

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 77/91

198

Exodex

DATE OF DECISION 3 JULY 1992

RAJARAM BACHCHULAL

Petitioner

MR. D V GANGAL

Advocate for the Petitioner(s)

Versus

UNION OF INDIA &amp; ORS

Respondent

MR. V S MASURKAR

Advocate for the Respondent(s)

## CORAM :

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr. J P Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *2*
4. Whether it needs to be circulated to other Benches of the Tribunal? *2*

MGIPRRND-12 CAT/86-3-12-86-15,000

*Sharma*  
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PREScot ROAD; Bombay-1

O.A. NO. 77/91

Rajaram Bachchulal  
Deputy Armaments Supply Officer  
Gr. II  
Naval Armaments Depot.  
Karanja - residing at  
8 Swapana  
Krishna Sakha Housing Society  
Bori Naka; Uran  
Dist. Raigad  
Maharashtra PIN 400702

..Applicant

V/s.

Union of India - though

1. Secretary,  
Ministry of Defence  
Raksha Bhavan  
New Delhi
2. Chief of the Naval Staff  
Raksha Mantralaya  
New Delhi
3. Flag-Officer-Commanding-in-Chief  
Western Naval Command  
Shahid Bhagat Singh Marg  
Bombay
4. Shri S. Vallayya, the then  
Director General of Armament Supply  
Naval Headquarters  
New Delhi (now retired)  
Address not known.
5. Shri S S Rajaputhran -  
then Director of Armament Supply  
Naval Headquarters  
New Delhi (now retired)  
Address not known
6. The General Manager  
Naval Armaments Depot.  
Karanja, Dist. Raigad
7. Estate Officer  
Commodore, Communication Centre  
Karanja; C/o. Fleet Mail Office  
Bombay 400023

..Respondents

Coram: Hon.Ms. Usha Savara, Member (A)  
Hon.Mr. J P Sharma, Member (J)

APPEARANCE:

Mr. D V Gangal  
Advocate  
for the applicant

Mr. V S Masurkar  
Counsel  
for the respondents

JUDGMENT:

(PER: J P Sharma, Member (A))

DATED: 3 -7-1992

The applicant is a Deputy Armaments Supply Officer Grade-II (DASO Gr.II), and before his transfer was posted at Naval Armaments Depot Karanja. In this application under section 19 of the Administrative Tribunals Act, 1985 the grievance of the applicant is that he has been transferred by order dated 7.10.1988 issued by the General Manager Naval Armaments Depot, Respondent no.6, on promotion to Naval Armaments Depot, Sunabeda. He was issued SOS on 15.12.1988. The other grievance of the applicant is that he had been unceremoniously evicted from the quarters in his occupation and he has also challenged the eviction order dated 3.3.1990 issued by the Estate Officer, Commodore, Communication Centre, Karanja, (Respondent no.7).

In this application the applicant has prayed for declaring that the transfer order dated 7.10.88 and rejection of his representation by order dated 4.1.91 and the eviction order dated 3.3.90 same are illegal, malafide and be quashed. He has also prayed for consequential reliefs that he is entitled for full pay and allowances and other benefits during his forced unemployment from 16.12.1988 till he is allowed to work at Karanja as DASO Gr.I. Further he should be restored the quarters.

The order dated 7.10.88 is a promotion cum transfer order and the applicant who was DASO Gr.II was promoted as DASO Gr.I<sup>0</sup> and was posted to NAD Sunabeda and the promotion will take effect from the date of   assuming the charge of his appointment in the station in which posted. In this transfer-cum-promotion order also two other incumbents viz., PVG Bhaskara and Ramesh Kumar were also transferred and promoted. The order dated 4.1.91 is the rejection of the representation by Director of Civilian Personnel Officer. The order on behalf of Chief of Naval Staff issued by the Naval Head Quarters. The representation of the applicant dated 7.12.90 for cancellation of transfer to Sunabeda it has been observed that the matter was considered and there was no merit and was rejected. The order dated 3.3.90 is an order under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. It is in respect of quarter no. 145/4. The reasons given are that the applicant continued to be in unauthorised occupation of accommodation after cancellation of his allotment order by letter dated 10.1.90. It was ordered that Shri Rajaram and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within thirty days of the date of publication of the order and in the event of refusal they shall be liable to be evicted from the said premises, if need be, by use of such force as may be necessary.

