

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

CORAM:

The Hon'ble Shri Ch.Ramakrishna Rao, Member (Judicial)

The Hon'ble Shri L.H.A.Rego, Member (Administrative)

Application No. : 596 of 1986(F)

Date of decision : 23.07.1986

Shri S.G.Deshpande ... Applicant

Versus

1. Sub-Divisional Inspector
(Postal),
Belgaum North,
Belgaum.

Respondents

2. The Senior Superintendent
of Post Offices,
Belgaum Division,
Belgaum.

Shri M.Raghavendra Achar : Advocate for the
Applicant.

Shri M.Vasudeva Rao : Advocate for the
Respondents.

JUDGEMENT PRONOUNCED BY SHRI CH. RAMAKRISHNA RAO,
MEMBER (JUDICIAL)

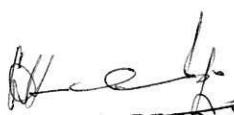
In this application, Shri M.Raghavendra Achar, learned counsel for the applicant has challenged the order passed by the Sub-Divisional Inspector, Postal (SDI) Respondent No.1 transferring, among others, the applicant, working as Postman BM City to BM Nehrunagar on several grounds. It is, however, sufficient in our view to deal with the main submission. According to Shri Achar the order of transfer was preceded by a Memo dated 25.1.1986 issued by the SDI in which he was called upon to explain why he should not be transferred, because he was found shouting loudly in the office in violation of discipline when he was working for and since proceedings were neither initiated pursuant to the aforesaid memo nor were they cancelled, the transfer was effected as a measure of punishment. Shri M.Vasudeva Rao, learned counsel for the Respondents submits, that though the Memo dated 21.5.1986 was issued to the applicant, there was no intention on the part of the Department to pursue the matter and the order of transfer is not, therefore, open to challenge.

2. A similar point arose for consideration in Sunder Raju V. Assistant General Manager, Canteen Stores Depot: application No.20/86(F), decided on 26.6.1986, in which we held that it was incumbent on the part of the Assistant General Manager to have passed an order giving quietus to the complaint made against the applicant in that case without which it is reasonable to draw an inference of a nexus between the order of transfer and the complaint made

against the applicant. The ratio of the decision cited above, is equally applicable to the present case, since Shri Rao has clarified that no order was actually passed cancelling the memo dated 25.1.1986. If so, the aforesaid memo is very much in existence which means and implies that the allegation of indiscipline levelled against the applicant stands and the transfer was effected on the ground stated in the memo as a measure of punishment.

3. We, therefore, set aside the order of transfer. This is, however, without prejudice to the right of the Respondent to pass a final order on the memo referred to above, calling for the explanation of the applicant in regard to the allegations stated therein and thereafter, to consider the question of transferring him in conformity with the rules and guidelines.

4. In the result, the application is allowed with costs.


(L.H.A. REGO)
MEMBER(AM)
23.07.1986

Ch. Ramakrishna
(CH. RAMAKRISHNA RAO)
MEMBER(JM)
23.7.1986

1. Sub-Divisional Inspector
(POSTAL), Belgaum North,
Belgaum

2. The Senior Superintendent
of Post Offices,
Belgaum Division,
Belgaum

: Respondents

A copy of the Order pronounced on 23-7-86 by Hon'ble
Sh. Ch. Ramakrishna Rao, Member (Judicial) on behalf of the
Bench consisting of himself and Hon'ble Shri L.H.A. Rego,
Member (Administrative) is forwarded herewith.

P
SECTION OFFICER
(Judicial)

To

1. Shri S.G. Deshpande, ✓
C/O Shri M. Raghavendrachar, Advocate,
No. 1074 & 1075, Banashankari I Stage,
Sreenivasanagar II Phase,
Bangalore.

2. Sub-Divisional Inspector, (POSTAL),
Belgaum North, Belgaum.

3. The Senior Superintendent of
Post Offices, Belgaum Division, Belgaum.

4. Shri M. Vasudeva Rao,
Additional Central Govt. Standing Counsel,
High Court of Karnataka Building,
Bangalore - 560 001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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Sd/-
(L.H.A. REGO)
MEMBER(AM)
23.07.1986

Sd/-
(CH. RAMAKRISHNA RAO)
MEMBER(JM)
23.7.1986

- True Copy -

Ramky 12/8/86
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE

Addl.Bench: BANGALORE

Application No. /86

Between:

S.G.Deshpande .. Applicant

And:

The Sub-Divisional Inspector & another .. Respondents

APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE.

The abovenamed applicant submits as under:

1. In the above application, the applicant has challenged the order passed by the respondents transferring him to a far off place.
2. It is submitted that the applicant joined the service as Ex-tra Departmental Agent in the year 1969 and thereafter, he was promoted in the year 1979 as Postman. The applicant submits that he has active part in the Union and he works their for the welfare of the officials. During such working, sometimes he might have highlighted the grievances before the Authorities. But, taking that as a grudge, the Authorities have transferred the applicant to a far off place.
3. It is submitted that the applicant met with an accident while he was on duty as E.D.A., in the year 1964 and now he is incapacitated to walk

in the normal course. Hence, the Authorities should not have transferred the applicant to a far off in violation of the Rules. It is submitted in the place to which now he is transferred, he has to walk ~~4~~ 5 K.Ms., daily and in the quarters, he has to climb everyday as it contains somany flats. This has become great problem for the applicant to discharge his duties. It is submitted that similarly situated incapacitated applicants (officials) are shown mercy by the Authorities, but the applicant has been singled out. Hence, the order of transfer is liable to be set aside. At the time of preferring the above application, the applicant could not urge the above facts. If the above facts are not permitted to be urged, the applicant will be put to irreparable loss and injury.

