

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 798/93

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DATE OF DECISION 20/4/94

Shri V.S. Shrivastav Petitioner

Mr.S.Shaikh for K.P. Anilkumar Advocate for the Petitioners

Versus

Union of India & Others Respondent

Mr.Sethna with Mr.R.K. Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Smt. LAKSHMI SWAMINATHAN, MEMBER (JUDL.)

The Hon'ble Shri

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judl.)

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

O.A.798/93.

Virendra Sahai Shrivastav.

.. Applicant.

Vs.

Union of India & 2 Others.

.. Respondents.

Coram : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

Appearances:

1. Mr.Salim Shaikh for
Mr.K.P. Anilkumar, Counsel
for the Applicant.
2. Mr.M.I. Sethna, with Mr.
R.K. Shetty, Counsel for
the Respondents.

JUDGMENT :

Dated : 20/4/94

{ Per : Hon'ble Smt. Lakshmi Swaminathan, Member (J) }

The applicant who is a Deputy Director (Staff Training), employed with Respondent No.2 Directorate General Factory Advice Service and Labour Institute (DGFASLI) has challenged the office order No.3/8/92-Estt. dated 29.7.1993 issued by the Head of the Office, for Head of the Department. By this order, it is stated that in public interest, the following transfers are made viz. that Shri Raja Ram, Dy. Director (ST) at Calcutta will be posted to Central Labbur Institute, Bombay and the applicant, Shri Virendra Sahai, Dy. Director (ST) will be posted in his place at Regional Labour Institute, Calcutta. The order also states that they will be entitled to TA/DA joining time etc. as admissible under the rules. The applicant has prayed for quashing the transfer order and subsequent release order No.64/276/I/83-CLI dated 30.7.1993 issued by the Head of the Office of C.L.I., Bombay relieving him of his duties in C.L.I., Bombay with effect from that date to enable him to report at RLI, Calcutta.

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(4)

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BOMBAY BENCH, BOMBAY

O.A.798/93.

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.. Applicant.

Vs.

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.. Respondents.

Coram : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

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1. Mr. Galim Shaikh for
Mr. K.P. Anilkumar, Counsel
for the Applicant.
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JUDGMENT :

Dated : 20/4/94

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2. The main grounds taken by the applicant in challenging the transfer order are that the same is malafide and was not in public interest. He has alleged that the order is in violation of certain office orders of the Director General allowing him to work in Staff Training Division; it is in retaliation against him for approaching the Court of law in respect of the employees of the DGFASLI Co-operative Canteen Society; the applicant had been relieved immediately and a substitute joined at Bombay on 2.8.1993 itself; the 3rd Respondent who is the Head of the Department was instrumental in harassing him; the transfer order has come at the fag end of his career; while it may be public interest in transferring Shri Raja Ram to Bombay, there was no such ^{interest} in his transfer to Calcutta; the nature of work of Shri Raja Ram who was Deputy Director for improvement in small scale units was different from his as he was trained in Staff Training and that he has been transferred to a temporary post at Calcutta from a permanent post and so it is illegal.

3. The Respondent No.3 has filed a reply affidavit on behalf of the Respondents on 25.11.1993 and a further affidavit has been filed by them on 31.1.1994, to the rejoinder filed by the applicant on 24.12.1993. The respondents have submitted that the transfer order was made in public interest. The applicant belongs to an All India Service and he is liable to be posted anywhere in India. In para 2 of their reply, the Respondents have set out the reasons to show that the impugned order is in public interest which reads as follows:-

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"The department has been equipped with computerised local area network (LAN) and also a Desk Top Publisher. These facilities have been created for the 8th Five Year Plan activities and also for a project under the USAID. The purpose of the above is to create/develop computer aided instruction packages

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for various training programmes in the areas of Safety and Health. In order to work with these aids, trained computer personnel is essential. However, our Plan proposal for creation of various posts in the computer field are yet to be approved by the Government and it may take quite some time to get such posts created. However, to keep the system idle until such time will be a criminal waste of resources. In the circumstances, it was found that the services of Shri Raja Ram, Deputy Director (Staff Training), Regional Labour Institute, Calcutta, will be of immense help. Shri Raja Ram was a Senior Engineer in the systems field in the Computer Maintenance Corporation of India before joining this organisation. Thus, Shri Raja Ram, Deputy Director (Staff Training) in the Regional Labour Institute, Calcutta was transferred from Calcutta and posted at Bombay specifically for this purpose in addition to his responsibilities in the Staff Training Division.

Posting a Deputy Director (Staff Training) in Calcutta is of utmost importance to the Government as this lone post with supporting staff of a Junior Stenographer and a Peon has been exclusively created for the Scheme "Training of Entrepreneurs in improvement of working conditions in medium and small scale units in Labour Institutes. A copy of the order creating the above post is annexed and marked as Annexure R-2.

