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,
Dombivali. ... 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))

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.P. 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, ~~therefore~~, alleged that the Respondents have, therefore 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

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

6. There was some controvercy regarding whether the applicant has in fact beentransferred 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 andttransfer 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 intereference 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 the reliefs claimed in para 8 of the petition. The contempt petition is dismissed. The alleged contemners are discharged. No order as to costs.

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J).

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

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