4. WHEREFORE, it is prayed that this Hon'ble Tribunal may be pleased to permit the applicant to urge the above facts, in the interest of justice and equity.

Bangalore,

Date: 4/7/81


Counsel for Applicant.

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Bangalore,

Date: Counsel for Applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE

Addl.Bench: PANGALORE

Application No. /86

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S.G.Deshpande .. Applicant

And:

The Sub-Divisional Inspector & another .. Respondents

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL.BENCH,
BANGALORE.

Application No.596/86.

Between:
S.C. Deshpande .. Applicat

and:
SDI Belgaum and another .. Respondents.

Reply filed on behalf of the Respondents
under Rule 12 of the Central Administrative
Tribunal Rules, 1985.

It is submitted as follows:-

1. That the applicant in the above application
has challenged the order of his transfer. The
application is misconceived and devoid of any merits,
and the applicant is not entitled for any relief
as claimed by him.

2. That the applicant was transferred by
the Sub Divisional Inspector, Belgaum North Sub
Division, the appointing authority as postman,

Sri P.T.Gunjikar
Nehrunagar P.O. Belgaum and Sri P.T.Gunjikar
leave reserve postman of Belgaum North Sub Division
was posted as postman Belgaum City P.O. vide Sri
S.G.Deshpande. The applicant has now filed an
application before this Hon'ble Tribunal and this
Hon'ble Tribunal has issued an interim stay of the
operation of the order dated 28.4.86. The
orders of the interim stay of this Hon'ble Tribunal

could not be implemented as the applicant was on leave and the transferred to the Post of Sri P.T. Gunjikar joined the post in the meanwhile.

The averments made in the application are traversed hereina parawise.

3. Regarding paragraphs 1 to 5 : No comments.

4. Regarding paragraph No.6: The applicant was examined by the Authorised Medical Officer, Cantonment Dispensary, Belgaum on 27.6.69 and he was certified to be fit for employment in Government Service. The said certificate also states that the applicant is suffering from "Kyphosis" and this kyphosis is there eversince the childhood of the applicant. Besides the applicant was ~~xxxxx~~ recruited under General Quota and not under the quota reserved for "Physically handicapped persons". The request of the applicant for granting him conveyance allowance has also been rejected. The applicant was sanctioned cycle advance with a condition that he will use the cycle for his official duties and the plea of the applicant that he is unable to ride the bicycle is not convincing one. The fact that applicant was ordered to be given a light beat is not denied and on this ground the applicant cannot claim immunity from transfer.

The allegation that the Superintendent is a member of the rival union and the transfer is

ordered as inter-union rivalry is far from truth
and is denied.

The transfer order was not issued to cause any hardship to the applicant. The transfer orders were issued in the administrative interest.

The Sub-Divisional Inspector is empowered to effect transfers in accordance with the provisions of Rule 37 of P & T Manual Volume IV. Besides both the offices are located in the same town.

Normally orders of transfer are outside the purview of examination by a Court of Law. Transferring being an implied condition of Government service, the appointing authority is the best person to decide how to distribute its man power.

A variety of factors may weigh the appointing authority while considering the question of transfer viz., reputation, the period for which he has been posted at a particular place and a number of other grounds which may be taken together under the head "exigencies of service". The Tribunal has to go into the matter and adjudicate about the availability of propriety of transfer.

The applicant is attempting to misguide this Hon'ble Tribunal by stating that a show cause notice was issued to the applicant. Though a show cause notice was issued the words "as a measure of penalty" were not used. The transfer was not ordered as measure of penalty as contended by the applicant. The applicant has been working in Belgaum

City since 1.7.70 and as postman in the same office since 6.10.69. As he was working in the same office for the last 16 years he was transferred in the exigencies of service, and not as a measure of penalty.

The applicant's application for retransfer to Belgaum City P.O. is still under consideration.

4. Regarding paragraph 7: The orders of this Hon'ble Tribunal ordering interim stay of the orders could not be implemented as the orders of transfer were partially implemented by the time the orders of interim stay were received.

Regarding grounds for relief:

(i) The impugned order of transfer is not violative of Article 15 as not hostile discrimination has been made in ordering transfers.

(ii) The order of transfer was issued in administrative interest.

(iii) The order of transfer is not without jurisdiction as the incumbent who was officiating had full powers of a regular Inspector.

(iv) The applicant had not been declared as a physically handicapped person and kyphosis is not one of the handicaps;

(v) The order of transfer was not made with mala fide intention and hence it is not bad in law.

The transfer order was not issued to the Sub-Divisional Inspector as he was not ordered as measure of penalty as contemplated by the application. The transfer was of penalty were not used. The transfer was cause notice was issued the words "as a measure notice was issued to the applicant. Through a show notice was issued by stating that a show cause notice had been issued to the applicant. The application is attempting to misguide the tribunal into issuing a transfer order.

and adjudge about the availability of property service". The tribunal has to go into the matter taken together under the head "exemptions of place and a number of other grounds which may be which the he has been posted at a particular of transfer viz., exemption, the period for supporting authority while considering the question A variety of factors may weigh the decided how to distribute its man power.

the appointing authority is the best person to being as implied condition of Government service, purview of exemption by a Court of Law. Transfer normally orders of transfer are outside the both the offices are located in the same town. of Rule 57 of P & T Manual Volume IV. Besides effect transfers (a secondary with the provisions The Sub-Divisional Inspector is empowered to orders were issued in the administrative interest. cause any hardship to the applicant. The transfer and is detailed.

