

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.845/90
AND 846/90

IN O.A. 845/90

Shri S.R.Patwardhan,

.... Applicant

V/s

Ministry of Finance
and another

.... Respondents

IN O.A. NO.846/90

Shri S.R.Patwardhan,

.... Applicant

V/s

Ministry of Finance
and another

.... Respondents.

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri S.R.Atre, Adv.
for the applicant.

Shri V.S.Masurkar, Adv.
for the respondents..

JUDGEMENT

DATED: 25.9.92

(PER : USHA SAVARA, M/A)

Both the cases were fixed for hearing on 3.9.1992.
A common order is being passed as the issues are
inter-related.

O.A.No.846/90 has been filed against the order
of the respondents dated 8.9.1990 read with order
dated 26.10.1990, by which an amount of Rs.22,494.60
has been ordered to be recovered as penal rent from the
applicant's salary. O.A.No.845/90 has been filed against

(N)

the order dated 23.10.1990, whereby the applicant was transferred from India Government Mint Bombay to the Gold Centre at Ahmedabad.

2. The facts of the case are that the applicant joined the Assay Department of the India Government Mint, Bombay in the year 1969 as an Assistant Assay Superintendent. By an order dated 21.3.1989 he was regularly promoted to the post of Assay Superintendent (Group B Gazetted) and was transferred to Gold Centre, Madras. On receipt of this order, the applicant pointed out orally to the respondent No.2, the various difficulties which he would face in running two separate establishments. It was also pointed out that there was no accommodation available at Madras out of the General Pool for the officers of the Gold Centre at Madras. By an order dated 8.4.1989 he was directed to proceed to Madras immediately on temporary duty; it was also mentioned in the order that he would return to the Headquarters on completion of temporary duties. Subsequently, on 28.4.1989 an order was passed transferring him on promotion as Assay Superintendent to Madras. He was relieved of his duties in Bombay on 2.5.1989. He proceeded to Madras to join his duties there. On 3.6.1989 he received a letter from the Administrative Officer/Estate Officer, Bombay, informing him that the allotment of the quarter in Bombay would be deemed to have been cancelled from 3.7.1989 on the expiry of 2 months from the date of his transfer. He was required

(B)

to intimate within seven days as to when he would vacate the quarter. He preferred a representation to the General Manager i.e. respondent No.2, in which he mentioned that his son was studying in Xth Standard and his elder daughter was in Second year B.A. and the younger daughter was in 1st year Commerce. He requested, in view of the fact that the family was already disturbed by his transfer to Madras, that he may be allowed to retain the quarter for the academic year with normal rent. No reply was received for this representation, but on 5.2.1990 the Dy. Chief Assayer, Madras addressed a letter to the respondent No.2 stating that the applicant had committed gross irregularities in the Gold Centre, Madras and therefore he was being "surrendered" with immediate effect on 5.2.1990 to India Government Mint, Bombay for his further posting elsewhere. He was required to vacate the Gold Centre, Madras, premises on the same day. (Annex A-6). He proceeded to Bombay and met the Dy. General Manager on 12.2.1990. He was informed that the Dy. Chief Assayer, Madras had no authority to surrender him to Bombay. He was told to return to Madras immediately and report. When the applicant reported at Madras on 16.2.1990, he was refused entry to his cabin on the ground that no order had been received from the General Manager. On 19.2.1990 he was allowed to join, but was prevented from sitting in his cabin to perform his normal duties (Annexure 11 and 12). He also made a representation to the General Manager on February 19th and February 23rd bringing to his notice the conditions prevailing the Gold Centre, Madras. The General Manager, by his letter dated 19/23.2.1990 informed him

that some charges had been levelled against him and asked him to explain as to why disciplinary action should not be taken against him under CCS (Conduct) Rule 1960. On 26.2.1990 he submitted his explanation to the charges levelled against him (Annexure 16). On the same day, by a separate letter he requested for leave as his son was appearing for the SSC Board examination and his father, who was a Cancer patient, had to be taken to the Doctor in the middle of March 1990, but leave was refused. On 7.3.1990 he received another letter levelling additional charges against him and asking for his explanation. On the same day, the General Manager, Bombay passed an order transferring him from Madras to the proposed Gold Centre at Noida Mint with immediate effect. He was relieved on 8.3.1990 and reported at Delhi on 16.3.1990, after availing of joining time. However, the General Manager, Delhi, pointed out that the General Manager, Bombay did not have administrative control over India Govt. Mint, Noida, and the transfer order of Gr. 'B' officer like Shri Patwardhan from Bombay to Noida could only be issued by the Min. of Finance. This fact was brought to the knowledge of the special officer (C and C), Min. of Finance by the General Manager, Delhi, by letter dated 21.3.1990. He was requested to issue an appropriate order to replace the transfer order issued by the General Manager, India Government Mint, Bombay in order to avoid future complications.

3. In the meantime, the applicant, besides making various representations to the Secretary, Ministry of Finance, also applied for allotment of a quarter at Noida

on 12.4.1990. No reply was received from the authorities on his representations. He was also not in receipt of salary from 1st March onwards, as his transfer from Bombay to Delhi had not been regularised. His TA/DA bill was also returned on 22.6.1990 as it was not known, whether he was on deputation or regular appointment/transfer. He made a further representation in June 1990 to the Secretary, Ministry of Finance for transferring him to Bombay on compassionate grounds due to the serious condition of his father, who was suffering from cancer.

4. On 8.9.1990, the applicant was informed by the Administrative Officer/ Estate Manager, that his request for retention of quarter till end of last academic year (June 1989 to May 1990) could not be acceded to as per rules. He was requested to pay licence fee at double the standard rent, and water charges for 4 months i.e. from 3.7.1989 to 2.11.1989, and at market rent from 3.11.1989 onwards. On 26.10.1990 he was given a memo that his request for considering his case for paying the licence fee at normal rate beyond the concession period of 2 months could not be acceded to, and arrears of licence fees amounting to Rs.22,494/- (up to October 1990) would be recovered from him in addition to the normal penal rent of Rs.1822.76 p.m. from his November 1990 salary. These two orders have been impugned by the applicant in O.A.846/90.

5. In response to the applicant's representation, he was transferred to India Govt. Mint, Bombay by order dated 17.10.1990 with immediate effect. He ^{was} relieved on 19.10.1990 and asked to report to General Manager, India Govt. Mint, Bombay. He assumed charge in Bombay on 22.10.1990, and was directed to report for duty at Gold Centre, Ahmedabad with immediate effect by an order dated 23.10.1990, which is being assailed by the applicant in O.A. 845/90.

6. Shri Ranganathan, appearing alongwith Shri Atre, submitted that the order transferring the applicant from Bombay to Ahmedabad is not only bad but malafide, in view of the fact that respondent No.1 ~~had~~ ordered his transfer from Noida to Bombay taking into consideration his plight. The applicant was transferred from Bombay to Madras, Madras to Bombay, again from Bombay to Madras, then from Madras to Noida, from Noida to Bombay and thereafter from Bombay to Ahmedabad in a short span of $1\frac{1}{2}$ years. This action of the respondents is not only malafice, it is also arbitrary and deserves to be quashed. Shri Ranganathan relied upon the judgement in the case of H.S. Ajamani V State of M.P. and ors (1989) 9 A.T.C. 122 to support his plea that frequent transfers, contrary to Govt. instructions, are bad. It is also submitted by Shri Ranganathan that the respondents have been transferring the applicant so frequently merely to harass him, and that no administrative exigency can be made out for transferring the applicant to Ahmedabad in October 1990, when the Gold Central Act was on the verge of being repealed. The applicant's transfer to Noida was irregular, as the General Manager was not

competent to transfer him to Delhi. His jurisdiction extended to Ahmedabad, Bombay and Madras only. The transfer to Delhi was void and the matter had to be referred to the Ministry in order to avoid future complications. The applicant's salary, his TA and DA were not paid to him in due time because the order of his transfer to Noida was made by a person not competent to transfer him outside the Bombay region. These hasty orders were passed by the General Manager, not on grounds of public interest, but because he wanted to harass the applicant. The bias of the respondent No.2 was obvious from his actions, which were arbitrary and bad. Reference was made to the judgement in the case of Delhi Transport Corp. V/s D.T.C Mazdoor congress AIR 1991 S.C. 101. which lays down the parameters within which discretion must be exercised by the Executive authorities. Shri Ranganathan also relied upon the judgement in the case of Alexander Kurian Vs Director Central Marine Fisheries Research Institute, Cochin and Another (1988) 6 ATC 421 for the proposition that mere assertion by the Government that transfer is in public interest does not validate the order unless there are specific grounds to support it. Shri Ranganathan also relied upon the judgement in the case of D.G. Mane V Union of India and another (1987 4 ATC 44) to support his contention that frequent transfers were made for harassing the applicant, and were proof of malafide.

