

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1277/93

Transfer Application No:

DATE OF DECISION: 30-3-1995

S.C.Nijhawan.

Petitioner

Shri G.S.Walia.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri R.K.Shetty.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No. 1277/93.

S.C.Nijhawan. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri G.S.Walia.
Respondents by Shri R.K.Shetty.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 30/3/95.

In this O.A. the applicant has challenged transfer order dt. 27.8.1993 from the post of Barrack Store Officer (for short, BSO) under Garrison Engineer (South) Pune to the post of Staff Officer (for short, SO) under Chief Engineer, Southern Command, Pune. The transfer is in the same station. But, according to the applicant, it affects him prejudicially because it is in violation of guide-lines as to posting policy involving Executive tenures. Para 15 (d) of the guidelines at page 24 states that Executive tenures will generally be $2\frac{1}{2}$ to 3 years and may be extended/curtailed based on performance of the officer after specific recommendations of CE Commands. Officers of outstanding merit may be given two executive tenures; Executive tenures will not be given in the last three years of service.

2. We need not go into other details of staff tenure and compassionate tenure, but from a bare reading of the guidelines, it is clear that Executive tenures are considered as prestigious

because it is only Officers of outstanding merit who are given two Executive tenures. Therefore, the shift from Executive tenure viz. BSO to the Staff tenure when the Officer had not completed the normal length of tenure is considered as derogatory. It is not disputed that the applicant was working from 28.2.1993 and the orders shifting him were passed on 27.8.1993 though implemented on 6.12.1993. Therefore, the Officer has hardly worked for ten ^{minimum} months in the Executive tenure as against thirty months envisaged by the guidelines. According to the applicant, the action taken against him is mala fide and in colourable exercise of power of transfer because it was really taken to punish the Officer for having complained against the then G.E., Respondent No.4. The applicant had represented against his transfer vide representation dt. 12.9.1993(at Ex. 'E' page 25) in which he has made several allegations of financial and other irregularities against the G.E. (South). This representation is post-transfer. But, the applicant has pointed out that this representation refers to much earlier action taken by the applicant to point out the irregularities. For example, the applicant had written a letter on 7.5.1993 on the subject of Irregular disposal of Tore Steel 10 mm. On 17.7.1993, the applicant had reported on deliberate taking away of government property for personal use by the G.E. The applicant has also referred to an incident involving of Subedar Sopan who, even after retirement, continued to occupy MES Pool accommodation. The applicant alleges that he had

reported the matter to Station Headquarters and on this, the then G.E. threatened him to put the applicant in trouble because the said JCO was his pet man. The applicant, therefore, contends that although his representation is dt. 12.9.1993, he had actually initiated several actions prior to his date of transfer viz. 27.8.1993 which have displeased the G.E. who has, therefore, engineered his transfer in violation of the transfer guidelines. The applicant has pointed out that, whereas, the earlier Movement Order dt. 13.9.1993 page 43 does not refer to the applicant being involved in any disciplinary case or court of inquiry, the subsequent Movement Order dt. 6.12.1993 at page 46 states that the Officer is involved in Court of Inquiry. According to the applicant the Court of Inquiry was a sequel to his letter of complaint and the applicant was a complainant and not an accused and to his the reference/being involved in Court of Inquiry wrongly As highly misleading and/shows him in the position of an accused.

3. The applicant has also contended that his transfer was discriminatory, inasmuch as, he alone was singled out for transfer by curtailing the period although there are six other BSOs under the Chief Engineer, Pune Zone who have not been disturbed. The list of these Officers is given by the applicant at page 6 of his Rejoinder dt. 18.4.1994.

4. The respondents have filed two written statements. There is one common written statement filed by Respondent No.1 to 4 and there is also a separate affidavit filed by R-4 the former G.E.

In the written statement, the Respondents have denied that the transfer was either mala fide or discriminatory. According to them, the transfer guidelines are only meant for the internal use of the Respondents and the Respondents are not precluded from re-deployment of the staff for organisational, functional and administrative reasons is which/what they have done in the instant case by transferring the applicant from the post of BSO to the post of SO. So far as R-4 is concerned, he has stated that the applicant was transferred on 28.8.1993, whereas, he had relinquished his appointment as G.E. much earlier viz. on 5.7.1993 and that he had never reported anything against the applicant or asked for his posting out. He states that the applicant has made allegations of irregularities only after receiving of the transfer orders in his own interest. He has denied all specific allegations made by the applicant including the allegations about Subedar Sopan. The Respondents have also stated in their Sur-Rejoinder dt. 14.6.1994 that the applicant was selected for a re-deployment to Staff posting as he has served in the Executive appointment as BSO continuously in his previous tenures.

5. The applicant filed an affidavit on 4.1.1995 in which he filed a copy of the letter from the Army Headquarters, Engineer-in-Chief's Branch dt. 19.10.1994, which states as below:

"1. Ref: Your telex No.145801/499/68/E1B(O) dt. 16.9.1994.

