

NO 1074-75, 1st stage
B. S. I. C., Flytree Bank
colony, opp. Raghavendra
Nursing Home,
Main cross, Subcross - 4,
B'lore - 50.

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1/87.

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on

16/2/87.

Copy to
A. No. 1456/86 (P)

ENCL: As above.

B. V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

ak.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 16th FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

Hon'ble Sri L.H.A. Rego - Member (A)

Review Application No. 1/87
(A.No. 1456/86)

The General Manager Telecommunications
Karnataka Circle & anr

(Sri. M.S. Padmarajaiah, Senior C.G.S.C.)

and

K. Ghante

(Sri M.R. Achar)

This review application came up for hearing before this Tribunal and Hon'ble Sri Ch. Ramakrishna Rao, Member (J) to-day made the following

O R D E R

In the application for review ('RA') of our order dated 2.9.1986 ('order') filed by the respondents in the original application ('OP') the main ground urged in paragraphs 6 to 8 are that we ignored to take into account the fact that the applicant was serving as a Junior Engineer ('JE') under the Divisional Engineer ('DE') for over three years and it was not the particular happenings as JE (Cables) Dharwar, which made the DE (Phones) to recommend for transfer as also the fact that the applicant was an average worker.

2. The facts referred to above were very much in our mind when we passed the order and, from the content and

EWJ

tenor of our order, it is amply clear that we concentrated on the question whether the order of transfer was actuated by malafides on the part of the respondents. We have given cogent reasons for arriving at the conclusion that the order of transfer was effected as a measure of punishment and as such suffered from the vice of malafides. We, therefore, see no reason to review our order on this ground.

3. The next ground urged in the RA ^{is} that we proceeded ~~on~~ on the assumption that the transfer was effected by R2. On a perusal of our order we find that even in the opening paragraph we stated that the prayer of the applicant was to set aside the impugned order passed by respondent R1 and not R2 as alleged. We, therefore, find that there is no substance in the statement made in the RA that we proceeded on a wrong assumption.

4. Turning to the remaining grounds urged in the RA we allow the same and direct the Registry to effect the following amendments in our order dated 2.9.1986 :

Para Line

2 14 for 'Madikere T.D' read 'Gonikoppal'

Page 4 17 for 'Madikere' read 'Gonikoppal'

8 3 for 'Madikere' read 'Gonikoppal'

Delete para 9 and renumber para 10 as 9.

5. The review application is partly allowed to the extent indicated above.



-True Copy-

DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Member (J)
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Member (A)

True Copy

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 2nd SEPTEMBER, 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao
Hon'ble Shri L.H.A. Rego

- Member (J)
- Member (A)(R)

Application No. 1456/86

K. Ghante
Hubli Phones Division
Dharwar

- Applicant

(Shri M. Raghavendra Achar, Advocate)

and

1. The General Manager
Telecommunications,
Karnataka Circle, Bangalore

2. Sub-Divisional Officer, Telephones,
Dharwar

- Respondents

(Shri M.S. Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before this
Tribunal today, Hon'ble Member (J) Shri C. Ramakrishna Rao
made the following

ORDER

In this application the applicant prays for setting aside the impugned order dated 14-5-1986 passed by respondent 1 in case No. Staff/3-57/XXXII in so far as the application concerned. The facts giving rise to the application briefly as follows :

2. The applicant is a Junior Engineer ('JE') in the establishment of the first respondent. He was transferred to Dharwar from Hubli in Nov 82 at his request.

Ch

Ch

before coming to the conclusion that the applicant was responsible for the cable fault in question and brought the matter to the notice of his superiors.

7. In this connection we may refer to the following observations in Pushpakaran v. Chairman, Coir Board 1978 K.L.T. 539

"An order of transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts. This is human aspect of the matter. However exigencies of administration and public interest must take precedence over individual inconvenience or hardship. A Welfare State, governed by Rule of Law has therefore attempted to ensure fairness and equality of treatment and eliminate arbitrary action even in the matter of transfers by enunciating a policy. Though the State is not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to the rules if any framed and policy, if any, enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a constitutional requirement which every order must satisfy."

These observations were cited with approval by a bench of this Tribunal in K.K. Jindal v. General Manager, Northern Railway & ors (A.T.R. 1986 C.A.T. 304).

8. In view of the foregoing, we have no hesitation in holding that the transfer of the applicant from Dharwar to Guntakoppal in Madikere was effected as a measure of punishment in violation of the principles of natural justice which

...envisages/-

*is amended vide
order dt. 16/2/87
R.A. No. 1/87*

CJ

envise an opportunity to be given to the applicant before effecting the transfer.

✓ Shri Padmarajaiah averred that since the applicant had not given ^{a good} account of himself in the post of JE(Cables) at Dharwar, it became imperative to post him to an alternative assignment as JE (Electricals) at Madikere. In the course of the hearing Shri Achar informed us, that such a post was available at Dharwar itself and therefore, there was no reason to transfer his client to as distant a place as Madikere, specially when he had requested for a posting at Dharwar at his own cost and he had not even completed a year as JD(Cables) at Dharwar. He informed us that alternative posts of JEs(Electricals) were available at Dharwar, where he could be easily accommodated. We, therefore, direct, that the applicant be posted in any of the alternative posts available at Dharwar, within one month.]

*Deleted
as per Order
dt. 16-2-87
in Review
Application
No. 1/87*

Q. In the result the application is allowed. No order as to costs.

Sd/-

(Ch. Ramakrishna Rao)
Member (J)

Sd/-

(L.H.A. Rego) ²⁻¹⁻⁸⁶
Member (A)(R)

True copy

B. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE