

(d)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 636/90
~~St. C. A. No. 636/90~~

198

DATE OF DECISION 21.10.91

Narendrakumar C. Pal PetitionerMr. L.M. Nerlekar Advocate for the Petitioner(s)

Versus

Commander Works Engineer, Colaba RespondentMr. R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Friolkar, Member (A)

The Hon'ble Mr. N.Dharmadan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MOTPRRND-12 CAT/86-3-12-86-15,000

(N.Dharmadan)
M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Original Application No.636/90

Narendrakumar C. Pal,
R/o. Datta Mandir Road,
M.E.S. Building, P.37/2,
Malad (West),
Bombay 400 097.

... Applicant

v/s

Commander Works Engineer,
24, Assaye Building, Colaba,
Bombay 400 005.

... Respondent

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri N.Dharmadan

Appearances:

Mr. L.M.Nerlekar, Advocate
for the applicant and
Mr. R.K.Shetty, Advocate
for the respondent.

ORAL JUDGEMENT:

Dated : 21.10.1991

(Per. N.Dharmadan, Member (A))

The applicant is a Group-C employee working under the Respondent from 25.11.1972 at Bombay. He has been transferred as per the impugned Exhibit A1 order dated 24.10.1989 from Bombay to Daman. The applicant submitted various representations for cancelling the same. They were rejected.

2. The applicant has challenged the transfer order mainly on three grounds:

- 1) the applicant, who belongs to a Scheduled Caste community, is not liable to be transferred to distant place, and it is against the policy of general transfers;
- 2) the transfer is on extraneous consideration only to accommodate a trade union leader and hence it is illegal; and

iii) the order of transfer is a punishment because it is solely based on the ground that the applicant is carrying on private business of transportation by proxy. The impugned order was passed to prevent him from carrying on these business.

3. The respondents have filed reply and additional reply denying all the allegations and averments in the application.

4. We have heard the arguments of learned counsel on both sides. The relevant instructions containing the policy of transfer of persons belonging to Group 'C' & 'D' civilian subordinates has been produced ^{as} Exhibit R1 along with the written statement filed by the respondent on 3.12.1990. According to Exhibit R1 policy statement an industrial personnel who was the longest stay in a particular station will be posted out. The applicant states that he is not the person who has got the longest stay in Bombay because he commenced his stay from 1972. One Shri J.Gomes is working in Bombay from 18.5.1957 and hence he should have been transferred adopting the principle and policy of the transfers as contained in Exhibit R1. This fact is denied by the respondent. According to the respondent Shri Gomes is working in a different station and he could not be transferred under Para 3(f) of Exhibit R1 as he was over 50 years of age. The respondent further submitted that the case of Shri Gomes is not a comparable one for testing the validity of the present transfer of the applicant. Having considered the contentions in this behalf we are of the view that the applicant is the person who is having the longest stay in Bombay from 1972 and in this

10/

view of the matter the contention of the applicant cannot be accepted.

5. The applicant has not produced any order or circular which prohibits or bans a transfer of a member belonging to SC/ST community. Of course the policy of the Government is not to disturb the members of SC/ST communities to the extent possible while issuing orders of general transfers. But they can be transferred in the exigencies of service. Under these circumstances we are not prepared to accept the contention of the applicant because there is no bar on the transfer of a member belonging to SC community from one place to another. In this case the applicant was continuing in a particular place from 1972 onwards. He cannot claim the benefits of continuing in ~~that~~ ^{any} place till the age of his superannuation particularly in the light of the undertaking given by the applicant at the time of his appointment that he would serve any where in India or outside in the best interest of service.

6. With regard to the ground that the transfer has been effected on extraneous consideration and not in the exigencies of services we are not prepared to accept the contentions of the applicant. The applicant's case is that the present order of transfer had been issued only to accommodate a trade union leader and hence it is malafide is only to be rejected because this has been denied by the respondent. It is stated in the reply statement that the applicant has been correctly selected for transfer based on his longest stay in Bombay and seniority as shown in Exhibit R17. We are inclined to accept the case of the respondent in this behalf.

