

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Original Application No. 49/91

Shri U.D. Birari.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

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

Appearances:

Applicant by Mr. S.R. Atre initially
and then applicant in person.

Respondents by Mr. J.G. Sawant.

JUDGMENT:

Dated: 13-9-1991

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

1. This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 16.1.1991. In it the applicant who is working as Deputy Station Superintendent at Nasik Road on Central Railway is challenging the order dated 5.10.1990 by which he is transferred from Nasik Road to Manmad and the order dated 14.12.1990 rejecting his representation.

2. By order dated 21.3.1988 passed in exercise of the powers conferred by Section 5(6) of the ^{said} Act, the Chairman has authorised all the Members of the Central Administrative Tribunal to function as a Bench consisting of a Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as are specified in the said order. Cases relating to transfer have been specified in the said order. Further, Mr. S.R. Atre, learned counsel who initially appeared for the applicant as also the applicant

himself and Mr. J.G. Sawant, learned counsel for the respondents all submitted that there were no complex legal issues involved in deciding this case. Besides, after being specifically asked as to whether the matter should go to a Bench of two Members, neither of the counsel appearing before me ^{nor the applicant} suggested that the matter should go to Bench of two Members. In view of this position I have proceeded to hear and decide this case.

3. The applicant was appointed as Traffic Signaller at Deolali on 10.2.1959. In the course of his service he was posted as Assistant Station Master, Nasik Road on 1.8.1986. He was promoted to his present post at Nasik Road by order dated 25.6.1987. By the impugned order dated 5.10.1990 he was transferred to Manmad. He submitted a representation dt. 22.10.1990, but his request was rejected by the 3rd respondent by the impugned order dt. 14.12.1990. Being aggrieved he filed this application.

4. The respondents have opposed the application by filing their written statement. The applicant was initially represented by Mr. S.R.Atre, learned counsel whom I heard at the start of the hearing; thereafter at the applicant's request to which, with his characteristic fairness, he had no objection, he withdrew from the case and then I heard the applicant in person. I also heard Mr. J.G. Sawant, learned counsel for the respondents.



5. The impugned order is assailed on a number of grounds. It is contended that he was transferred to Nasik at his own request and so should be retained ^{there.} There are two vacancies available at Nasik ~~against~~ which he can be retained, but has not been retained. But all these come under exigencies of service. It was then contended that juniors are retained at Nasik and the order has been passed to accommodate some ^{specific} persons.

I am unable to go along with all these submissions of the applicant as it is now well settled that the Administration is the best judge of where to post its employees. In Lachman Dass v. Shiveshwarkar & Others, AIR 1967 Punjab 76, with which I am 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 Praveen v. Union of India & Ors, 1974 SLJ S.N. 15 at page xviii (Delhi) ^{with} which I am also 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."

Besides in M.A.Rasheed and others v. The State of Kerala AIR, 1974 SC 2249, the Supreme Court has held:

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

In view of this position, the ~~the~~ submissions of the applicant must be rejected.

6. It was then contended that he has been transferred because of complaints made behind his back. But the impugned order of transfer does not cast any stigma and does not *visit* the applicant with any adverse or penal consequence. In A. Marimuthu v. Union of India and Another, 1990 12 ATC 305, it has been held:

"The administration, having regard to the nature of complaint or allegation against a government servant, may come to the conclusion that it is better that he is removed from a particular work spot and transfer may be ordered. In such circumstances, as long as the transfer itself does not *visit* the official concerned with adverse or penal consequences such as reduction in emoluments, rank or status, any challenge of the transfer order would not merit consideration."

Against this background (I) do not see any merit in this submission.

7. The applicant's final submission was that he was a SC employee, that he was due to retire soon and that his children's education would be affected. This is contested by the respondents who contend that the applicant is originally^a/resident of Manmad, has immovable property there, his family are staying there and his children have been travelling daily from Manmad to Nasik Road for education by availing of free Railway Passes. Against this background, (I) see no merit in this submission also.

8. 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

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in which the Supreme Court has lucidly summarised the legal position regarding 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 ground 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 mala fides. "


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.

② There is no dispute that under the conditions of service applicable to the applicant he is liable to be transferred. 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

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statutory rules or mandatory instructions or is mala fide in any way whatsoever. The impugned order of transfer does not suffer from any of these fatal flaws. In this view of the matter, I see no merit in this application and am of the opinion that it deserves to be dismissed.

10. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)

13-9-1991