In the application the applicant has gone into unnecessary details on certain facts which are not relevant for the decision of the present case. The present case as per the relief sought by the applicant is only relevant in regard to the legality and propriety of the transfer order dated 7.10.1988 and the eviction order dated 3.3.90 from the quarter allotted to the applicant viz., quarter no.145/4.

The applicant had also some grievance regarding his promotion to the post of DASO Gr.I alleging that 8 officers who allegedly were junior to him have been promoted and the applicant has been bypassed. He has assailed that grievance in an Original Application No. 803/88 filed before the CAT Bench at New Bombay (now Bombay Bench) and the same is still pending.

The applicant also filed earlier another OA 313/90 before CAT, New Bombay Bench (now Bombay Bench) and that application was disposed of with the order that the applicant may file a detailed representation before the second respondent against the transfer and after a decision is taken on the representation by order dated 4.1.1991, the present application has been filed. The applicant has also assailed the transfer order on the ground that it is violative of Articles 14 and 16 of Constitution of India, malafide on the part of S. Valayya, Ex. DGAS, impleaded as respondent no.4; that the appellate order (reference to the order dated 4.1.91) is an unreasonable and non-speaking order; no exigency of service at NAD, Sunabeda; applicant is singled out for hostile discrimination and chosen for transfer; the applicant was posted to a low value post in comparison to the post he was holding

and also the policy of transferring officers after 3-4 years was not followed strictly.

Regarding his eviction the ground taken by the applicant is that the eviction of the applicant is wrong and is violative of Sections 4 to 6, 9 and 16 and Rule 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The respondents contested the application and filed a detailed reply refuting each and every averment made by the applicant in the application and has stated that the order of promotion and transfer to Sunabeda was issued on 7.10.1988. The applicant instead of joining at the place of duty at Sunabeda on promotion, unauthorisedly absented himself from duty. Though the applicant is a civil employee that in itself is no ground for the officers not to be transferred. His appeal for retention has already been considered and rejected by the Naval Head Quarters. Regarding his promotion from DASO Gr.II to DASO Gr.I actual service of five years is required. The other eight officers referred to by the applicant in the application belong to the year 1981 and had completed five years of regular service as DASO Gr.II earlier than the applicant and so they were promoted earlier than the applicant. However, this is subject matter of controversy in the application pending in CAT, Bombay Bench i.e., O.A. 803/88. It is further stated that the applicant himself made a request for deferment of his transfer till mid-December 1988 which was granted. There was a vacancy available at NAD Sunabeda and that was filled up by posting the applicant in the interest of service. Due to shortage of officers posting was done keeping in view of the man power

available and the load of work at various places. The duties of the applicant were taken over in absentia as he himself did not hand over the charge of duties. Merely by sending representations or filing of a case in the Tribunal will not preclude the applicant from following the rules, regulations and service procedure or allow him to absent from duty unauthorisedly. The applicant has not reported so far at the transferred place. The applicant can be posted at any place in India as per terms and conditions of his appointment. The applicant had already served for more than 3 years at NAD Karanja, before his posting to NAD Sunabeda, which was done keeping in view the exigency of service. It is the policy of the department to move the officers from one place to another after a period of 3 to 4 years to afford them opportunities for all round experience as they grow up in the organisation. It is also the normal practice to move the officers on promotion if they have completed 3 to 4 years in a station. There was genuine difficulty in retaining the applicant at Karanja due to service requirements at NAD Sunabeda. Ramesh Kumar As regards allegations against Bhaskar Rao, the applicant has not made them parties to this application. B. R. Kumar was posted in Visakhapatnam and was subsequently transferred to NAD, Bombay and moreover B R Kumar was due to retire on 31.1.89 and the transfer would have delayed finalisation of pension papers etc. It is further stated seniority in service is not considered as ground for retention in a particular station. It is further denied that the applicant has been transferred because he has filed a case in CAT. The applicant was transferred in October 1988 and thereafter he filed the application in November 1988 (1.11.88) Regarding eviction from the quarter it is stated that the

applicant was no longer on the strength at NAD Karanja and he was not entitled to retain the public premises in his occupation and, therefore, he was evicted from the public premises under the orders of Estate Officer Karanja after following the procedure prescribed in the Public Premises (Eviction of unauthorised Occupants) Act, 1971. It is lastly stated that the order regarding his transfer and eviction were valid and legal and cannot be termed as bad in law or malafide.