12

(b)

7. The further case of the applicant is that the transfer is malafide because the respondent had stated in the reply statement that the sole reason for transferring him is based on the alleged business which is being carried on by his sons and relatives of the applicant. He submitted that if the applicant is really involved in such business the respondent should have taken disciplinary action against him and transfer is not legally permissible. ^{Since the transfer is a punishment it} We have considered the contention of the parties. We are of the view that the transfer in the instant case has been effected in the exigencies of service. The additional reason mentioned in the reply statement filed by the respondent only indicates that the applicant is also interested in running the business which is being carried on in the name of proxy. But this is not the sole reason for the transfer as alleged by the applicant. We are not inclined to accept the contention of the applicant that the transfer is malafide ~~and to penalise him.~~ ^{is}

8. It is also brought to our notice in the course of arguments that the applicant has disobeyed the movement order issued by the respondent and separate disciplinary proceedings are taken and being continued for penalising him.

9. Having considered the facts and circumstances of the case in detail we are of the opinion that the applicant has not made out a case for interference. This is only a simple transfer in the exigency of service and we are not interfering in this matter. The impugned

19

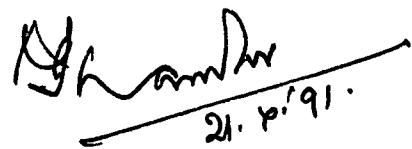
... .5/-

(14)

order under these circumstances has been issued in the exigencies of the service. Accordingly we see no merit in this application which is only to be dismissed.

10: We dismiss the same.

11. There will be no order as to costs.


N. Dharmadan
21. x. 91.

(N. Dharmadan)
Member (J)


M.Y. Priolkar

Member (A)

v/-

15
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

R.A.No.188/92 in
O.A.No.636/90.

DATE OF DECISION : 10/12/92

Narendrakumar

- Applicant

Mr.L.M.Nerlekar

- Counsel for the applicant

V/S

Commander Works Engineer,
24, Assaye Building,
Colaba, Bombay 400 005.

- Respondent

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri N.Dharmadan

JUDGMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

This review application and M.P.No.937/92 for condonation of delay are filed by the original applicant. On a perusal of the RA and the accompanying M.P. we are of the opinion that they can be disposed of by circulation. Accordingly, we dispose of the same by circulation on the basis of following orders.

2. The applicant challenged his transfer order No.233 dated 24.10.89 in the original application filed under Section 19 of the Administrative Tribunals Act, 1985. The main points raised at the time of arguments were considered and the application was rejected as per judgment dated 21.10.91. The applicant received a copy of the judgment on 31.10.91. He ought to have filed the RA within 30 days of receipt of a copy of the judgment, but actually the RA was filed on 21.10.92.

There is a long delay of about one year. The applicant has stated that he was laid up on account of some physical and mental strain and he was suffering from acute bronchitis and jaundice. But he has not mentioned the details of the dates recovered on which he was actually laid up and/from the ailments alleged by him in the M.P. No satisfactory explanation has been given as to what actually prevented him from taking steps for filing the RA by entrusting the matter to some other person who is related to him or very close to him in order to avoid the delay. The settled principle is that every day of delay in filing the RA should be explained with satisfactory and convincing reasons. The applicant has given only general statement without specific particulars and details and relevant dates for appreciating the contentions and the bonafides of the applicant in presenting the matter. Having regard to the facts and circumstances we are of the view that the reasons given in the application for condonation of delay are not satisfactory. We are not inclined to condone the delay and entertain the RA. Hence, we dismiss the application for condonation of delay without issuing notice to the opposite party. Consequently, we dismiss the application for review also. There will be no order as to costs.



(N.DHARMADAN)
JUDICIAL MEMBER



(M.Y.PRIOLKAR)
ADMINISTRATIVE MEMBER