

(14)

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

O.A No 527/92

Shri N S Kantbde
R/o. Wardha Minor Irrgn. Dvn.,
Occupation Government Servant
Divisional Accountant
A/2/2 HSK society
Ravinagar Nagpur ..Applicant

V/s.

Accountant General (A&E)
Maharashtra II Civil Lines
Nagpur 440001 ..Respondents

CORAM: HON. Ms. USHA SAVARA, MEMBER (A)
HON. Mr. J P SHARMA, MEMBER (J)

APPEARANCE:

Smt. Meenaxi Iyer
Advocate for the applicant

Mr. Ramesh Darda
Counsel for the respondents

Mr. Y R Singh
Advocate for the intervenors

ORAL JUDGMENT:
(PER: J P Sharma, Member (J))

DATED: 3-7-92

The applicant who is a Divisional Accountant posted at the relevant time at Wardha since July 1990 and prior to that in Left Bank canal, Pipri, Wardha district has been ordered to be transferred by Deputy Accountant General Nagpur by the impugned order dated 21.5.92 and in his place one Shri S.S. Agnihotri from Nanded is being posted in the same capacity.

Shri Agnihotri has also filed an intervenor's application by way of Miscellaneous Petition No. 508/92 and is represented by Mr. Y R Singh, counsel.

The application was filed on 2.6.92 and interim relief prayed for was granted and the applicant, if not already relieved, should not be relieved and that interim order is continuing till to-day.

In this application the applicant has sought direction to the respondents to set aside the transfer order dated 21.5.92 and further to retain the applicant at Wardha itself or he may be posted at Nagpur at his own ~~count~~ as he is on the verge of retirement.

The applicant has given the history of posting in para 2 of the application which goes to show that he was in Aurangabad from 1979-1983; at Nagpur from 1983 to 1987; in Wardha district at Pipri from 1987 to 1990 and lastly in the Wardha Canal Irrigation district, Wardha till July 1990. The applicant assails this order on the ground that since he filed certain applications regarding redress of his grievances before the Bombay Bench, so he has been ~~and~~ singled out on the verge of retirement ~~and~~ shifted from settled place where he is working since July 1990. It is stated that there is a breach of transfer ~~also~~ ^{policy} and the manual of CPWD which enjoins upon the respondents that if a person ~~is~~ beyond the age of 53 years and is likely to superannuate should as far as possible be placed at the place of posting unless there are administrative exigencies. It is also stated that there is violation of Articles 14 and 16 of the Constitution of India as well as the transfer ~~policy~~.

Reference has also been made to the case of MANAGEMENT OF SYNDICATE BANK V. THE WORKMAN AIR 1966 SC 1238 and P. PUSHPAKARAN V. CHAIRMAN COIR BOARD, KERALA, 1979(1) SLR 309.

The Official respondents in their reply stated that the transfer has been effected on administrative grounds in the exigency of service as applicant has already stayed for a period of about five years in Wardha district. He was also informed by

the letter dated 7.2.92 that he is likely to be transferred in April/May 1992, and the choice station was desired from the applicant and the applicant himself in his written request dated 28.3.92 given Nanded as one of the stations of choice. It is stated that transfer is not mala fide. Reference has also been made to a decision of the Supreme Court in Civil Appeal No. 1786 decided on 31st March 1989 where the Hon. Supreme Court held that Government ^{every} has ~~no~~ legal right for his posting at a particular place and transfer from one place to another is general condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and for efficiency in public administration.

The intervenor also supported the stand taken by the official respondents and stated that he had already completed five years of tenure at Nanded and he is due for transfer and has been transferred to Wardha. It is also stated that no favour was shown to him as he was moving out of the last station after completing his tenure of five years.

We have heard learned counsel for the parties ~~at~~ length and have gone through the various averments made in the application as well as the arguments advanced before us. The first grievance of the applicant is that the transfer is in breach of CPWD manual, an extract of which has been annexed as Annexure *D* to the application. We have gone through the relevant portion at page 67 and we do find a mention therein that a person on the verge of retirement can only be moved in the administrative exigency. Guidelines issued in the matter of policy are only directive in nature for the

consideration of the administration, while pursuing the authority of transfer. In the case of KAMLESH TRIVEDI V. UNION OF INDIA, REPORTED IN FULL BENCH DECISION VOL. I, 1991 page 80, the full bench has considered the various decisions in the matter of transfer starting from E.P. ROYAPPA'S CASE AIR 1974 SC 555; & VARADHARAO'S CASE AIR 1986(4) SCC PAGE 131 and the case referred to by the applicant in the application MANAGEMENT OF SYNDICATE BANK V. THE WORKMAN AIR 1966 SC 1238 and P. PUSHPAKARN V. CHAIRMAN COIR BOARD, KERALA 1979(1) SLR 309. The full bench in its elaborate judgment ^{field} find that instructions laid down for transfers are guidelines and not mandatory orders. The said part was opposed by the learned counsel for the applicant and the learned counsel for the applicant emphatically argued that the CPWD manual is statutory in nature and that the directions given therein are mandatory in nature and are correct.