We have heard the learned counsel of the parties at length and gone through relevant letter. The applicant has during the course of the arguments led that it is because of the malafide of Shri S. Vallaya that he has been transferred. He has also referred to certain communication between him and Shri Vallaya. The power of the Tribunal to interfere with such transfer can be exercised when it is found that the transfer has been made in colourable exercise of power and on certain pre-notions which may be of malafide in nature. In the very lengthy draft of the application it is nowhere revealed that the order of transfer has been effected to accommodate another person or that it is for the harrasement of the applicant. The applicant raises a grievance of his non-promotion prior to eight officers of DASO Gr.I but the matter is pending before CAT Bombay for adjudication in OA 803/88. The respondents in their reply have clearly stated that those eight officers had joined earlier to the applicant and though the applicant was selected earlier but he joined subsequently after completion of certain formalities. For promotion to DASO Gr.I five years regular service is required in DASO Gr.II. It is not necessary to further deal with the matter which is

subjudice) in another proceedings. But this by itself cannot be taken to mean that the applicant's transfer has been affected in a malafide manner. Applicant, in the very first representation made to the respondents, only requested for deffering his transfer till mid of December and this prayer was granted. Not only this, by the order dated 17th October 1988 the Naval Armament Depot, Karanja have asked the applicant to intimate his preferred SOS date for further necessary action. The applicant himself desired SOS date by 15th December 1988. At that time the applicant did not raise any voice. The first representation made by the applicant is 15.12.1988 (Annexure E) and in this representation the only request made by the applicant was that he should be retained at Bombay on promotion as he has filed a case in CAT Bombay Bench and that has been admitted on 9.12.1988. This cannot be said to be a valid ground. The respondents have rejected the representation of the applicant on 16.12.1988 (Annexure F) intimating the applicant that his case pending in CAT has no relevance to the transfer on promotion. All these matters were agitated by the applicant in OA 303/90. He was asked to file a representation against this transfer order. The applicant preferred the representation on 7.12.90 to Chief of the Naval Staff and the same has been disposed of by the impugned order dated 4.1.1991. Thus what has been stated in subsequent representations is more about his non-promotion and a sort of discrimination metted out to him on his allegation that he belongs to a reserved category. But these contentions raised during the course of arguments cannot be termed to be in anyway malafide. The learned counsel has referred to the case of E P ROYAPPA V.

STATE OF TAMIL NADU AND ANOTHER, AIR 1974 SC 555

The Hon. Supreme Court in that case observed as follows:

"Article 14 is the genus while Art.16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basis principle which, therefore, informs both Arts.14 and 16 is equality and innipition against discrimination. Now, what is the content and reach of this great equalising principle? .... From a positivistic point of view, equality is anthithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Art.16 Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. The require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antee chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts.14 and 16 .... It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to a mala fide exercise of power by a State machine. It is, therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post .... That might have some relevant to Article 311 but not to Articles 14 and 16.

The court then considered:

"Whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of Deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for collateral reason? These are the questions which call for our consideration".

The facts of the case of Royappa are totally different. The applicant's case is that the applicant has been transferred by the order dated 7.10.1988 on promotion time and by that/he has already completed more than three years of his stay at Karanja, Bombay. The applicant in his first representation himself requested for defferment of his transfer till mid of December and on 16.12.1988 he made a representation only stating that since he has filed a case at CAT Bombay he may be retained at Bombay. In that representation also he did not at all refer to any averment of discrimination or of mala fide action on behalf of the respondents. It appears that in May 1989 the applicant has also made a representation to Raksha Mantri, Ministry of Defence. But that matter was under consideration of earlier OA 313/90. Even taking into consideration this representation this was made much after. The law on the point has been specifically laid down by the Hon. Supreme Court recently in the case of MRS. SHILPI BOSE & ORS V. THE STATE OF BIHAR AND OTHERS, AIR 1991 SC 532.

The relevant portion is reproduced below:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to another. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

We have also gone through the law laid down in the case of GUJARAT ELECTRICITY BOARD AND ANOTHER v. ATMARAM SUNGOMAL POSHANI, AIR 1989 SC 1433. The relevant portion is extracted below :

"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 his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to 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."