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LAW.

With malice fit the intention and hence it is not bad in
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Referred to grounds for relief:

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5. The allegation that the Superintendant is a member of the rival union and the transfer is

Now comes before the Hon'ble Tribunal the aforesaid
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL.BENCH,
AT NO. 800, 8th Main, Bangalore - 560 008.

Application No.596/86.

Between: Sri. G. Deshpande, and

S.C. Deshpande .. Applicant

and: SDI Belgaum and another .. Respondents.

Reply filed on behalf of the Respondents
under Rule 12 of the Central Administrative
Tribunal Rules, 1985.

It is submitted as follows:-

1. That the applicant in the above application has challenged the order of his transfer. The application is misconceived and devoid of any merits, and the applicant is not entitled for any relief as claimed by him.

2. That the applicant was transferred by the Sub Divisional Inspector, Belgaum North Sub Division, the appointing authority as postman, from the office of Sh. J. J. Jaffar, to the office of leave reserve postman of Belgaum North Sub Division. He was posted as postman Belgaum City P.O. vide Sri S.G.Deshpande. The applicant has now filed an application before this Hon'ble Tribunal and this Hon'ble Tribunal has issued an interim stay of the operation of the order dated 28.4.86. The orders of the interim stay of this Hon'ble Tribunal

City since 1.7.70 and as postman in the same office since 6.10.69. As he was working in the same office for the last 16 years he was transferred in the exigencies of service, and not as a measure of penalty.

The applicant's application for retransfer to Belgaum City P.O. is still under consideration.

4. Regarding paragraph 7: The orders of this Hon'ble Tribunal ordering interim stay of the orders could not be implemented as the orders of transfer were partially implemented by the time the orders of interim stay were received.

Regarding grounds for relief:

(i) The impugned order of transfer is not violative of Article 15 as no hostile discrimination

has been made in ordering transfers.

(ii) The order of transfer was issued in administrative interest.

(iii) The order of transfer is not without jurisdiction as the incumbent who was officiating had full powers of a regular Inspector.

(iv) The applicant had not been declared as a physically handicapped person and kyphosis is not one of the handicaps;

(v) The order of transfer was not made with mala fide intention and hence it is not bad in law.

ordered as inter-union rivalry is far from truth and is denied.

The transfer order was not issued to cause any hardship to the applicant. The transfer orders were issued in the administrative interest.

The Sub-Divisional Inspector is empowered to effect transfers in accordance with the provisions of Rule 37 of P & T Manual Volume IV. Besides both the offices are located in the same town.

Normally orders of transfer are outside the purview of examination by a Court of Law. Transfer being an implied condition of Government service, the appointing authority is the best person to decide how to distribute its man power.

A variety of factors may weigh the appointing authority while considering the question of transfer viz., reputation, the period for which he has been posted at a particular place and a number of other grounds which may be taken together under the head "exigencies of service". The Tribunal has to go into the matter and adjudicate about the availability of propriety of transfer.

The applicant is attempting to misguide this Hon'ble Tribunal by stating that a show cause notice was issued to the applicant. Though a show cause notice was issued the words "as a measure of penalty" were not used. The transfer was not ordered as measure of penalty as contended by the applicant. The applicant has been working in Belgaum

6. As stated earlier the orders of the interim stay could not be implemented.

7. The applicant has not exhausted all the remedies within the department and hence on this score itself the application is liable to be rejected.

8. Regarding paragraphs 10 to 13 no comments.

It is therefore prayed that the application filed by the applicant is devoid of any merits ^{be} and hence it is liable to be dismissed with costs, in the interest of justice and it is prayed accordingly.

Bangalore,
Dated: 19.6.1986.

RESPONDENTS

Verification

I, M.B. Hegde, Asst. Postmaster General(S), on behalf of the respondents, do hereby verify that what is stated in paragraphs 1 to 8 of the reply are true to the best of my knowledge, information and belief.

Bangalore,
Dated: 19.6.1986.

RESPONDENTS.

Bangalore,
Dated: 19.6.1986.

Addl. Central Govt. Standing Counsel
and
Advocate for Respondents.

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The allegation that the Superintendent is a member of the rival union and the transfer is

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL.BENCH,
BANGALORE.

Application No.596/86.

Between:

S.G. Deshpande .. Applicant

and:

SDI Belgaum and another .. Respondents.

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2. That the applicant was transferred by the Sub Divisional Inspector, Belgaum North Sub Division, the appointing authority as postman, Nehrunagar P.O. Belgaum and Sri P.T.Gunjikar leave reserve postman of Belgaum North Sub Division was posted as postman Belgaum City P.O. vide Sri S.G.Deshpande. The applicant has now filed an application before this Hon'ble Tribunal and this Hon'ble Tribunal has issued an interim stay of the operation of the order dated 28.4.86. The orders of the interim stay of this Hon'ble Tribunal

feed today 9/6/86

CAT

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

A . NO. 596 OF 198 b

Between:

S. G. Deshpande

APPELLANT/S
PETITIONER/S

And

SD | Bilgavu dr

RESPONDENT/S

MEMO OF APPEARANCE

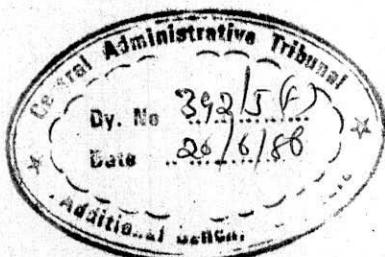
All the Central Government Standing Counsel, Senior and Additional, appear and act for the Union of India and its Officers (Respondent/s ~~Appellants~~ Nos.) in this proceedings.

This appearance may kindly be recorded.

for All the Central Government
Standing Counsel

Address for Service

Mr. Senior Central Government Standing Counsel,
High Court Building,
Bangalore - 560 001.



Recd. today RBB/86

CAT

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

A

NO. 596 OF 1986

Between:

S. G. Deshpande

APPELLANT/S
PETITIONER/S

And

Inspector Post
S. C. S.

RESPONDENT/S

MEMO OF APPEARANCE

All the Central Government Standing Counsel,
Senior and Additional, appear and act for the Union
of India and its Officers (Respondent/s Appellants
Nos. 182) in this proceedings.

This appearance may kindly be recorded.



for All the Central Government
Standing Counsel

Address for Service

Senior Central Government Standing Counsel,
High Court Building,
Bangalore - 560 001.



P.M.C
R 96/5/86

Central Admin. Tribunal
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

A. NO. 596 OF 1986 (F)

Between:

S. G. Deshpande

APPELLANT/S
PETITIONER/S

And

Sub. Divl. Ins. (Postal)

RESPONDENT/S

D. C. W.

MEMO OF APPEARANCE

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Senior and Additional, appear and act for the Union
of India and its Officers (Respondent/s Appellants
Nos.) in this proceedings.

This appearance may kindly be recorded.


C.M. Varadarao
for All the Central Government
Standing Counsel

Address for Service


Addl. Senior Central Government Standing Counsel,
High Court Building,
Bangalore - 560 001.



~~Notified~~
CAT

Intimation order

By Regd. Post/pos

*Bengaluru Beach.

Monday, the 28th day of April, 1986.

Present

The Hon'ble Member (Tendulkar) - - Sh. Ch. Venkateshwar Rao
The Hon'ble Member (Adman) - - Sh. L-H.A. Rigo.

in

Application no. 596/86 (P).

S. C. Deshpande,
C/o. H. Raghavendra Sekar,
Sohwala
No. 1034 & 1035
B.S. K. 1st Stage.
Streemranga Nagar II Phase,
Bengaluru.

- - - Applicant

Varied

1. The Sub-Divisional Inspector (Postal)
Belgaum North,
Belgaum.

2. The Senior Superintendent of
Post Office,
Belgaum Division,
Belgaum.

- - - - - Results.

ORDER

[The operation of order no. B2/P/Jan/86
dated 15-2-86 issued by the 1st respondent
herein, in so far as the applicant above
mentioned is concerned, is stayed up to
12th of May, 1986 in respect of the applicant.

The case is listed for further hearing
on 12th of May, 1986.

Given under my hand and the
Seal of this Tribunal, this 29th
day of April, 1986.

for Righter.

INTERIM ORDER
BY REGD. AD.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex,
Indira Nagar,
Bangalore-38.

Monday, the 28th day of April, 1986

PRESENT

The Hon'ble Member(Judl.)

..Shri Ch.Ramakrishna Ra

The Hon'ble Member(Admn.)

..Shri L.H.A. Rego

IN

Application No.596/86(F)

Shri S.G. Deshpande,
C/o Sh. M.Raghavendrachar,
Advocate, No.1074 & 1075
B.S.K. Ist stage,
Sreenivasa Nagar, IIInd phase,
Bangalore. - 560 001

..Applicantx

VERSUS

1. The Sub-Divnl. Inspector(Postal)
Belgaum North, Belgaum.
2. The Sr. Supt., of Post Offices,
Belgaum, Divn., Belgaum.

..Respondents.

ORDER

Order No.B2/P'Man/86, dated 15.2.86 issued inter-
alia to the applicant by the 1st Respondent herein, shall
stand stayed upto 12th of May, 1986 in respect of the
Applicant.

The case is posted for further orders on 12th of
May, 1986.

Given under my hand and the seal of this Tribunal,
this 29th day of April, 1986.

R.
For Registrar.

Swit. R. B. Bhatnall *OLC* *Recd* *Mr. 304/86*
304/86

तारीख
Date
मोहर
Stamp

समय
Time of

मी. न
C. No.

बुक करने का
Booking
प्राप्त करने का
Receipt

From
By

द्वारा प्राप्त हआ

इस तार के प्राप्ति में प्राप्ति की दूसरी इस प्रकार इह काम के समय, क्रम संख्या, मरकारालय तथा वार्ता की संख्या (यदि कोई हो) और शब्दों की संख्या

PTG/11/35/86 SRP
The sequence of entries of the below items in this
telegraph class of telegram, time, having the service
number, office of origin, date, service institution (if any) and number, of words

इस तार के संबंध में यदि किसी प्रकार की पूछताछ हो तो इसे इस काम के साथ अवश्य सलग करना चाहिए।

This form must accompany any enquiry in respect
of this telegram

बोलने के लिये इसे लटे - TO OPEN CUT HERE

दूरसंचार विभाग

DEPARTMENT OF TELECOMMUNICATIONS

तार

TELEGRAM

CENTRAL ADMINISTRATIVE

TRIBUNAL BANGALORE BRANCH

COMMERCIAL COMPLEX

INDRA NAGAR BANGALORE 38 ---

17.1

क्रमांक FIRST FOLD

0 1150 N104 BELGAUM 12 47

— SO FAR I AM NOT ALLOWED TO DISCHARGE DUTIES AS POSTMAN
BELGAUM CITY INSPITE OF THE STAY ORDER PASSED IN APPLICATION NO

596186 (F) PRAY FOR SUITABLE DIRECTIONS TO DIVISIONAL

AUTHORITIES --- S G DESHPANDE ---



77

104 38

596186 (F)

मर्मा/

REGISTERED/AD

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA),
Indira Nagar,
Bangalore-560 038.

