

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 892/92

199

~~XXXXXXXXXX~~  
T.A. NO:

DATE OF DECISION 28.9.1992

Shri A.R.S.Parihar

Petitioner

Shri D.V.Gangal .

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri V.M.Bendre for Sh.P.M.Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

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 ?

ND

*S.K.Dhaon*  
(S.K.Dhaon)  
Vice Chairman

mbm\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 892/92

Shri Ajitkumar Ramsahay Singh Parihar ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri D.V.Gangal  
Advocate  
for the Applicant

Shri V.M.Bendre  
for Shri P.M.Pradhan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 28.9.1992


(PER: S.K.Dhaon, Vice Chairman)

The order dated 11.8.1992 passed by the Senior Assistant Engineer (Admn.) transferring the applicant from Dombivli to Wada is being impugned in the present application. A reply has been filed on behalf of the respondents. Rejoinder affidavit also has been filed. We are disposing of this application with the consent of the counsel for the parties.

2. Reliance is placed by the applicant upon a transfer policy. It is emphasised that in paragraph 3 it is laid down that the transfers should be spaced out in such a manner as to cause the least dislocation to the studies of children of the employees concerned. The transfers should take effect at the end of the academic session, but all cases should be reviewed and a decision taken to transfer them by December or May as the case may be depending on when the academic term ends. It appears that on 14.8.1992 the applicant made a representation to the General Manager Telecom followed by a representation dated 17.8.1992 and representation dated 19.8.1992. These representations are still pending.

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3. We are deliberately refraining from going into the merits of this case. We feel that the General Manager Telecom should go into the question and dispose of the representations made by the applicant on merits and in the light of the aforementioned transfer policy. If the officer decides to reject the representations, he shall give reasons as to why the norms laid down in the said transfer policy have been by-passed in the case of the applicant. The order of transfer shall not be implemented as against the applicant till the representations are disposed of. With these directions this application is disposed of finally.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(S.K. DHAON)  
VICE CHAIRMAN

C.P.No. 192/92

in

OA.NO. 892/92

Tribunal's Order

Dated: 4.12.1992

This is an application praying that the respondents may be punished for having passed an order in disregard to the directions given by this Tribunal on 28.9.1992.

2. The petitioner came to this Tribunal with the prayer that the order passed on 11.8.1992 by the Senior Assistant Engineer (Admn.) transferring him from Dombivli to Wada may be quashed. On 28.9.1992 this Tribunal in paragraph 3 of its order gave a specific direction that the officer concerned shall dispose of the representation of the applicant. This Tribunal also directed that if the representation was being rejected, the order of rejection shall disclose as to why the norms laid down in the transfer policy may not be followed in the case of the applicant.

3. In pursuance of the directions given by this Tribunal, on 27.10.1992 the General Manager passed an order. We <sup>have</sup> perused this order carefully and we are satisfied that no attempt has been made in the order to deal with the direction contained in paragraph 3 of the transfer policy. The applicant's grievance appears to be <sup>that</sup> he is being transferred in the mid-session and, therefore, the studies of his children are likely to be put in jeopardy. We are, therefore, satisfied that no attempt has been made to comply with the directions given by us in our order dated 28.9.1992.

4. Normally, the officer concerned should be given some punishment. However, we are letting him off with a warning. Nonetheless, we direct that he shall pass a fresh order treating the order passed by him on 27.10.1992 as cancelled. He shall

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

C.P. 85/93 in (92)  
Original Application No. 892/92

Shri Ajitkumar Ramsahay Singh Parihar ... Applicant.

V/s.

Shri S.L. Winston,  
General Manager,  
Kalyan Telecom,  
Kalyan.

Shri A.V. Prabhu,  
Divisional Engineer Administration  
Kalyan Telecom,  
Kalyan.

Shri P.R. Shirode,  
Divisional Engineer Telecom  
New Telephone Exchange,  
Dombivli.

... Respondents.

CORAM: Hon'ble Shri M.R. Kolhatkar, Member(A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance:

Shri D.V. Gangal, counsel  
for the applicant.

Shri P.M. Pradhan, counsel  
for the respondents.

Tribunal's order.