7. It is, further, the case of the applicant that due to his frequent transfers from Bombay to Madras, Madras to and back, Madras to Noida and Noida to Bombay Bombay/and finally from Bombay to Ahmedabad, he has been unable to shift his family from Bombay. He had requested

(14)

for permission to retain the Government accommodation in Bombay on normal rent for one year on 12.6.1989. He was given a reply only on 8.9.1990, rejecting his representation. In the meantime, only normal rent was being deducted from his salary therefore he presumed that his representation had been accepted. When he was transferred to Delhi on 7.3.1990, he made an application for allotment of quarter in April 1990 but he was transferred from Delhi on 17.10.1990 and rejoined in Bombay on 22.10.1990. On 23.10.1990 he was ordered to report at Ahmedabad. The post of Assay Superintendent at Ahmedabad had remained vacant for a long time. It was only when the applicant was transferred to Bombay by respondent No.1 on humanitarian grounds that respondent No.2 thought of public interest and transferred the applicant to Ahmedabad. Another Assay Superintendent was available at Bombay, but he was not disturbed, and the post at Ahmedabad was kept vacant. No sooner did the applicant join at Bombay then the respondent No.2 transferred him on the ground of administrative exigency. The sequence of events leads to the inevitable conclusion that respondent No.2 was determined to harass the applicant, and having failed in his attempt to keep him in Noida, promptly posted him at Ahmedabad. The transfer order was malafide, punitive and arbitrary and therefore should be quashed. Because of the frequent transfers, the applicant was not allowed to settle down at Madras, Noida or Bombay and therefore the recovery of penal rent for the quarters is arbitrary and bad in law. Though the officers of the Government Mint were declared eligible for allotment to General Pool accommodation at Madras from 11.12.1989, but the applicant

was transferred to Noida in February 1990, and therefore, could not apply for the same. He did apply for government accommodation in April 1990 in Noida, but was not allotted any accommodation till the date of his transfer to Bombay in October 1990. In the meantime, he was served the letter dated 8.9.1990 from the Administrative officer and Estate Officer regarding deduction of penal rent from his salary. His representation dated 26.10.1990 (Annex 47) to the Secretary, Min. of Finance for waiver of penal rent is still not decided. In the circumstances, it is prayed that the impugned orders dated 8.9.1990 and 26.10.1990 (by which recovery has been ordered) be declared illegal and bad in law and the same be quashed.

8. Shri V.S.Masurkar, learned counsel for the respondents vehemently contested the application. So far as the transfer of the applicant to Ahmedabad is concerned, he stated that the applicant has been transferred due to exigencies of service, as the post of Assay Superintendent was lying vacant for a long time, and there was an urgent need for the services of an Assay Superintendent at Ahmedabad. The grounds on which he was transferred from Noida to Bombay were not known to respondent No.2, and he posted him at Ahmedabad for administrative reasons only. The applicant does not have a vested right to remain at a particular place. The action of the respondents is within the law and there is no malafide. It was submitted by the learned counsel that on his transfer to Madras, the applicant was relieved on 2.5.1989. The applicant's claim that he was given oral assurance by the 2nd respondent not to disturb him from the Government quarters is totally denied.

On the other hand, as early as 3.6.1989, he was informed that the allotment of the quarter was deemed to have been cancelled from 3.7.1989, and he was advised to intimate when he would vacate the quarter. No doubt the applicant made a representation for retention of the quarter for the academic year, but the same was not acceded to as he was owning a house at Andheri. The reply to his representation was given on 8.9.1990, when he was informed that his request had been rejected, and he was requested to pay penal rent. However, it is pointed out by Shri Masurkar that the applicant was well aware of the rules, as he had faced the same situation in 1984-85, and paid penal rent for a long period. Since the applicant had his own house, he could have easily vacated the Govt. accommodation. The balance of convenience was not in his favour.

9. It is further stated that the Dy. Chief Assayer, Madras, found several serious omissions and commissions in his functioning, so he 'surrendered' him to General Manager, Bombay for further posting. The charges were found to be partially correct, on an enquiry made by the General Manager, so 'it was considered that his continuance at Madras could be allowed,' and he was directed to go back to Madras. This period was treated as temporary duty, and no loss had been caused to the applicant. Though there was conflict between the applicant and the Dy. Chief Assayer, it is denied that he was prevented from doing his duty. However, both were watched and warned appropriately. The allegations against the applicant

were enquired into and were found to be partially correct. Since the applicant's continuance in Madras was a very serious risk to the precious metal dealings, the respondent No.2 transferred him to Noida Mint, and also requested the Ministry to repatriate respondent No.4 to his parent department. This transfer was made under the powers vested in Respondent No.2 as cadre controlling authority for assay officers; a new centre was to be opened in Noida, as an experienced senior officer, the applicant was posted there. This transfer was in public interest. The charge of harassment against respondent No.2 is false and baseless. TA and DA have been sanctioned to the applicant in time. However, it is a fact that lapses attributed to India Government Mint, Noida and Bombay do occur sometimes when accounting circles change.