APPLICATION No. 596/86(F)

Dated: 19.5.1986.

S.G. Deshpande,
C/o Sh. M. Raghavendra Achar,
Advocate, No. 1074 & 1075,
Banashankari 1st Stage,
Sreenivasa Nagar, 1Ind Phase,
Bangalore, 560 050.

... Applicant.

-Versus-

1. The Sub-Divisional Inspector (Postal),
Belgaum North, Belgaum.

2. The Senior Superintendent of Post Offices,
Belgaum Division,
Belgaum.

... Respondents.

A copy of the telegram received from the Applicant
is sent herewith for necessary action.

2. The Application is adjourned to 26.5.1986 for
further orders.

By order of the Tribunal.

0/c (F. 58)
REGISTRAR.



Smts
pl. Disnefied
R. Jeeved
S. 20/5/86

"COPY"

TELEGRAM - DEPT. OF TELECOMMUNICATIONS

To CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
COMMERCIAL COMPLEX
INDIRA NAGAR
BANGALORE - 38.

O 1150 N104 BELGAUM 12 47

- SO FAR I AM NOT ALLOWED TO DISCHARGE DUTIES AS POSTMAN
BELGAUM CITY INSPITE OF THE STAY ORDER PASSED IN APPLICATION
NO 596186 (F) PRAY FOR SUITABLE DIRECTIONS TO DIVISIONAL
AUTHORITIES — S G DESHPANDE —

—77 104 38 596186 (F)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDL. BENCH: BANGALORE

REGISTRATION NO.

BETWEEN:

S.G.DESHPANDE .. APPLICANT

AND:

SUB-DIVISIONAL
INSPECTOR (POSTA)
AND ANOTHER .. RESPONDENTS

I N D E X

Sl.No.	Particulars	Page Nos.
1.	Memorandum of Application	1 to 8
2.	Annexure-A & A, M. e & Rec and 9 S.S.P.	9 - 10
3.	Annexure-B Notice	11
4.	Annexure-C Transfer order	12
5.	Annexure-D	
(5)	Vakalath	13
(6)	Original Ame & I. P.O	14

Bangalore,

Date: 25. 4. 86

M RAGHAVENDRA CHAR
Advocate & Soc. LL.B.
Counsel for Applicant
No. 1 Mysore City
opp. Raghavendra Nivas
Main Cross Sub-Office
BANGALORE-560001

FORM No.1.
(See Rule 4)

for 28/4/86
APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985

For use in Tribunal's Office

DATE OF FILING

25th April 1986

FILED BY

: M.RAGHAVENDRA ACHAR,
Advocate,
No.1074 and 1075,
Banashankari 1st Stage,
Sreenivasa Nagar II Phase,
Bangalore.

REGISTRATION No.

Seal
SIGNATURE

REGISTRAR



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH: BANGALORE

BETWEEN;

S.G.DESHPANDE

.. APPLICANT

AND:

1. SUB-DIVISIONAL INSPECTOR
(POSTAL).
2. THE SENIOR SUPERINTENDENT
OF POST OFFICES ..

RESPONDENTS

DETAILS OF APPLICATION

1. Particulars of the applicant.

(i) Name of the applicant: S.G.DESHPANDE

(ii) Name of Father : Gangadhar Deshpande

(iii) Designation and Office in which employed : Postman, Road Kapileshwar/Post Office, Belgaum.

(iv) Office Address : S.G.Deshpande
S/o Gan gadhar Deshpande,
Postman,
Kapileshwar Road Post
Office, Belgaum.

(v) Address for service of all notices : S.G.Deshpande
C/o M.Raghavendra Achar,
Advocate,
No.1074 and 1075,
Banashankari 1st Stage,
Sreenivasa Nagar II Phase,
Bangalore.

2. Particulars of the respondent.

(i) Name and/or designation of the respondent. 1. Sub-Divisional Inspector (Postal), Belgaum North, Belgaum.

(ii) Office address of the respondent. 2. The Senior Superintendent of Post Offices, Belgaum Division, Belgaum.

(iii) Address for service of all notices.

3. Particulars of the order against which the application is made.

The application is against the following order:

(i) Order No. B2/P'Man/86

(ii) Date: 15-2-1986

(iii) Passed by: First respondent.

(iv) Subject in brief: By the impugned order, the applicant has been transferred to another post office in violation of the Rules, which is the result of malafide intention of the respondents.

Officer

4. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

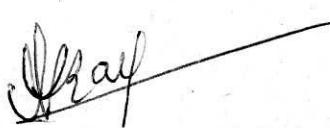
5. Limitation.