Dated: 26-4-94

¶ Per Smt. Lakshmi Swaminathan, Member (J) ¶

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This is a second Contempt Petition filed by the applicant in respect of the order dated 28.9.92 passed in O.A. 892/92. In the original application, the applicant had challenged the transfer order dated 11.8.92 passed by the Senior Assistant Engineer (Administration) transferring the applicant from Dombivli to Wada. After hearing the parties the Tribunal vide its order dated 28.9.92 disposed of the case by directing that the order of transfer shall not be implemented against the applicant till his representations are disposed of on merits and in the light of the transfer policy relied upon by the applicant.

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2. In pursuance of this judgement the respondents passed an order dated 27.10.1992 which was challenged in an earlier C.F. 192/92. In that contempt petition, the Tribunal observed that while no attempt has been made to implement the directions given by us in the earlier order dated 28.9.1992, the officer concerned was let off with a warning, his order cancelled, and directions were given to pass a fresh order strictly in the light of the order passed earlier on 28.9.92. In pursuance of the second order of the Tribunal dated 4.12.1992, the respondents cancelled the impugned transfer order dated 11.8.1992 by order dated 17.2.1993.

3. The present contempt petition has been filed against another order passed by the General Manager, Kalyan Telecom, transferring the applicant from Dombivli to Wada from 18.5.93, which according to the applicant is a repetition of the order of 11.8.1992. The learned counsel for the applicant has alleged that this transfer order has also been passed merely stating that it is in the interest of service but not taking into account the transfer policy of the Department and hence in total dis-regard of the directions of this Tribunal's order dated 28.9.1992. He has, <sup>therefore</sup> ~~therefore~~, alleged that the Respondents have <sup>therefore</sup> committed contempt of this Tribunal's order dated 28.9.1992. The other main ground taken by the applicant was that he had in his representation dated 19.8.1992 indicated that if he had to be transferred, his choice station was in the order of preference (a) Kalyan (b) Ambernath, (c) Badlapur (d) Ulhasnagar, and Bhiwandi city. According to applicant's counsel, since he was not transferred to any place of his choice, this was also in violation of the "transfer policy" and hence against the order of this Tribunal dated 28.9.1992.

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4. The learned Counsel for the respondents has strongly opposed this second contempt petition stating that it is not maintainable. The order in compliance of the Tribunal's judgement has already been disposed of by the respondents by cancelling the earlier transfer order dated 11.8.1992. The learned counsel for the respondents pointed out that the applicant in his representation has referred, in particular to para 38(3) of Chapter II of "Transfers and Postings" policy, which provides as follows:

" The transfers should be spaced out in such a manner as to cause the least dislocation to the studies of children of the employees concerned. The transfers should take effect at the end of the academic session, but all cases should be reviewed and a decision taken to transfer them by December or May as the case may be depending on when the academic term ends. Those officers proposed to be transferred are to be informed in advance so that they may be ready for the transfer and to indicate 3 or 4 choices of stations, where they would like to be transferred. Every effort may be made to accommodate them, as far as possible, in the station of their choice ( 69/33/71.SPB I dt.13.7.71)"

5. The transfer order dated 11.8.1992, was a mid-term transfer, which objection is not applicable to the transfer order dated 18.5.1993 and, therefore, the two transfer orders cannot be compared. In view of these facts the learned Counsel for the Respondents submitted that there is no question of contempt of the Tribunal's order as the present order, in any case has been passed in compliance of the transfer policy. He has also pointed out that the order of 18.5.1993 does not deal with the applicant alone. Besides, since he has already been working for more than four years at Dombivli and because of certain administrative reasons, he has been transferred in public interest and, therefore, there is no illegality in the order. Regarding the allegation that there was again violation of the transfer policy in not posting the applicant at the station of his choice, his contention was that this is not a mandatory provision but has to be considered by the administration, to accommodate the

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officials "as far as possible", keeping also in view the public interest involved in the exigencies of administration.

6. There was some controversy regarding whether the applicant has in fact been transferred from Dombivli or continues to remain under the third respondent as on 19.5.93. In this regard the applicant has submitted a registered letter which he states he had sent to the respondents, but was not accepted by them, regarding his relief and transfer from Dombivli. Having regard to the facts and law applicable in this case we do not think that it is necessary to open this letter for consideration of the matter, in view of the order that we are passing.

