(04)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NOs. 496/91,503/91, 540/91,541/91

1. Original Application No.496/91

Shri M.C.Barke .... Applicant

V/s

Employees' State Insurance Corp. and another .... Respondents

2. Original Application No.503/1991

Shri K.P.Nayak .... Applicant

V/s

Employees' State Insurance Corporation and another .... Respondents

3. Original application No.513/1991

Shri R.K.Kapani .... Applicant

V/s

Employees' State Insurance Corporation and another ... Respondents

4. Original application No. 540/91

Shri M.A.Khan .... Applicant

V/s

Employees' State Insurance Corp. and another .... Respondents

5. Original Application No.541/91

Shri S.G.Shelar .... Applicant

V/s

Employees' State Insurance Corp. and another. .... Respondents

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman,

HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER(A)

Appearance:

Mr.G.K.Masand, for Mr.G.R.Meghani, adv, for the applicant

Mr.M.I.Sethna, Sr.Counsel for the respondents.

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Dt: 15-10-1991.

Judgment

(Per : U.C.Srivastava, Vice Chairman)

In all these five applications as common facts and law are involved, they are being decided by a common judgment, The applicants have challenged the common transfer order, by which they have been transferred to Puna from Bombay. They were earlier promoted and they declined to accept the promotional post in order to avoid the transfer and within a year they have been promoted and transferred to Poone again vide impugned order.

2. The applicants are employees of Employeess State Insurance Corporation(for short,H.S.I.C.) as Lower Division Clerks. They joined the service on various dates and were promoted as U.D.C. and then to the higher post of Head Clerk/Assistant on adhoc basis, A meeting of Departmental Promotion Committee, was convened for making promotion to the post of Head Clerk/Asstt. which scrutinised the Annual Confidential Reports for making such promotions. The Departmental Promotion Committee which was held on 4.5.1989 cleared the applicants also and recommended promotion of 127 officials from the gradation list. There were only 55 vacancies in Bombay, 7 vacancies in Nagpur and 47 vacancies in Pune. Out of these persons 21 were promoted on the recommendation of the Departmental Promotion Committee which was held on 11.8.1989 and other officials were promoted on the recommendation of D.P.C. which met on 30.5.90 for promotion on regular basis. Some of the officials found unfit by the earlier D.P.C. 12 officials who had earlier refused promotion in 1989 were included in it. Out of these, 17 declined promotion and 3 proceeded to Pune. Remaining officials including 5 applicants were transferred by an order/9.8.91, 23.8.91 and 12.9.1991, which has been challenged in this application. In the promotion

order issued by Employees State Insurance Corporation, it was mentioned that names of the employees should be intimated by the local Office Managers who were not willing to move to the new places of posting within 7 days of receipt of the said order and to the order of Promotion on regular basis of those who are not willing will be deemed to be cancelled and they will not be considered for promotion for a period of one year and would thereby loose their seniority. The applicants declined the transfer on promotion due to family problems, health problems etc. and their promotions were cancelled, but they continued to officiate as Head Clerks/Assistants at Bombay regional office. Again the DPC met in August 1989, the applicants who declined their earlier promotion outside Bombay, again were promoted by order dated 31.5.91 and transferred to Pune again by the impugned order. Those who were promoted earlier in place of applicants and were transferred to Pune were transferred back to Bombay said to be in public interest, even though admittedly they are being transferred back to Bombay on their own request. The applicants state that the transfer order on the ground of public interest is not at all in public interest and it is illegal and arbitrary as transfer order is passed with a view to accommodate these employees who have been transferred out of Bombay on promotion superceding the applicants. The applicants state when they declined the promotion outside Bombay and juniors were promoted, they were led to believe that they would stay at Bombay at least for a reasonable normal term after refusal of promotion and forced session. Despite superseded by one year again they are being sent from Bombay to Pune on transfer. The

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applicants grudge thus, there they will be loser doubly viz seniority and disturbance of family life and shifting to new place which may be visited by unforseen consequences. The impugned transfer order by promoting the juniors according to the applicantsh have been done to favour them who are being brought back to Bombay within one year and that too on their own request. The transfer on request after promotion within a short span of time according to the applicants against the concept of transfer in public interest. The background of the present practice of transfer according to the respondents is that some of the employees of the Pune Sub Regional Office filed petitions in High Court, Bombay, which was transferred to this Tribunal by which the transfer of employees of Sub-Regional Office Pune on the basis of the common centralised Regional Seniority list for the entire state which includes these sub-divisions for the said cadre of Assistants/Head Clerks were challenged and prayer for decentralisation and separate and independent seniority list for each of the aforesaid three divisions was made. A rival petition was also filed by the Employees' Union belonging to the Bombay office in which prayer for centralised cadre for all the three divisions was made and thereby conflicting relief was claimed. Earlier, interim order was granted, which was later on vacated on 28.4.89 and Department started the practice of effecting inter-se transfers within the aforesaid Sub- Regional officers as and when the question and need for filling the vacancies on regular