The applicant further declares that the application is within the limitation prescribed in S.21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case:

The facts of the case are given below:-

(i) The applicant was a postman working in the establishment of the Post and Telegraph Department at Belgaum City Post Office. The applicant met with an accident and ~~constrained~~ suffered a severe infirmity in his back bone and hence he is declared as physically handicaped. A copy of the declaration that the applicant is physically handicaped issued on 7-11-1985 is produced here-with and marked as Annexure-A. Further, the applicant is not in a position to move long distances nor is he in a position to ride bi-cycle. Hence, the applicant requested the second respondent to provide him the light beat work. The second respondent, by his order dated 27-10-1985, directed the Superintendent of Post Offices, Belgaum City, ^{as per copy A} to provide him light beat work. The applicant submits that his residence is at about 1 K.M. away from the place where he was working ~~from~~ in the Head Office. The applicant belongs to National



Union whereas the Superintendent of Post Offices and the Sub-Divisional Inspector belong to the rival union. The applicant is working as Divisional Secretary for Postmen (Class-IV) in Belgaum Division. The applicant used to discuss with the respondents about the problems of the Union and also bring out the harassment given by the respondents. The applicant also discussed about the complaints made against the second respondent, with the respondents.

(ii) It is submitted that to take revenge against the applicant and to cause him hardship, the first respondent, who came on in-charge only for a period of four months, transferred the applicant, by his order dated 15-2-1986 from Belgaum City Sub Office to Nehru Nagar Post Office as Postman. The said transferred place is away at about 5 K.Ms., from the present place. By virtue of the transfer order, the applicant is made to travel everyday twice from his residence to Nehru Nagar Post Office and thereby he is made to work and ride bi-cycle for more than 20 K.Ms. per day. This is how, with the malafide intention, the impugned order of transfer came to be made.

(iii) It is submitted that before ordering transfer, a show cause notice was issued on 25-1-1986 calling upon the applicant to show cause why he should not be transferred as a measure of penalty, without framing any specific charges, a copy of which is produced herewith and marked as Annexure-B. The

applicant gave reply suitably stating that he is not indulged in any activities which warrant his transfer. Inspite of it, the applicant has been transferred. Hence, the impugned order is illegal and bad in law. If the respondents transfer the applicant by way of penalty, they should have held an enquiry against the applicant as per Rule 15 of the Fundamental Rules. Under Rule 15, either for misbehaviour or inefficiency the Government Servant should not be transferred. Hence, the impugned order of transfer is penal in nature and violative of Fundamental Rule 15 of the Rules. The impugned order of transfer is also made with malafide intention as the respondents belong to the rival union. Added to this, the first respondent is only an in-charge Officer and not a regular incumbent. He has abused his power without authority of law.

(iv) The applicant submits that his request for re-transfer is also turned down without any application of mind and the representation to the higher authorities by way of appeal has also not ~~xxxx~~ yielded any fruits for re-transfer of the applicant to his original place. A copy of the impugned order is filed at Annexure-C.

7. Relief sought:

In view of the facts mentioned in para-6 above, the applicant prays for the following relief:

" Set aside the impugned order of the first respondent dated B2/P'Man/86 dated 15-2-1986 in so far as the applicant is concerned."



Ground for the Relief:

(i) The impugned order of transfer is violative of Rule 15 of the Fundamental Rules.

(ii) The impugned order of transfer is purely on account of malafide intention of the respondents just to take revenge against the applicant as he belongs to the rivalry Union and is working as Divisional Secretary of that Union, highlighting and illegal activities of the respondents, such as, misdeeds, mismanagement and harassment given to the respondents. Hence, the impugned order transferring the applicant is bad in law.

(iii) The impugned order of transfer is one without jurisdiction as the first respondent is acting only on in-charge basis. He cannot exercise the statutory power. He can only carry out only day to day administration. Hence, the impugned order of transfer is unjustified and illegal.

(iv) In the light of the fact that the petitioner is declared as physically handicaped and that the second respondent has directed the Authorities to provide light beat work to the applicant, ignoring all these aspects and transferring the applicant to the place which is far away from the present place clearly establishes the malafide and illegal action of the respondent-1. Hence, the impugned order is liable to be set aside.

(v) Even otherwise, the impugned order of transfer is bad in law.



8. Interim order prayed for:

Pending final decision on the application, the applicant seeks issue of the following interim order:-

"Stay the operation and implementation of the impugned order dated B2/Man/86 dated 15-2-1986 in so far as the applicant is concerned"

Reasons for interim order:

By virtue of the impugned order, the Authorities are forcing the applicant to report to duty and also threatening ~~him~~ to take disciplinary action against him if he does not report to duty at the transferred place. As the Authorities are fully prejudiced against the applicant, they may take any action as they desire against the applicant. It is submitted that a large number of members of the applicant's family are depending on the applicant. If the applicant is forced to report to duty at the transferred place, he will be put to irreparable loss and injury, besides being put to greater hardship, inasmuch as he is physically handicapped.

9. Details of the remedies exhausted.

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc., inasmuch as though he made representations to the second respondent and then to the higher Authorities by way of appeal for cancellation of the proposed transfer, no action has been taken.

10. Matter not pending with any other court, etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or

Wazay

any other Bench of the Tribunal.

11. Particulars of Postal Order in respect of the Application Fee:

1. Number of Indian Postal Order : DD 853 712
2. Name of the issuing Post Office : SBM Colony, Bangalore-50
3. Date of issue of Postal Order : 25/4/86
4. Post Office at which payable : at G.P.O. Bangalore-1

12. Details of index.

An index in duplicate containing the details of the documents to be relied upon is enclosed.

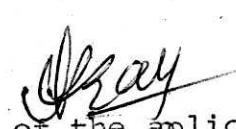
13. List of enclosures as per the index.