7. The main grievance of the applicant in the earlier contempt petition was that it was a mid-term transfer and hence against paragraph 3 of the transfer policy of the department. The present transfer which is sought to be impugned by this contempt petition has been passed in the month of May and, therefore, the applicant cannot have any grievance on this ground. As regards the arguments that the applicant should, if at all, be transferred only to a station of his choice as referred this Tribunal's earlier order read with the 'transfer policy', we find this unacceptable. The administration is only required to accommodate the officials choice of station "as far as possible" but is not bound in all cases to give the official a posting of his choice only. In this case, therefore, we do not find that the Respondents have deliberately disobeyed the Tribunal's earlier order and the applicant's contention is rejected. The applicant has not made out any other ground to show that the latest transfer order dated 18.5.1993 is against the rules or is mala fide warranting or justifying any directions or interference in the matter of discretion exercised by the Respondents.





8. In the facts and circumstances of the case, we find no merit in this application and the applicant is not entitled to any of <sup>the</sup> reliefs claimed in para 8 of the petition. This contempt petition is dismissed. The alleged contemnors are discharged. No order as to costs.

*Lakshmi Swaminathan*  
( SMT. LAKSHMI SWAMINATHAN )  
MEMBER (J).

*M.R. Kolhatkar*  
( M.R. KOLHATKAR )  
MEMBER (A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
BOMBAY

R.P. No. 84/94

Dated: 28-9-1994.

in

O.A. No. 892/92.

Shri Ajitkumar R. Parihar ... Applicant

versus:

1. Shri S.L. Winston,  
General Manager,  
Kalyan Telecom,  
Kalyan.
2. Shri A.V. Prabhu,  
Divl. Engineer Administration,  
Kalyan Telecom,  
Kalyan.
3. Shri P.R. Shirode,  
Divisional Engineer Telecom,  
New Telephone Exchange,  
Dombivli. ... Respondents

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

This review petition No. 84/94 has been filed for review of the order dated 26.4.1994 passed in C.P. No. 85/93 in O.A. No. 892/92. The applicant has tried to argue the same contentions which have been considered and rejected in the order dated 26.4.1994. The applicant states in para 3(e) of the petition that he is relying upon two orders dated 7th September, 1992 and 12th August, 1993 (Annexures A-5 and A-6) respectively. Annexure A-5 order deals with the rotational transfer in the cadre of Phone Inspector in the case of one Shri H.L. Chauhan and Shri A.N. Anantwar and the order dated 7th September, 1992 is the sanction of honorarium for certain officials for work performed in the department, which includes the applicant at S.No. 88. Further, in sub-para (g), the applicant states that the letter dated 12th August, 1993, letter of 7th September, 1993 and letter of 25th April, 1994 were not available with him earlier inspite of due diligence and have now become available to him and are on the file with review petition. None of these letters have been properly referenced. Annexures A-5 and A-6 orders do not deal with the issue of transfer or transfer policy of the applicant and, therefore, are not relevant.

2. From a careful perusal of the review petition, it appears that although the grounds taken may be more germane for an appeal, none of the ingredients for review permissible under O. 47 Rule 1 read with Section 115, C.P.C. has been made out to warrant a review of the order dated 26th April, 1994. The applicant has not been able to show that there is any error apparent on the face of the record or any glaring omission or patent mistake or any other sufficient reasons justifying review of the order. The review application cannot be utilised for re-arguing the case <sup>13/</sup>traversing the same ground. We, therefore, find no merit in this review application.

3. There has also been delay in filing the review petition by 21 days. We have seen the application for condonation of delay for filing the review petition, but we are not satisfied that there is sufficient justification for condonation of the delay.

4. Therefore, both on the grounds of merit and limitation, this review petition is rejected.

5. Regarding M.P. No. 34/94 in O.A. No. 892/92 dated 10.1.1994, this may be placed before the appropriate Bench for orders.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member (J)

*M.R. Kolhatkar*  
(M.R. Kolhatkar)  
Member (A)