

2

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 754/91
~~XXXXXX~~

198

DATE OF DECISION 22-1-92

MR. RATHAN ROBERTS,

Petitioner

MR. D. K. GHAIAS

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA AND ORS.

Respondent

MR. J. G. SAVANT.

Advocate for the Respondent(s)

CORAM

The Hon'ble Ms. USHA SAVARA, MEMBER (A)

The Hon'ble Mr.

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 in needs to be circulated to other Benches of the Tribunal ?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(9)

ORIGINAL APPLICATION NO. 754/91

Mr. Rathnam Roberts.
Superintendent,
Passport Office,
Panaji-Goa.

.... Applicant

V/s

1. The Union of India,
Through Secretary,
Min. of External Affairs.
and ors.

.... Respondents

CORAM : HON'BLE MEMBER MS.USHA SAVARA, MEMBER (A)

Appearance :

Mr.D.K.Ghaisas, Adv.
for the applicant.

Mr.J.G.Sawant, Adv.
for the respondents.

JUDGEMENT

(PER : MS.USHA SAVARA, M(A)

DATED: 21/1/92

The applicant who is working as Superintendent, Passport Office, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing of order dated 28th October 1991 (Annex 'A') by which the applicant was transferred from Passport office panaji to Passport Office, Kozhikode with immediate effect. He also prays for quashing and setting aside the order dated 11th November 1991 (Annex. 'B') by which ~~Shri~~ Anthony B.Rebelo was authorised to sign all the passports/travel documents etc. as Superintendent in the Passport Office, Panaji.

2. In brief, the facts of the case are that the applicant who was appointed as Lower Division Clerk in the Central Passport and Emigration Organisation (hereinafter called as CPEO) on 27.11.1957 has been working continuously in the Passport Office from that date. During his service at Bombay, where he was posted in May 1987, he was promoted as Superintendent in Gr.IV in November 1990. The applicant was transferred to Passport Office, Panaji, Goa as Superintendent. On 28th October 1991, he received an office order issued by the Controlling Authority at Delhi transferring his services as Superintendent, Passport Office, Panaji, to Passport Office, Kozhikode, which was served upon him on 11.11.1991. It was stated in the order, that the transfer was in public interest. However, the applicant pleads, that the respondent No.3 i.e. Shri Anthony Rebello who was earlier deputed as Assistant in the Panaji Passport Office, has been taken in service on fresh deputation and has been assigned the work of Superintendent from 23rd October 1991. It is the applicant's case that his transfer has been made only in order to accommodate the Respondent No.3. There is only one post of Superintendent, at the Passport Office, Panaji. This post was held by the applicant and therefore in order to accommodate Shri Anthony Rebello as Superintendent, the authorities have transferred the applicant to Kozhikode and this transfer is challenged on the ground that it is malafide and is vitiated with colourable exercise of power.

3. Mr. Ghaisas, learned counsel for the applicant submitted that, the officials of CPEO are not transferred so frequently. The applicant has been transferred within one year of his posting to Panaji, Goa, which is against the statutory rules, and for this reason alone the transfer order should be quashed. It is further submitted by the learned counsel, that the respondent No.3 is not entitled to be appointed as Superintendent at the Panaji Passport Office on deputation as he belongs to the cadre of the Goa State Government. In view of this, the impugned order of transfer as well as, the impugned authorisation letter issued to the respondent No.3 are not only void but also manifestly unjust. In this circumstances, it is prayed that the impugned orders dated 28.10.1991 and 11.11.1991 be quashed and set aside.