In verification:

I, S.G.Deshpande S/o Gangadhar Deshpande, Postman, Kapileshwar Road Post Office, Belgaum, do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

place:

Date:


Signature of the applicant.

To

The Registrar,
Central Administrative
Tribunal,
Addl.Bench: Bangalore.

ANNEXURE TO O.M.NO. FD.1. SRP. 79

DATED 17TH JULY 1979

FORM (Applicable to Orthopaedically Handicapped Govt. Employees)

GOVERNMENT OF KARNATAKA

Orthopaedic Department, Civil Hospital: BELGAUM

Sr.No.

I hereby certify that I have examined Shri Shankar Gangadhar Deshpande who is said to have been employed in Post & Telegraphs Dept. as (designation) Postman and whose signature is attested by me, is a candidate for sanction of conveyance allowance as stipulated in G.O.No. FD.1. SRP.79 dated 14-2-1979. After the detailed examination, I find that he has got the following permanent disability of:

1. Kyphotic deformity of thoracolumbar region.
2x with difficulty in bending and standing
erect and walking.

In conclusion, I am of the opinion that the total permanent disability is upto 45% percentage of both upper and lower extremities. He is eligible for the conveyance allowance as per G.O.No.FDI.SRP.79 dt. 14-2-1979.

Sd/-

Signature and Designation of
the Head of the Department of
orthopaedics, Govt., Civil Hospital

place: Belgaum.
Date: 7-11-1985.

Dr. Kalmesh S. Shegunshi,
M.B., B.S., D'Ortho
Orthopaedic Surgeon,
District Hospital, Belgaum.

/True Copy/

D. Sridhara Iyappa

Court Officer
High Court of Karnataka
Bangalore

INDIAN POSTS AND TELEGRAPH DEPARTMENT

Senior Superintendent of Post Offices, Belgaum Dn.,
Belgaum-590 001.

To

The S.P.M., H.S.G.II,
Belgaum City-590 002.

B-2/Miss/Retention P'Man beats/85 dated Belgaum 6-11-85

Sub:-Change the light beat on
compassionate grounds.

...

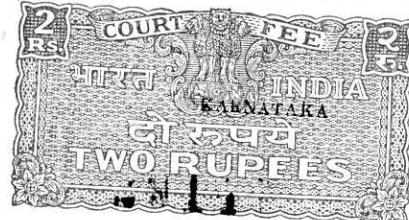
Shri S.G.Deshpande says that he is not strong
to ride bycycle etc., because he had met with acci-
dent long back. He requests that he may be given
light beat near the P.O.

Shri Deshpande may be given light beat near
the P.O.

Sd/-
Sr.Superintendent of P.O.,
Belgaum Dn., Belgaum.

/ True Copy /

B. Sridhara Iyer
Court Officer
High Court of Karnataka
Bangalore



No. 14584 Before the C.A.T.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

~~1400~~ No.

of 1986

**Appellant/Petitioner/s
Plaintiff/s Complainant/s
Decree-Holder/s, Applicant/s**

**Defendants, Respondent/s,
Accused/Judgement-Debtor/s,
Opponent/s.**

G. S. Zesha Pandit, Appellant,

nt/s.
Ssg Bel

I/We G. S. Desponda
the Appli Card

Nos. in the above matter hereby appoint and retain

Sri..... M. Roopa Venkata Chari

to appear, act and plead for me/us in the above matter and to conduct, prosecute and defend the same and all Interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein. appeals and/or other proceedings arising there from and also in proceedings for review of judgement and for leave to appeal to Supreme Court, and to obtain return of any documents filed therein or to receive any money which may be payable to me/us in the said matter.

2. I/We hereby authorise him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree or order therein, to appeal from and decree/order therein and to appear, to act and to plead in such appeal or in any appeal preferred by any other party from any decree/order therein.

3. I/We further agree that if I/we fail to pay the fees agreed upon or to give due instructions at all stages, he/they is/are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our papers and moneys till such dues are paid.

Executed by me/us this..... 21 date of..... 6 1981 at..... Bangalore

ashley

Signature/s

Executants are personally known to me and..... signed before me.....

Satisfied as to Identity of Executant's Signature.

(where executant is illiterate, blind or unacquainted with the language of Vakalath)

Certified that the contents were explained to the executants in my presence in.....
.....language, known to him/them who appeared perfectly to understand the same
and have signed in my presence.

Accepted M. RAGHAVENDRA CHAR

..... can i say grandpa. No s-a Name
..... No s-a Name. S-a cross f

ADVOCATES FOR

ADVOCATES FOR
DATE 3/1/84

ADDRESS FOR SERVICE

1094-21
B84 Midan
Bony 101

DEPARTMENT OF POSTS

14

O/o the Sub Divisional Inspector, Belgaum(N) Sub Dn. B

Memo No. B 210/Jan/86 Belgaum 15-2-86

With
The following transfers order in the Postman cadre is ordered to have immediate effect.

- (1) ✓ Shri S.G.Deshpande Postman BM City (HSG-II) SO to be Postman BM Nehrunagar.
- (2) Sri P.M.Badule CR Postman BM(N) S/Dn. attached to BM Nehrunagar to be LR Postman BM(N) Sub Dn. attached to BM City (HSG-II) SO.
- (3) Shri B.P.Godse Postman BM Nehrunagar to be LR Postman BM(N) Sub Dn. and attached to BM Nehrunagar SO.
- (4) Shri P.T.Gunjikar LR BM (N) Sub Dn and attached to BM City SO to be P'man BM City SO.

