

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

ORIGINAL APPLICATION NO.: 651/90

Shri D.B.Gaikwad,  
Senior Auditor,  
CDA(O), Pune - 411001

..... Applicant

Vs.

1. The Controller of Defence Accounts (O)  
Pune - 411001

2. The Controller General of Defence  
Accounts, R.K.Puram, West Block, No.5,  
New Delhi - 110066

..... Respondents.

CORAM : HON'BLE SHRI T.C.REDDY, MEMBER (A)

Appearance :

Mr.S.P.Saxena,Adv,  
for the Applicant

Mr.V.S.Masurkar, Adv,  
for the Respondents.

JUDGMENT

DATED: 20-8-91

(PER : T.C.REDDY, MEMBER (A)

This application is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 questioning his transfer order dated 30.8.1990 from C.D.A.(O) Pune - 1 to M.C.C.D.A.(S.C.)-Pune -1. The facts giving rise to this application in brief are as follows:

2. The applicant is civilian Central Government Class II employee and is working as an Accountant. He is transferred from CDA (O) - Pune - 1 to M.C.C.D.A. (S.C.), - Pune 1 as per order of the 2nd Respondent dated 30.8.1991. The said transfer order is in question as already pointed out.

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3. On behalf of the respondents it is contended that there is no transfer of the applicant at all ~~in~~ the real sense and the applicant is shifted from one office to another in the same station which is Pune and that the application is liable to be dismissed.

4. The fact that the applicant is transferred from one post to the other in Pune itself, is not in dispute. In this context it will be pertinent to note the observations in B.Varadha Rao V State of Karnataka and others 1986(4)SCC pg.131, wherein it is laid down as follows:

"It is well understood that transfer of a government servant who is appointed to a particular Cadre of transferable post from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. (emphasis supplied). That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post" is

The applicant/transferred from one post to another in Pune itself as already pointed out. As seen none of the respondents have any illwill as against the applicant. We see no malfides on the part of any respondent in effecting the said transfer from one post to another at Pune itself. The transfer of applicant to the Office of Respondent No.3 as ordered by respondent No.2 is on administrative grounds and not with any malfe' intention. The applicant continues to enjoy at Pune all facilities including accommodation as before. The said transfer is purely administrative for smooth and efficient functioning of the office concerned.

5. It is seen from the record, one Mr.A.R.Jagtap had been working as Class IV employee at Pune and the applicant herein and the [redacted] said Jagtap ~~appear to be~~ having personal animosities and seem to have given complaints against each other. So, on

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administrative grounds the said Jagtap had been transferred to outstation viz. Nashik, whereas, the applicant has been transferred to the other office in the same place i.e. Pune. Keeping in mind administrative exigencies, the transfer of the said Jagtap and the applicant seem to have been effected. It is pleaded that one Mr.N.S.Dube who is the president of the All India Defence Account's Association is supporting the said Jagtap and the said Dube who is said to be in close touch with the respondents had influenced the respondents in bringing the transfer of the applicant from one office to another at Pune. I am not prepared to believe that the respondents under the influence of the said Dube, had acted making the said transfer of the applicant.

6. The question about transfer of an official is primarily for the authorities concerned. Variety of factors may weigh with the authorities while considering the question of transfer viz. suitability of the officer for the post, his attitude, past conduct, reputation, the period for which he had been in that post and a number of other grounds which may be clubbed together under the head "Exigency of Service". It is not for this Tribunal to go into the matter and adjudicate about the propriety of the said transfer. This Tribunal can only interfere if the transfer is violative of any of the legal provisions or is otherwise malafide. In this case we do not find any legal provision being violated or the transfer having been effected with any malfides. So, the order of transfer is neither open to judicial review nor justiciable.

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5. After going through the entire material it is quite clear that there are no merits in this application and this application is liable to be dismissed and accordingly is dismissed. The parties shall bear their own costs in this application.

T. Chandrasekhar  
(T.C.REDDY)  
MEMBER (J)

21/8/91

# Central Administrative Tribunal

~~HYDERABAD BENCH : AT HYDERABAD~~

Q.A.No.

T.A.No. RP No.66/91

Date of Decision :

Sri Dharamveer Babaji Gaikwad

Petitioner.

Advocate for the  
petitioner (s)

Versus

Controller of Def.Accts., Pune

Respondent.