4. Mr. J. G. Sawant, learned counsel for the respondents filed counter affidavit on their behalf. The learned counsel stated that the transfer order of the applicant was in public interest and was duly approved by the Controlling Authority in terms of Rule 20 of the C.P. and E.O. Rules 1959. Rule 20 of the said Rules laid down "that an Officer in Grade I to V of the CPEO will be liable to serve in any duty post in India to which he may be posted by the Controlling Authority". The applicant holds a transferable post and has no legal right to insist for his posting at Panaji or Bombay or any other place of his choice. The learned counsel submitted, that the allegation regarding malafides are unsubstantiated and have been made only with the motive of making out a prima facie case in his favour. Shri Sawant pointed out that one of the relevant factors weighing with the controlling authority for

(V)

transferring the applicant from Panaji to Kozhikode was the high pendency of applications at Kozhikode. He gave the figures of comparative pendency at the Regional Passport Office, Bombay, and Madras and also the number of Officers manning the Regional Passport Offices in both these places. It is seen, that compared to the pendency at Kozhikode the pendency at Bombay and Madras is much less. It is also seen that there are only four officers at Passport Office, Kozhikode, whereas the number of officers at the Regional Passport Office, Bombay are 14, and at Madras there are 5 officers. It was for this reason, that it was considered necessary to augment the strength of officers at Passport Office, Kozhikode and the applicant was transferred to Kozhikode. Shri Sawant reiterated that it was only due to exigency of the work with a view to liquidate the mounting pendency in the office that the Controlling Authority transferred the applicant to Kozhikode.

5. The allegation of malafides made by the applicant were denied as being baseless. However, it was stated by the learned counsel, that there have been complaints against the applicant while he was working at Panaji which are being looked into administratively. The learned counsel for the respondents drew our attention to the recent judgement of the Hon'ble Supreme Court in the case of Gujarat Electricity Board and another V/s Atmaram Sungomal Poshani 1989 (3) SCC 20. He also relied upon the decision in the case of Union of India and others V/s H.N.Kirtania (1989) SCC 445. It was submitted that, in view of the law laid down by the apex Court, the application was misconceived and should be dismissed.

6. I have gone through the records of the case carefully, and heard the learned counsel for both the parties. There is no doubt that the applicant is holding a transferable post. That being so, in the absence of any malafides or violation of any statutory rules, the order of transfer cannot be called in question. It is for the respondents and not for the Tribunal to consider the genuine difficulties of the applicant and take decision. The legal position has been clearly laid down by the Hon'ble Supreme Court in it's recent decisions cited by the learned Counsel for the respondents.

7. Further, the applicant's allegation of malafides is not supported by evidence of any kind. There is absolutely no evidence to warrant the conclusion, that the transferring Authority was working under ~~any~~ malafides. It is incumbent upon the applicant to satisfy the Tribunal that the Controlling Authority was acting under malafides. In the first plea, he is required to make specific allegations. The question of proof would naturally follow the averments. The applicant has failed in this exercise. In E.P. Royappa v/s State of Tamilnadu, 1974 (4) SCC (3). The Hon'ble Supreme Court has expressed it's opinion thus ;

" The burden of establishing malafide is very heavy on the person who alleges it. The allegation of malafide are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility".

The applicant has merely averred that in order to accommodate Respondent No.3 as Superintendent, Passport Office, Panaji, the Controlling Authority has transferred the applicant to Kozhikode. He is not able to produce any evidence in support of this allegation. In the absence of any specific

74

allegation against the transferring authority, I am unable to accept the claim of the applicant. The applicant has failed to establish any malafides on the part of the transferring authority.

7. The only other ground for entertaining ~~is~~ the transfer order would be of violation of any statutory rules. The learned counsel for the applicant has not pointed out any such violation with reference to the statutory rules of the CPEO. Since the applicant is holding a transferable post and since he has been transferred in public interest, as reflected by the figures of pendency furnished by the respondents, I do not see any reason to interfere with the transfer order.

8. In the light of the above and being guided by the pronouncements of the Hon'ble Supreme Court, I see no justification to interfere with the action taken by the respondents. There is no merit in the present application and the same is dismissed at the admission stage itself.

The parties will bear their own costs.

SAC

b. Savara
(MS. USHA SAVARA) 22.1.92
MEMBER (A)