

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 600/91 199
T.A. NO:

DATE OF DECISION 12.11.91

Shri Shaikh Sultan Ghulam Petitioner

Shri S.A.Tawate Advocate for the Petitioners

Versus

Min. of Law & Company Affairs Respondent

Shri J.P. Deodhar Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. D.K. AGRAWAL, MEMBER (J)

The Hon'ble Mr. M.M. SINGH, MEMBER (A)

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 Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

D.K. Agrawal

(D.K. AGRAWAL)
MEMBER (J)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 600/91

Shri Shaikh Sultan Ghulam

... Applicant

V/s.

Min of Law & Company Affairs,
Bombay.

... Respondents.

CORAM: Hon'ble Shri D.K. Agrawal, Member (J)
Hon'ble Shri M.M. Singh, Member (A)

Appearance:

Shri S.A. Tawate for the
applicant.

Shri J.P. Deodhar for the
respondents.

JUDGEMENT

Dated: 12.11.91

{Shri D.K. Agrawal, Member (J)}

This application under section 19 of the Administrative Tribunal's Act 1985 filed on 28.8.91 is directed against the order of transfer dated 3.7.1991 where by the applicant namely Shri Shaikh Sultan Ghulam Mohideen posted as Upper Division Clerk in the office of the Registrar of Companies, Bombay has been transferred to the office of Registrar of Companies, Gujarat, Ahmedabad, on an posting equal in status and responsibility. Impugned order of transfer had been challenged on number of grounds. Firstly it was urged that it was not passed by a competent authority. Secondly that it was discriminatory in as much as he was singled out from amongst a list of 58 Upper Division Clerks working in different offices of the department at Bombay. Thirdly that the transfer was made without an enquiry into the conduct of the applicant. Vaguely other grounds of transfer being malafide and Arbitrary have also been raised.

We have heard learned counsel at length and given our careful consideration to the arguments raised at the bar. We may set that the transfer is an incident and essential condition of the service. The

Dr. Agrawal

....2....

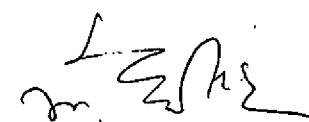
Government is [✓]the best judge whom to transfer or where to utilise the service of an employee. The only restriction placed on the power of the Government affecting the transfer is that it should be in public interest. This has clearly been taken into account by the High Court in the case of B. Varadha Rao vs. State of Karnataka 1986 SCC (IV) 131. The Supreme Court has also observed in the case of U.O.I. vs. H.N. Kartane 1989(3) SCC 445 that it is not open to the High Court [✓]on the Tribunal to interfere with an order of transfer unless the same is malafide, illegal or against the statutory rules. It is usually alleged in each case of transfer that the same [✓]is illegal or Arbitrary but the facts of the case have ~~to be~~ examined to record a finding that the order of transfer is illegal or arbitrary. In the instant case the only argument as to illegality and Arbitrariness is alleged to be that the applicant was not communicated the reason of transfer. It is not necessary either for the competent authority to communicate the reason of transfer. The learned counsel for the respondents have shown us that the transfer of the applicant was affected in public interest, Therefore we are unable to reach to the conclusion that it was illegal or arbitrary.

There is no hostile discrimination either because the applicant has been transferred to a post of equal status and responsibility. As regards the fact that the applicant has been singled out and picked up for transfer to Ahmedabad, we may mention that this fact alone does not render it discriminatory. We may also point out that an transfer against the transfer policy by itself is not a valid ground for quashing the order of transfer as held by full Bench of Tribunal in the case of Kamlesh Trivedi vs I.C.AR. 1988 (7) AEC 253. It was also held in that very case that one of

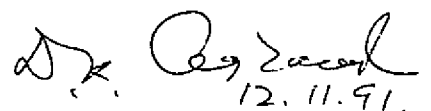
Dr. R. S. Mehta

the ground of transfer may very well be the allegations themselves still such a transfer cannot be termed as penal on that score. One ground is alleged to be that of the jurisdiction of the authority who has affected the transfer of the applicant. It is alleged that Shri C.R. Mehta was not the competent authority to transfer the applicant from Bombay to Ahmedabad. The transfer order could be passed by the Regional Director only. However we have perused the order dated 10.5.91 issued by the Department of Company Affairs, Ministry of Industry, Government of India where by Shri C.R.Mehta was made to hold the post of Regional Director as well. The only technical mistake which has occurred in the impugned order of transfer is the fact that it indicates the designation as Member, Company Law Board while it should have been mentioned as the Regional Director. All the same we find that the impugned order of transfer was issued by the office of Regional Director, Western Region. Therefore, for all intent and purpose it will be deemed that it was passed by the Regional Director. In view of the facts and circumstances the point of jurisdiction also cannot be decided in favour of the applicant. At the end we may also mention that the transfer order has already been implemented. Taking into account these facts we are of the opinion that this claim petition is to be dismissed.

In the result this petition is dismissed at the admission stage itself with no order as to costs.



(M.M. SINGH)
MEMBER(A)


12.11.91.

(D.K. AGRAWAL)
MEMBER(J)