

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

St.A.No.254/91
O.A.No. 390/91

N.K.Dongre,
Surana Layout,
Plot No.32, Anant Nagar,
Nagpur - 440 013.

.. Applicant

vs.

1. Union of India
through
Secretary,
Ministry of Defence,
Government of India,
New Delhi - 110 011.

2. The Chief Engineer,
Headquarters,
Southern Command,
Pune.

3. Commander Works Engineer,
MES, AFI Building,
Nehru Marg,
Nagpur.

.. Respondents

Coram: Hon'ble Shri P.S.Chaudhuri, Member(A)

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

Appearances:

1. Mr.S.Natarajan
Advocate for the
Applicant.

2. Mr.RaviShetty,
for Mr.R.K.Shetty
Advocate for the
Respondents.

JUDGMENT:

(Per P.S.Chaudhuri, Member(A))

Date: 19-7-1991

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 27-5-1991. In it the applicant who is working as Upper Division Clerk (for short, UDC) under the third respondent is challenging the order dated 25-3-1991 by which he is transferred from Nagpur to Baroda.

2. It is the applicant's case that he joined service on 13.11.1963 as a Lower Division Clerk at Kamti. After transfers and a promotion he was appointed to his present post in July, 1985. He made a representation against the impugned order

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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

St.A.No.254/91

O.A. No. 390/91
~~XXX XXX No.~~

198

DATE OF DECISION

19-7-1991

N.K.Dongre

Petitioner

Mr.S.Natarajan

Advocate for the Petitioner(s)

Versus

Union of India & Ors..

Respondent

Mr.Ravi Shetty for Mr.R.K.Shetty Advocate for the Respondent(s)

CORAM

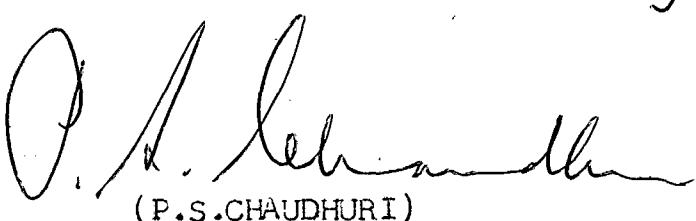
The Hon'ble Mr. P.S.Chaudhuri, Member (A)

The Hon'ble Mr. T.Chandrasekhara Reddy, Member (J)

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 ?

Yes

No


(P.S.CHAUDHURI)

of transfer on 10-4-1991 which has not yet been answered. Being aggrieved the applicant filed the present application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr.S.Natarajan, learned counsel for the applicant and Mr.Ravi Shetty, holding the brief of Mr.R.K.Shetty, learned counsel for the respondents.

4. Mr.Natarajan's first contention was that the respondents had laid down a posting/transfer policy by their circular dated 25.2.1991 and that the impugned transfer was contrary to this policy. He submitted that it was a well settled principle that such policy instructions were binding on the Government and cannot be violated to the prejudice of the Government servant. He cited Satya Ranjan Ghosh v. Union of India (GOI Press), [1987(4) ATC 324], and Mohini Mohan Datta v. Union of India and others, (1987) 5 ATC 409, in support of this proposition. But it is now well settled that not all instructions issued regarding transfers are statutory rules. In B.Varadha Rao v. State of Karnataka and others, AIR 1986 SC 1955, the Supreme Court have quoted with approval the judgment of the Karnataka High Court which stated:

"The norms enunciated by the Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

So, in view of this law laid down by the Supreme Court, we have to see whether the instructions referred to by Mr.Natarajan have, in fact, been followed and whether these are mandatory or are merely guidelines. Mr.Natarajan submitted that the respondents' reply made it clear that

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in the Nagpur Complex there was a surplus of 8 UDCs which was sought to be made good, though not fully, by posting in 3 UDCs and posting out 5 UDCs still leaving a surplus of 6 UDCs. He contended that that was a violation of para 20 of the policy instructions which stipulated that no compulsory posting would be made from a station where more civilians than authorised are held. We are unable to go along with this submission because the very next sentence of the circular says that any imbalance of vacancies will be rectified gradually and, further, the circular says that no civilian can claim retention against the quota reserved for militarised personnel. The harmonious construction of these instructions is that if the number of civilians in an establishment is more than permissible strength for civilians, no civilian can claim retention at the station against the quota reserved for militarised personnel but the excess strength of civilians will be rectified gradually. We have no difficulty in holding that this is precisely what the respondents have done in the present case. We must therefore reject Mr. Natarajan's submission in this regard.

5. Mr. Natarajan's second contention was that the respondents action was mala fide because initially only 5 UDCs were transferred out and it was only after the applicant had pointed out that there were others who had been in the Nagpur Complex for longer than him that they transferred out two more persons. In J.K.Dave v. State of Gujarat & Ors., 1989(3) SLR 593, the Gujarat High Court held that:

"Simply because some averments are made in the petition and the order of transfer is labelled as discriminatory and/or as actuated by mala fides, it does not become discriminatory or cannot be said to have been passed on account of mala-fides. To make out a case for interference in matter of transfer there should be concrete material which should be unimpeachable in character."

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We are in respectful agreement with this view. Further, in M.A.Rasheed and others v. The State of Kerala, AIR 1974 SC 2249, the Supreme Court have held that:

"The onus of establishing unreasonableness rests upon the person challenging the validity of the acts."