With due respect to ^{Views of} the learned counsel for the applicant and in view of the Full Bench decision cited above we cannot accept this contention as ^{Correct} position of law. Thus the transfer of the applicant, though may be not so much within the scope and ambit as well as in line with the directions or guidelines laid down, in the CPWD manual (Annexure D, page 67) cannot be said to be ~~bad~~.

The next contention raised during the course of the argument regarding Article 14 [redacted] of the Constitution of India. We do not find any ^{inequality} breach or collateral or equal protection ^{of} the law in the case of transfer where no discriminatory or arbitrary conduct of the respondents is averred or substantiated.

We do consider that on the verge of retirement the family of a retiring person should not be uprooted, but there are ^{controversy} of decisions

of the Supreme Court, the latest being MRS. SHILPI BOSE & ORS V. STATE OF BIHAR & ORS, LLJ, DEC.1991 Vol.II The power to interfere with the matter of transfer though of course is permissible but when there is a case of malafide or when a person is transferred times and again or when the transfer is effected to cause loss to the demoluments at the transferred place or loss of status on the post to which the transferee is posted. In this case the applicant is divisional Accountant who has already been in Wardha district though in a particular place in Pipri he was from 1987 to 1990 and in minor irrigation division from July 1990, so it cannot be said that the case of the applicant falls in any of the above points referred to in this case.

Though the applicant has taken the plea that his transfer is due to certain applications moved by him before the CAT for redressal of grievance, but that matter is apart, the applicant has not impled of the any persons who bear grudge or animosity with him and merely urging the transfer is malafide. is nothing but a lip service to the case.

Regarding the posting of S S Agnihotri that will not be discriminatory to place the applicant Agnihotri is coming to this place i.e., Wardha after completing his tenure of five years at Nanded and it cannot be said that the respondents have favourably chosen Agnihotri ⁱⁿ the place of the present applicant.

Giving a careful consideration to all these aspects and the contentions raised before us by the learned counsel for the applicant, we do not find any smell in the transfer order either of mala fide or of discrimination or of arbitrariness. It is for the respondents to see which officer can be suited to a particular place and i.e., the administrative

exigency for which they have got their own line of action and thinking.

We, therefore, do not find any merit in the application Q and is devoid of merit which is disposed of leaving the parties to bear thier own costs. The interim relief granted till to-day stands vacated. The M.P. NO. 508/92 and 545/92 are also disposed of.

J. P. Sharma
(J P SHARMA) 3.7.92

MEMBER (J)

Usha Savara
(Ms. USHA SAVARA) 3.7.92
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

RA 152/92 in OA 527/92

Date of Decision : 0.12.92

Sh. N.S. Kantode Vs. Accountant General (A&E), Maharashtra
II Civil Lines, Nagpur

ORDER

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant in this Review Application has
prayed for the review of the judgement dt. 3.7.1992 by
which OA No.527/92 for the relief of cancelling the
transfer order dt. 21.5.1992 was refused.

2. As provided by Section 22(3)(f) of the Act, the
Tribunal possesses the same powers of review as are
vested in a Civil Court while trying a civil suit. As
per the provisions of Order XLVII, Rule 1 of the Code of
Civil Procedure, a decision/judgement/order can be reviewed:-

- (i) if it suffers from an error apparent on the
face of the record; or
- (ii) is liable to be reviewed on account of discovery
of any new material or evidence which was not
within the knowledge of the party or could
not be produced by him at the time the
judgement was made, despite due diligence; or
- (iii) for any other sufficient reason construed to
mean "analogous reason".

3. The applicant in this Review Application has again
raised the old and discarded arguments which have been
considered in the body of the judgement. The applicant

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cannot reopen the case again. No glaring error or mistake apparent on the face of the judgement has at all been mentioned in the number of grounds taken in para-4(i) to (x).

4. The Review Application is devoid of merit and is, therefore, dismissed by circulation.

AKS

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

Usha Savara
(USHA SAVARA)
MEMBER (A)