10. So far as the applicant's transfer to Ahmedabad is concerned, Shri Masurkar submitted that there was an urgent need for the services of an Assay Supdt. At Ahmedabad and therefore the applicant was posted there. The transfer was made purely in public interest and was within the law and competence of the respondents. It is the duty of the administration to find out and place the right man at the right place. The applicant cannot claim a vested right to continue at a particular place. After his transfer, it was obligatory upon him to vacate the quarter which he had failed to do, and therefore the licence fee has been charged according to the prevalent rules and the orders call for no interference. The applicant is not entitled to any relief.

22

11. I have heard the arguments of the learned counsel for the opposite parties at great length, and have perused the annexures filed by them as well as the case law cited by them. The crux of the matter is whether the transfer of the applicant is made on administrative grounds or whether there is an element of arbitrariness in it amounting to colourable exercise of power. It is undisputed that the applicant has undergone four transfers in the brief period between May 1989 and October 1990, not counting the totally irregular act of "surrendering" by the Dy. Chief Assayer, which resulted in the applicant's departure from Madras and his return to Madras in February 1990. His transfer to Madras was certainly in public interest. It is the case of the respondents that he was shifted from Madras to Noida because his 'further retention at Madras was very serious risk to the precious metal dealings 'Some charges had been leveled against him and on enquiry, the General Manager came to the conclusion that the same were true. If this is true then it was incumbent upon the respondents to conduct a further enquiry and punish him. No such proceedings were initiated. Since no enquiry has been conducted, I cannot accept the statement in the reply that he was transferred from Madras because his retention there was undesirable. While upholding the principle, that it is for the concerned administrative authority to decide whether in the larger interest of efficiency a particular transfer is to be effected or not and once such a decision has been taken in a fair and bonafide manner, it is not for this Tribunal to examine the legal validity of it, I am compelled to interfere in this case because of the peculiar facts and circumstances stated above and the decision taken

by the respondent No.2 holding the applicant guilty without any enquiry after notice to the applicant. The Kerala High Court in Abdul Kadar Vs RDD 1967 Ker It 334 held that "if the dominant motive of the employer in the order of transfer was only to punish the employee, the transfer is illegal and void." The order transferring him from Madras to Delhi is in effect a penal action against the applicant.

12. Again, the General Manager, Bombay has administrative Control over Bombay, Ahmedabad, and Madras. In his haste to get rid of the applicant, he exceeded his jurisdiction and transferred him to Delhi. As pointed out by the General Manager, Delhi to Special Officer (C and C) Ministry of Finance, the order of transfer of the applicant to Noida should have been issued by the Min. of Finance. This order of transfer was void. It has been held by the Hon'ble Supreme Court in the case of Baradakanta Mishra Vs H.C. of Orissa that if the order of the initial authority is void, the order of appellate authority cannot make it valid. What is void cannot be confirmed. This order was bad, and could not have been 'regularised' by the Min. of Finance, subsequently.

13. The applicant made various representations to the higher authorities that his father, aged 75 was suffering from cancer and he should be transferred to Bombay. His patience bore fruit and on 17th Oct. 1990 he was transferred to Bombay. He joined there on 22.10. 1990 and on 23.10.1990 was directed to report at Gold Centre, Ahmedabad. This transfer is on the ground of

24

public interest, as there was need for Assay Superintendent at Ahmedabad. The post had been vacant for a long period of time, and it was necessary to man it. If the applicant had been the only Assay Supdt. in Bombay, one could have accepted this, and dismissed this petition. However, there was another Assay Superintendent at Bombay. He was not disturbed. The applicant, who had undergone the rigours of three transfers ~~was~~ was chosen for manning the post at Ahmedabad. If this is not gross abuse of power, it certainly substantiates the applicant's allegation that someone is harbouring ill-will towards him and he is being harassed and victimized. The Hon'ble Supreme Court has observed in the case of Delhi Transport corp. (Supra) that 'the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by law, discretion, when conferred upon executive authorities must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decision should be predictable, and the citizen should know where he is'. The order transferring the applicant to Ahmedabad is certainly tainted with arbitrariness, and for that reason, deserves to be quashed.

14. The respondents have claimed that the transfer is in the interest of public service. They have not produced any material to support this claim. However, in view of the fact that the Gold Control Act was repealed and, subsequently, the Ahmedabad office itself was closed down in 1992, I cannot accept the bald statement

(28)

-15-

of the respondents that the transfer was made in public interest. In view of this the O.A.No.845/90 succeeds. I allow the application and quash the order dated 23.10.1990 transferring the applicant to Ahmedabad.

15. With regard to O.A.No.846/1990 it is also allowed partially. The applicant is liable to pay normal rent for 2 months, double the standard rent and water charges for 4 months, and market rent from 3.11.1989 to 8.3.1990 i.e. the date he was relieved from Madras.

16. The applications are disposed of with the above directions. There is no order as to costs.