Against this background we are unable to see any mala fide in this action. It appears to us that there was a genuine error in regard to which were the establishments that fell within the Nagpur Complex which the respondents corrected. No evidence was adduced which would lead us to the conclusion that the applicant's transfer was mala fide on this score.

6. Mr.Natarajan's third contention was that, contrary to the policy instructions, the applicant had been transferred out of his existing Command. This submission is misconceived as it is clear beyond any doubt that the applicant's transfer has been ordered by the Chief Engineer, Southern Command and the applicant remains within that Command even after his posting at Baroda.

7. Mr.Natarajan's fourth contention was that the applicant belongs to one of the Scheduled Castes and the relevant orders provided for posting such persons at or near their native place.

Mr.Natarajan cited three cases in support of his contention. The first was Sheodan Singh v. Union of India and others, (1989) 9 ATC 563. But the facts of that case are quite different. In that case, the transfer was held to be punitive in nature. The second was R.Nanoo v. Divisional Railway Manager Trivandrum and others, (1989) 10 ATC 137. But that case can also be readily distinguished as the facts are quite different. In that case a Scheduled Caste official with his native place near Quilon was transferred to Ernakulam whereas his substitute, who is a member of the Scheduled Tribe and has his

native place near Ernakulam, instead of being posted was at Ernakulam/transferred to Quilon. The third case was D.R.Sengal v. Chief Post Master General and others, (1991) 15 ATC 36. But that case, too, can be readily distinguished as it was specifically decided on the specific facts of that case. In it, it has been held:

"It cannot be said that any particular judgment lays down any rule or principle in any absolute sense for either sanctioning an absolute right on the part of the government to transfer its employees or prohibiting such transfers altogether. Each judgment derives its conclusion from specific facts....."

Against this background we have no hesitation in holding that the instructions regarding posting of Scheduled Caste employees are by way of guidelines for the officers who order transfers.

8. Mr.Natarajan's final submission was that the applicant deserved sympathy in view of his present personal circumstances. The applicant's children were young and school-going and so the transfer would upset their education. Besides, the applicant had not been posted at Nagpur for an unduly long period. Mr.Natarajan also cited B.Varadha Rao's case(supra) in support of his submission. While we sympathise with the applicant regarding his personal problems and difficulties, we cannot hold that these circumstances either warrant or permit interference with a legal order of transfer.

9. Over a decade ago in Shanti Kumari v. Regional Director, Health Services, Patna Division and others, AIR 1981 SC 1577, the Supreme Court held:-

"Transfer of a government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters."

This was reiterated in Gujarat Electricity Board and another v. Atmaram Sungomal Poshani, AIR 1989 SC 1433 at 1436, in which the Supreme has lucidly summarised the legal position regarding ~~xa~~ transfer of employees

in the following words:-

"4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

Finally, in Union of India and others v. H.N.Kirtania, (1989) 11 ATC 269, the Supreme Court held:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides."

From these decisions it is clear that the legal position is that interference is permissible only in the limited contingency that the order of transfer is violative of any rules or legal provisions or is otherwise mala fide.

10. Coming to the question of what constitutes "exigencies of service", in Lachman Dass v Shiveshwarkar & Others, AIR 1967 Punjab 76, with which

we are in respectful agreement, H.R.Khanna, J
(as his Lordship then was) held that:

"A variety of factors may weigh with the authorities while considering the question of transfer, viz. the suitability of the official for the post, his aptitude, past conduct, reputation, the period for which he has been on that post and a number of other grounds which may be clubbed together under the head "exigencies of service".... The Court can only interfere if the transfer is violative of any legal provision or is otherwise mala fide. Except in such a limited contingency, the order of transfer is neither open to judicial review nor justiciable."

Again in Prem Parveen v. Union of India & Ors., 1974
SLJ S.N.15 at page xviii(Delhi), with which we are in respectful agreement, Sachar.J (as his Lordship then was) held that :

"the administration is the best judge and in the know of all relevant circumstances and to determine as to the desirability or the propriety of any particular posting and at what place of a Government servant. But it is equally well settled that Courts can interfere if the transfer is violative of any legal provision or is otherwise mala fide."

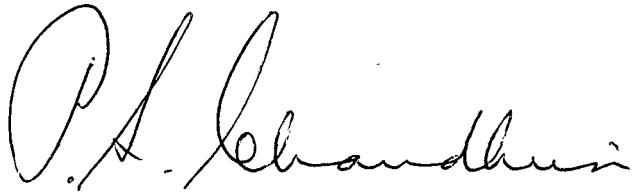
11. There is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred and posted to any place within India. So, against the legal position discussed in detail, the only question which falls for determination in this case is whether the impugned order of transfer is violative of any legal provisions or statutory rules or mandatory instructions or is mala fide in any way whatsoever. We have already held that the impugned order of transfer does not suffer from any of these fatal flaws. In this view of the matter we see no merit in this application and are of the opinion that it deserves to be dismissed.

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12. We accordingly dismiss the application.
Interim orders in force are hereby vacated. In the
circumstances of the case there will be no order as to
costs.

T. Chandrasekara Reddy

(T.CHANDRASEKHARA REDDY)
Member(J)



(P.S.CHAUDHURI)
Member(A)

19-7-1991