Learned counsel for the applicant has referred to the following cases:

1. 1986(1) ATC 42 VC LN Mithila University V. Dayanand Jha
2. 1986(1) ATC 103, Central Inland Water Transport Corporation Ltd.V. ....
3. 1987(4) ATC 421, HLD Deby V. Jokhu Singh
4. 1987(2) SLJ 308, A B Singh V. UOI
5. ATR 1986(1) 304 KK Indal V. Eastern Railway
6. AIR 1966 SC 12 B Management Syndicate Bank V. Workmen.
7. AIR 1975 SC 529, Municipality of Bhivandi and Nizampur V. Zissing works.
8. 1979(1) SLR 307 p Pushpakaram V. Chairman, Coir Board.
9. 1980(1) SLR 309, C. Ramanathan V. Acting Zonal Manager FCI
10. 1973(1) SLR 1153, NN Singh G M, Chitharanjan Lock WorkShop .
11. ATR 1986 CAT 314 Oarasadilal Sharma V. UOI
12. 1986(1) SLJ 25, R. Kapur V. UOI
13. 1982(1) SLJ 81, Dr. P. Damodaran V. State of Kerala.
14. AIR 1974 SC 555 E P Royappa V. State of Tamil Nadu
15. 1987(3) SLJ 596, B. Pratab V. Dy. Director of Doordarshan.
16. 1988 SLJ 186 Gummudi Ankhinidu V. DGI ICAR.
17. 1982(2) SLJ 281 Mohd. Thekethil V. Director
18. Lachman Das V. Shiveshwarkar and ors. AIR 1967 Punjab 76.
19. Lord Dennimy Master of Rolls in Laker Airways Ltd. V. Department of Trade 1977 (2) WLR 237
20. 1987 (4) ATC 473, CAT U. Bhaskaran V. Deputy Collector of Central Excise.
21. ATR 1987(2) CAT 113 Delhi DC Sharma V. UOI
22. ATR 1987(1) CAT 393 Delhi Charanjit Lal V. UOI
23. SLJ 1986(4) CAT Ahmadabad OA 2591/86 Bhikha Daya V. Divisional Commercial Supdt.
24. AIR 1986 CAT 314 Prasadilal Sharma V. UOI
25. 1988 ATR - 2 page 116 Kamlesh Trivedi V. SAR

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We have gone through the relevant law on the subject. The considered opinion is that a judicial review of an administrative action is of course permissible. But orders of transfer are interfered when

- a) the transfer is malafide or arbitrary or perverse;
- b) when it adversely alters the service conditions in terms of rank, pay and emoluments;
- c) when guide lines laid down by the department are infringed and lastly
- d) when it is frequently done.

We have also considered the law laid down in the case of KAMLESH TRIVEDI V. I.C.A.R. (ND), ATC 1988(7) CAT 253/SLJ 642 (CAT); UNION OF INDIA AND OTHERS V. H.N. KIRTANIA, 1989(3) SLJ 44, 46(SC).

In view of the recent decisions and the law laid down by the Hon. Supreme Court, we do not find that the ground raised by the present applicant regarding the colourable exercise of power in ordering his transfer or choosing the applicant singly for transfer or that the transfer has been effected on certain pre-notions and biased views or on malafide grounds is not at all made out. We find that the present application is totally devoid of any merit as regards his transfer order is concerned.

Regarding the eviction of the applicant, since the transfer order is valid and after transfer he cannot retain the premises because the licence ceases the moment he is transferred and more over in the present case his allotment has already been cancelled

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and after that he has been proceeded with under the relevant Public Premises (Unauthorised Occupants Eviction) Act 1971 and an order has been passed by the Competent Authority. There is no illegality or irregularity in those proceedings. Thus there is no substance in the contention of the applicant that the order of <sup>eviction</sup> [redacted] is bad in law or arbitrary or violative of said Public Premises (Unauthorised Occupants Eviction) Act 1971.

Regarding the rejection of the representation of the applicant the higher authorities have considered the case of the applicant and it is not necessary to reply to every averment in the representation.

Thus the present application is dismissed as devoid of merit leaving the parties to bear their own costs.

J. Savara

J. Savara,  
37/92

( J P Sharma ) 3.7.92  
Member (J)

(Ms. Usha Savara)  
Member (A)