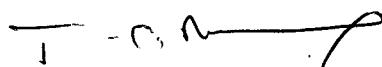
Advocate for the  
Respondent (s)

## CORAM :

THE HON'BLE MR. T. CHANDRASEKHAR REDDY, MEMBER (JUDICIAL)

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)



(HTCR)  
Member (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Review Petition No.66/91

Shri D.B. Gaikwad

.. Applicant

Vs

1. Controller of Defence Accounts, Poona

2. Controller General of  
Defence Accounts  
New Delhi

.. Respondents

CORAM:

Hon'ble Shri T. Chandrasekhar Reddy, Member (J)

ORDER ON REVIEW PETITION BY CIRCULATION

( PER Shri T. Chandrasekhar Reddy, Member (J) ) Dated:

This Review Petition No.66/91 under Section 22(3)(f) of the Administrative Tribunals Act, 1985, is filed on 23/9/91 for reviewing the judgement dated 21.8.91, a copy of which was sent to the applicant and received by him on 10.9.91.

After carefully considering the issues raised in the Review Petition along with facts and circumstances of the case, I see no reason why the Review Petition should not be disposed of by circulation in terms of Rule 17(3) of the Central Administrative Tribunals (Procedures) Rules, 1987. Accordingly, I proceed to deal with and decide it.

The facts giving rise to the review petition in brief may be stated as follows:

The applicant is a civilian Central Government Class II employee and is working as an Accountant. He was transferred from CDA(O), Pune-1 to M.C.C.D.A.(S.C), Pune-1 as per the order of the second respondent dated 30.8.1990. The said transfer was questioned by the applicant in this Tribunal by filing OA No.651/90, under Section 19 of the Central Administrative Tribunals Act, 1985.

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The said original application was decided on 21.8.1991 by judgement of this Tribunal. As already pointed out, it is the said judgement that is sought to be reviewed by the petitioner. The applicant had raised the following grounds in his Review Petition to review the judgement.

- "1. On a perusal of the judgement dated 20.8.1991, it is seen that the Hon'ble Tribunal has not taken into consideration all the submissions and pleadings made out in the original application. The Hon'ble Tribunal ought to have taken note of the fact that the applicant was beaten up by another employee of CDA(O) viz., Shri Jagtap and the applicant had to be medically treated. A F.I.R. with Police had been filed by the Applicant and the respondents were informed, but no action was taken by the Respondents against the misconduct of Shri Jagtap by the Respondents.
2. Similarly, the earlier incident of Shri Jagtap visiting the house of the applicant and misbehaving and threatening ~~of~~ the wife of the applicant in his absence was also a misconduct. Shri Jagtap for which a complaint was ~~filed~~ lodged by the applicant with the local respondents, but no action was taken by Department against Shri Jagtap.
3. Further, the incidence of abusing the applicant by Shri Jagtap in the office premises on working day was also reported to the local respondents, but again no action was taken by the Respondents against Shri Jagtap.
4. The applicant had also asked for an inquiry on the above incidents, but the respondents did not hold inquiry which goes to prove that the respondents are acting malafidely and with bias and were favouring and protecting Shri Jagtap.
5. The ~~C~~ Hon'ble Tribunal would have ~~not~~ taken notice of the fact that a Criminal Case is pending against Shri Jagtap for assaulting the applicant and hence, the respondent department should have initiated a departmental action against him in all fairness but it was not done."

As could be seen, none of the grounds taken by the petitioner are relevant for deciding the question ~~in~~ in issue. The question in issue in the OA was whether the

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transfer of the applicant at Pune itself from one office to another was done with any malafides and whether the said transfer was arbitrary and illegal.

In the Judgement dated 21.8.91, it is clearly pointed out that the said transfer of the applicant is purely on administrative grounds for smooth and efficient functioning of the concerned offices. We have also made it clear in the judgement, that the respondents were not influenced by any extraneous considerations in effecting the transfer of the applicant. We had also observed in the said judgement that "This Tribunal can only interfere if the transfer is violative of any of the legal provisions or is otherwise malafide. In this case, we do not find any legal provision being violated or the transfer having been effected with any malafides. So the order of transfer is neither open to judicial review nor justifiable."

In view of the above observations in the judgement dated 21/8/91, we are unable to understand how the question of 'transfer' could be 're-opened' once again in this Review Petition.

As could be seen, the effort on the part of the applicant seems to have the entire case re-opened, re-appraised and to have fresh judgement - if possible, in his favour. That cannot be the scope of the Review Petition. It is needless to pointout that the review is by no means an appeal in disguise and is permissible only in exceptional cases which come within the ~~limits~~ of Order 47, Rule 1, C.P.C.

We do not see any error apparent on the face of the record. In this context, the decision of the Supreme Court Judgement in AIR 1979 S.C. 1047 - Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma and others may be cited.

"It is true there is nothing in Art. 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to exercise the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of the due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; It may be exercised where some mistake or error apparent on the face of the

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record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. The would be the province of the court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed....."

In view of the observations in the said decision, there is absolutely no scope to review the judgement.

There are no merits in this Review Petition and is liable to be dismissed and accordingly is dismissed.

*T. Chandrasekhar Reddy*

(T.CHANDRASEKHAR REDDY)  
Member (Judicial)

Dated: Ninth Jan., 1992