2. MES-303416 Shri SC Nijhawan, BSO was

side stopped from GE(S) Pune to CE Southern Command as SO3 based on the specific request made by the then Chief Engineer, Southern Command to the then Addl DGE (Pers) based on Officer's unsatisfactory performance. The officer has filed a CAT case in the Honourable Tribunal. The officer has also made certain allegations against his previous GE which are under investigation by a Staff Court of Inquiry.

3. The case of the officer is sub-judice. Moreover, the staff Court of Inquiry finalisation report has not been received.
4. In view of the above, the competent authority has not agreed to your suggestion to post the officer to an executive appointment."

6. It appeared, therefore, that the respondents were shifting their ground) as to the/reasons for the transfer of the applicant. With reference to his affidavit, the respondents, however, have reiterated that the transfer was ordered in the interest of administration and the counsel stated that the reference to unsatisfactory performance of the applicant has to be considered in the context of the fact that the applicant was making all types of allegations against his superior Officers.

7. The applicant relies in his support on the following Judgments:

1. R.Jayaraman V/s. UOI & Ors. (1991) 17 ATC 151).

This was also a case of transfer of an Officer in the MES in violation of transfer guidelines. In that case, the applicant was transferred prematurely from the position of Superintending Engineer, MES, in the office of the Commander Works Engineer, Bombay to Shillong Zone. The only defence of the Respondents was that the

transfer was made keeping in view the interest of the state. The Tribunal, however, noted that in the pleadings the applicant had taken the stand that there were threats of certain Contractors whose payment was withheld by the applicant on the ground of unsatisfactory nature of work and the Contractors had threatened that they would see that the Officer is transferred. The Tribunal held on facts that the transfer was made in violation of the prescribed guidelines and the plea of the Officer that the order is mala fide and in colourable exercise of power is required to be accepted and the transfer was quashed.

2. V. Bhaskaran V/s. Dy. Collector (P&E)
O/o. The Collector of Central Excise,
Ernakulam, Cochin & Ors. (1987) 4 ATC 473).

In this case, the Tribunal held that the power to transfer cannot be exercised as a punitive measure or on irrelevant or extraneous considerations. The Tribunal set aside the order of transfer.

3. Hira Lal Dhar Dubey V/s. Jokhu Singh
and Ors. (1987) 4 ATC 521).

In this case, the Tribunal held that the transfer was not in the interest of administration and was on the basis of malice and therefore, struck down the order of transfer.

8. In our view, the Respondents have not been able to point out the nature of functional or organisational or administrative reasons which led to the transfer of the Officer from an Executive position to a Staff position by curtailment of his tenure from 2½ years to 10 months.

The plea taken at one place that the Officer had already stayed for a long time in executive positions is not convincing because if that were the real reason for transfer, the applicant would not have been posted in the first place in the executive position. It, therefore, appears to us that the real reason for the transfer is as stated in the letter dt. 19.10.1994 which gives the following reasons :

- "1. Specific request made by Chief Engineer, Southern Command to the then Additional DGE (Pers) based on Officer's unsatisfactory performance.
2. The officer has filed a CAT case and the case of the Officer is sub-judice.
3. The officer has made certain allegations against his previous G.E. which are under investigation by the Staff Court of Inquiry.

The last two reasons are as to why the request from Southern Command for the posting of the Officer at that stage to an executive appointment could not be considered, but at Sl.No.1 is the reason for transfer of the Officer. The applicant has pointed out that regarding his unsatisfactory performance he has never received any memorandum or a warning letter, but, on the other hand, he has produced letters of commendations received by him at various stages in his career.

9. The counsel for the respondents relies on the case of Shilpi Bose in which the Supreme Court limited has laid down the scope of judicial review in the transfer matters. He also relies on the latest case of N.K.Singh V/s. UOI & Ors. (1994)28 ATC 246).

A That was a case in which the main point decided

by the Supreme Court was the scope of judicial review when violation of public interest was alleged. So far as violation of personal rights is concerned, it was observed vide para 6 :

"that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness."

10. In the present case it is established that there was violation of the transfer guidelines, that the transfer did affect the career prospects of the Officer prejudicially, because it is the meritorious officers who are singled out for executive posting and curtailment of executive posting, in the absence of strong administrative grounds has attached a stigma to the Officer. Moreover, the very fact that the action of complaints made by the Officer is treated as unsatisfactory performance of the Officer shows that the transfer of the applicant had something to do with the action taken by him by way of written complaints or by way of oral submissions vis-a-vis his previous superior viz. former G.E. That the G.E. was transferred out earlier does not exclude the possibility that it was at the instance of the G.E. who was annoyed with the applicant that the transfer was effected. We are therefore, of the view that this is a fit case for interference with the order of transfer of the Officer both on the grounds of violation of transfer guidelines and which transfer has prejudicially affected the career prospects and

on the ground of the transfer being mala fide viz. actuated by extraneous considerations. We, therefore, set aside the impugned order of transfer and direct the respondents to re-post him to an executive position. The applicant states that as at present the original position of BSO is still vacant. We are not inclined to make a direction to the respondents to re-post the Officer to the same position, but we would expect that the Respondents would take into account all relevant factors and re-post the Officer to an appropriate executive position in or near Pune not excluding the previous post of BSO, Southern Command. The OA is disposed of with these directions. There will be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.