

BEFORE THE CENTRAL ALMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING 6
BOMBAY

Original Application No. 357/91

Shri Ramdas Madhav Shende ... Applicant
Vs.
Divisional Railway Manager,
Central Railway, Nagpur and 3 others. ... Respondents.

CORAM: Hon'ble Shri P.S. Chaudhuri, Member(A)
Hon'ble Shri T.C. Reddy, Member (J)

Appearance

Applicant by Shri
D.B. Walthare.

Respondents by Shri
J.G. Sawant.

JUDGEMENT

Dated, 28-8-1991

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

1. This application under section 19 of the Administrative Tribunal's Act, 1985 was filed on 24.6.1991. In it the applicant who is working as Reservation Supervisor, Central Railway, Nagpur is challenging the order dated 27.5.1991 by which he is transferred from Nagpur to Bhusaval.
2. The respondents have opposed the application by filing their written statement. We have heard Mr. D.B. Walthare, learned counsel for the applicant and Mr. J.G. Sawant, learned counsel for the respondents.
3. The impugned order on transfer is assailed on a number of grounds. The first is that it is in violation of the guide lines dated 5.12.1986. But the norms enunciated by 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 - see B. Varadha Rao V. State of Karnataka and others, AIR 1986 SC 1955, and so we must reject this submission.

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Dated : 9.7.91 - Camp at Nagpur.

Applicant by Mr. M. Sudame.
Respondents by Mrs. Indira Bodade.

Adjourned to 11.7.91 for
admission hearing.

P. S. Chandrani
(P.S. Chandrani)
M (A)

U.C. Srivastava
VK

Date : 11.7.91

Applicant by Mr. Walltare.
Respondents by Mrs. Indira Bodade.

S.O. to 12.7.91

P. S. Chandrani
(P.S. CHAUDHURI) U.C. SRIVASTAVA
M (A) VK

Dated : 12.7.91 - Camp at Nagpur.

Applicant by Mr. J. B. Walltare.
Walltare. Respondents by Ms. Indira
Bodade.

2. At the request of applicant
S.O. to 18.7.91 for hearing admission
and interim relief at New Bombay.
Resps. to make complete record
available on that date.

P. S. Chandrani
(P.S. Chandrani) U.C. Srivastava
M (A) VK

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4. The transfer was then assailed on the grounds of violation of the instructions dated 14.1.1975 dealing with the hardship caused to SC/ST/^{employees} who are transferred. We do not see how this letter helps the applicant who belongs to the SC. It does not impose any ban on the transfer of SC employees but only says that they should be transferred very rarely and for very strong reasons only.

5. The third ground for assailing the transfer was that it was not in the interest of the Administration but was a case of legal malafide inasmuch as the respondents were trying to go behind allegations against the applicant. But this statement alone does not constitute legal malafide. There has to be concrete material which should be unimpeachable in character.

In J.K. Dave v. State of Gujarat and others, 1989(3) SLR 593, with which ~~we~~ in respectful agreement, the Gujarat High Court held

"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."

Against this background, we see no merit in this submission.

6. The respondents' contend that the applicant holds a sensitive post and that in the past there were occasions when the applicant exploited his position for personal gains during the period 1965 to 1986 necessitating imposition of penalties. It was against this background that the respondents were of the view that he be transferred from Nagpur to a far off place.

7. The applicant then contended that the alleged complaints no longer survive and acting on them would cause double jeopardy. ~~Further~~, he had been found fit for promotion and so there was no cause for considering him as being unfit for retention at Nagpur. We are unable to go along with the applicant as it is now well settled ~~that~~ 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 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 Praveen v. Union of India & Ors., 1974 SLJ S.N. 15 at page xviii (Delhi), with which we are 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, this submission of the applicant, too, must be rejected.

8. The applicants' next submission was that transfer casts a stigma. He cited Debendra Nath Bag v. Union of India and others, 1989(3) SLJ (CAT) 302 in support of his contention. But that case can be readily distinguished as on a consideration of the facts and circumstances of that case, the Bench concerned had been inclined to accept the applicant's contention that the order of transfer had been passed as a penal measure. That is not the case here. In this case the respondents are of the view that the applicant's services can best be utilised at Bhusaval. In support of the contention the respondents cited A. Marimuthu v. Union of India and Another, 1990 12 ATC 305, in which 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 we do not see any merit in this submission.

9. The applicant's next contention was that the transfer was an arbitrary and colourable exercise of power in as much as by the impugned order, the post of Supervisor was being transferred to Bhusaval with the sole objective of accommodating the applicant. The applicant cited Dr. Amalendu Chandra v. State of West Bengal and others, 1990 Lab IC 211 (Calcutta). We do not see how this case helps the applicant. In it, it has been held that the transfer order is justiciable. That is not at all in dispute. In our opinion the facts and circumstances of the applicant's case under the category of " exigencies of service", which we have considered earlier. Hence this submission, too must be rejected.

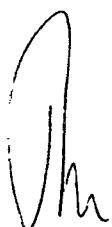
10. The applicant's final submission was that he deserves sympathetic consideration in view of his personal problems and difficulties. While we do sympathise with the applicant regarding his personal problems and difficulties, we cannot hold that these circumstances warrant or permit interference with a legally valid order of transfer.

11. 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 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 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 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 or transfer is violative of any rules or legal provisions or is otherwise mala fide.

12. 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. 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.

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

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

28/8/91

O. N. Chaudhuri
(P.S. CHAUDHURI.)
MEMBER (A)

28-8-1991