basis arose. By the final order datrd 16.2.1990 the Tribunal permitted the centralised list of the relevant cadres. A common seniority list was accordingly prepared. The strength of Bombay office being the largest and therefore,as and when Regular vacancies arose in other sub-regional office persons from Bombay according to the respondent were sent to fill up these vacancies initially. Thus department started this practice in the year 1989 only and continued till thereafter. It has also been admitted by the respondent that this transfer practice mentioned above is started from Sr.No.229 of the said seniority list thereby excluding the first 228 names of the list from facing any such transfer. The persons who were promoted after refusal of promotion by the applicants viz their juniors were transferred to Pune and Nagpur and retransferred to Bombay at their instance the applicants are being transferred to other place after they have been made their services in this manner stated above. This practice, according to them has been solved to enable officials at Bombay to have experience of work to go together to places, as far as possible without causing least possible inconvenience by accepting the re-transfer request in a phased manner as far as possible. A reference to the Unions at these places have also been made and it has been stated as it will be desirable that the Union may also be impleaded as a party. The allegation of malafide which made by the applicant has been denied.

3. The factual position is as stated above and is that

there is no written policy in the matter of such transfers by the department, and the practice only has started in the year 1989 and has not been applied squarely to all the persons in the seniority list as it excludes from its operation first and 228 employees who continued to stay on the places where they were posted after their promotion in theyear 1989. It appears that the purpose of such transfer is that those persons may gain experience of working elsewhere also. The applicant's plea that such transfers are being made at the instance of one Union and also pick and choose is being adopted which, according to them, is evident from the facts that the first 228 persons are not being touched, who according to them are associated with this Union which at present is is in dominating position and that is why those who are associated with the Union and who have got promotion out of turn, are being sent back to Bombay within a period of one year on their own request. Normally, on request no one is transferred within a period of one year and it is because of influence of the Union that they are being transferred to the detriment of the applicants and others but the so called practice is not a good practice and there is no surety that this practice will be followed and that too consistently or is based on any rotational policy. The instant transfer too cannot be said to be in exigencies of situation. There is no plausible explanation by the

respondents as to how first 228 persons are being excluded and thatthey have also refrained from stating that in case of the applicant also it has been very transfer back to Bombay within a period of one year like those who have been promoted in their places, they will also be transferred back to Bomaby or that their cases will also be considered favourably. Those who have been promoted in place of the applicants, have got their transfer out of their turn and in this manner they hafe become senior and at Bomaby they will come back again as senior to the applicants who in turn will go to Pune, as their juniors for which earlier they hade refused their transfer. Even if the said juniors who have been promoted earlier, are sent back there is no explanation as to why the Department has not laid down a written policy the way in which the practice was adopted also lacks in cohesion or coherent and it appears no guidelines have yet been laid down. The way in which the practice has been adopted, cannot be said to be fair and the similarly placed employees and the way the transfer order has been passed, does not exclude the element of arbitrariness even though a very clear case of malafide has notbeen made out, at the Bombay. On behalf of respondents it has been stated thattwo exceptions have beenmade and prayer for stay at the very place of posting has been accepted by the respondents. If that is so, the case of the applicants can also be considered for stay at Bombay in case they suceed in making out

a case for it. In case the applicants are to be transferred to Pune or elsewhere or Bombay under the impugned order, there appears to be no reason why there seniority will not be restored. They of course never opted to loose the r seniority for all times to come for staying at Bombay for few months stay at Bombay cannot be equated with loss of seniority for all times to come. Juniors to the applicants got promotion even before they were entitled to and in case they are transferred and become a senior to the applicants as they were earlier, even then they will be gainer, as they got promotional post itself with a few months. Equity and fairness requires tht the applicants who are now being sent againts Pune witin a few months, got their seniority, if not anything else. Accordingly, we direct that in case the applicants go to Pune or anywhere else, their seniority may be restored over those who earlier were juniors to them, accept the promotion earlier and incase the applicants are not inclined to go to Pune or any other place, they will be entitled to restoration of seniority but their prayer for sta at Bombay for reasonable period will be considered. In case a good case for the same is made out and the department is satisfied with it. With the above observation and directions,

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this applications are disposed of finally with no order

THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH
BOMBAY

(14)

M.P. No. 336/92
R.P. No. 77/92
in
O.A. No. 496/91, 503/91, 513/91, 540/91
541/91

M.C. Barke .. Applicant

Vs.

Employees State Insurance Corporation — Respondents

&

Employees State Insurance Corporation — Petitioner

1-6-1992

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. M.Y. Priolkar, J.A.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This review application is directed against our judgement and order dated 15.10.91 in one of the several cases which were decided by our common judgement order dated 15.10.91 given in number of similar cases. Certain directions in favour of the applicant who is the respondent to this review application by Dy. Regional Direector who was respondent to O.A. have been given including in respect of applicants case for re-transfer.

The case was heard and disposed of after hearing the Counsel for both the parties. Review application does not mean re-hearing. An order can be recalled on limited grounds. There is no error on the part of the face of the record and no new material has been brought to our notice which was not to the notice of the applicant despite due deligence. The facts mentioned in the review application regarding the transfer and promotion etc. have been taken into consideration by us and accordingly there are no grounds for interference in our order. The review application having no merits is rejected.