Relief arrangements:

- (1) SPM BM N.Nagar will please relieve Shri P.M. BALULE to start the chain.
- (2) Shri S.G.Deshpande Postman BM City on leave will join his new post after expiry of leave.

Sub Dnl. Inspector (P)
Belgaum North, Belgaum.

Copy of this memo issued for information and n/a to:

1. The SPMs, BM City/BM Nahrnagar.
2. The PM Belgaum.
3. The SSPOs, Belgaum.
4. Officials.
5. PFS.
6. O/C.

on Govt Casual leave
for 10 days from 6-2-86
to 15-2-86. including
Sunday.

4. You are, therefore, hereby called upon to pay damages to my client in a sum of Rs.50,000/-, failing which my client has ~~xx~~ already instructed me to take steps both in Criminal and Civil Courts for redressal of his grievance against you. If no steps are taken for payment of the above damages, my client will lodge a complaint in the jurisdictional Police and register a case against you punishable under the provisions of the Indian Penal Code, within three days from the date of receipt of this notice.

5. You are liable to pay Rs.200/- towards costs of this notice.

Yours faithfully,



(M.Raghavendra Achar)

Registered A/D

NOTICE OF APPLICATION

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

2nd Floor, Commercial Complex (BDA)
Indiranagar, Bangalore-560038.

Dated: 29th April, 86

Application No. 596 of /1986/F

Applicant

Versus

Respondent(s)

Shri S.G.Deshpande,

The Sub.Divnl. Inspector (Postal)
Belgaum North, Belgaum &
another.

To

1. The Sub-Divnl. Inspector (Postal)
Belgaum North, Belgaum.

2. The Senior Supt., of Post Offices,
Belgaum, Divn.,
Belgaum.

....Respondent No. 1 & 2.

Whereas the Applicant above named has filed an Application (copy enclosed) under Section 19 of the Central Administrative Tribunals Act, 1985 in this Tribunal, and whereas the Application is admitted.

Take notice that within 30 days from the date of service of this notice, you may appear in person or through an agent or through a duly authorised legal practitioner and file in six complete sets, reply to the Application along with documents, if any, in a paper book form with the Registry of this Tribunal, failing which the matter will be heard ex parte.

No. 1 is posted for further orders on 12-5-86
By order of the Tribunal.



R
for (K.R. Rao)
Deputy Registrar

AC DR 20-4-86
Shri Inspector DR 20-4-86
Joined with no enccl
8th
30/4/86

INDIAN POSTS AND TELEGRAPH DEPARTMENT

Senior Superintendent of Post Offices, Belgaum Dn.,
Belgaum-590 001.

To

The S.P.M., H.S.G.II,
Belgaum City-590 002.

B-2/Miss/Retention P'Man beats/85 dated Belgaum 6-11-85

Sub:-Change the light beat on
compassionate grounds.

...

Shri S.G.Deshpande says that he is not strong
to ride bycycle etc., because he had met with acci-
dent long back. He requests that he may be given
light beat near the P.O.

Shri Deshpande may be given light beat near
the P.O.

Sd/-
Sr.Superintendent of P.O.,
Belgaum Dn., Belgaum.

/ True Copy /

B. Shitalwajappa
Court Officer
High Court of Karnataka
Bangalore

Annexure- B

INDIAN POST AND TELEGRAPH DEPARTMENT

Sub-Divisional Inspector,
(Postal) Belgaum North,
Belgaum-590 002.

By hand

To

Shri S.G.Deshpande,
Postman, Belgaum City.

No.PF/SGD/86

Belgaum 25-1-1986.

Sub:-Improper behaviour-case of Sri S.G.
Postman, Belgaum City.

...

During my visit to Belgaum City so on 6-1-1986 and 8-1-86, the undersigned observed that your behaviour in the office was not proper. You were interfering in the administration of B.M.City, so which was not required/required by you. You were disturbing the office work by shouting loudly in the office/postman ~~have~~ not caring discipline of the office. Therefore, you are hereby called upon to explain why you should not be transferred from this office. Your explanation should reach the undersigned within 3 days from the date of receipt of this letter. In case of non receipt of your reply, the undersigned is at liberty to take action as deemed fit in the matter.

Sd/-

Sub-Divisional Inspector,
(Postal) Belgaum North,
Belgaum-590 002.

/ True Copy /

B. Goldalivappa

Court Officer
High Court of Karnataka
Bangalore

2574

DEPARTMENT OF POSTS

o/f the Sub Divisional Inspector, Belgaum (N) Sub Dn. BM-2

Memo No. B.2/P/Man/86 Belgaum 15-2-86

The following transfers order in the Postman cadre is ordered to have with immediate effect.

(1) Shri S.G.Deshpande Postman BM City (BSG-00)
SO to be Postman BM Nehrunagar.

xx xx xx xx

Relief arrangements:

(1) SPM BM N.Nagar will please relieve Shri P.M. Balule to start the chain.

(2) Shri S.G.Deshpande Postman BM City on leave will join his new post after expiry of leave.

Sd/-

Sub-Divl. Inspector (P)
Belgaum North, Belgaum.

Copy of this memo issued for information and n/a to

1. The SPMs, BM City/BM Nehrunagar.
2. The PM Belgaum.
3. The SSPOs, Belgaum.
4. Officials.
5. PFS.
6. O/C.

/ True Extract/

*B. S. Goldalal Nayappa
Court Officer
High Court of Karnataka
Bangalore* 2674