Therefore, the Respondents submit that transferring the applicant to this post vacated by Shri Raja Ram was for this specific purpose and the refusal of the applicant to join the Calcutta Office has caused total disruption to the said activities".

4. I have also carefully perused the relevant documents on record on the question of allocation of work/ office accommodation to the applicant, the allegation of harassment by Respondent No.3, matters relating to the affairs of the DGFASLI Co-operative Canteen Employees and the subsequent Court case, and other points on which the applicant has relied upon to show that the order is tainted by malafide. This contention of the application is rejected, as during this period the applicant had been promoted and the impugned order has been made on administrative grounds.

5. The learned Counsel for the applicant has relied on the decisions of the Supreme Court in R. Pandey V. State of U.P. & Ors. (1993 II CLR 365) and Y. Kurikesu V. Senior

Superintendent of Telegraph Traffic, Trivandrum Division and others, (1/94 Swamynews 57 (Ernakulam) date of judgment 28.10.1993). In Pandey's case the Supreme Court held that the impugned transfer order dated 8.7.1992 does not recite any public interest. It is not possible to discover from other available records whether the transfer of the applicant was in public interest. In the absence of a counter affidavit or even the relevant records, the necessary conclusion is that no public interest is involved. It cannot be gainsaid that transfer is a necessary concomitance of every service, but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, "the public interest" being absent, the impugned order of transfer cannot be supported". Pandey's case can be distinguished from the present case. The Respondents in this case have not only filed their replies, they have also given their reasons why it was in the public interest to post Shri Raja Ram as Dy. Director (ST) in Bombay which necessitated the applicant being posted in the vacant post at Calcutta. On the facts of this case, I am unable to accept the applicant's contention that the transfer order is not in public interest or it was necessary for the Respondents to show that apart from requiring the services of Shri Raja Ram at Bombay, they have also to show separately and justify the transfer of the applicant to Calcutta in public interest. Both these officers have been transferred by the same order and it is not possible to separate the "public interest" in the manner contended by the applicant. The decision in the case of Y. Kurikesu also depended on the particular facts of the case, in which the Tribunal has observed that "even after giving several opportunities to justify the order of transfer on any principle or rule, respondents could not justify it on either. If transfer was made on the principle of longest stay in a Circle or on any other principle, that could have

been stated. Nothing was stated, presumably because, there was nothing that could be stated". The facts in these two cases relied upon by the applicant are distinguishable from the facts in this case, as the respondents have brought out in their reply affidavit the reasons necessitating the transfer in the exigencies of service and public interest.

6. Under Section 4 read with columns 5 - 14 of the schedule to the Directorate General, Factory Advice Service & Labour Institutes (Group 'A' and Group 'B' posts) Recruitment Rules, 1989, it is seen that the qualifications required for Dy. Director (ST) and Dy. Director (Productivity) are the same. The respondents have also shown that vide their order dated 26.2.1987 there is a post of Dy. Director (ST) at Regional Labour Institute, Calcutta and the applicant has been transferred as Dy. Director (ST) which post was earlier held by Shri Raja Ram. On these facts the applicant's contention that he has been transferred to an inferior position, viz. a temporary post at Calcutta, which is not a permanent post and, ^{that it is in a different capacity and} therefore, it is illegal cannot be accepted. There is also no substance or merit in the other arguments of the applicant for quashing the transfer order.

7. The fact that since there is a vacant post in Bombay, the applicant should be absorbed here only because his wife is also working in Bombay is not based on any rule and is rejected. As observed by the Supreme Court in a number of cases, the question of who should be transferred, where or when is not a matter for the Courts/Tribunals to interfere but is within the purview of the administration. It will be sufficient to refer to one of these cases, namely, Union of India V. S.L. Abbas (AIR 1993 SC 2444), in which

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the Supreme Court has held :-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafieds or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legally enforceable right".

8. Having considered the facts and circumstances of the case and record, therefore, I am unable to accept the contentions of the applicant that the transfer order is mala fide or is otherwise illegal or has been made other than on administrative grounds. Keeping in mind the observations of the Supreme Court that this Tribunal is not an appellate authority sitting in judgment over the orders of transfer and cannot substitute its own judgment for that of the competent authority, except where the order has been made mala fide or in violation of any statutory provisions, I find that the applicant has not made out a case justifying any such interference. In the result, since there is ^{no} merit in the application, it is dismissed.

No order as to costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (JUDL.)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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R.P.No. 63/94

in

O.A.No.798/93

Shri V.S. Shrivastav

... Applicant

v/s.

Ministry of Labour

... Respondent

Tribunal's order on Review Petition No. 63/94.

Dated:

This review petition No. 63/94 has been
filed seeking review of the order dated 20.4.1994
in O.A. No. 798/93. I have carefully considered
the review petition alongwith the annexures.

2. The applicant has urged review of the judgment
on the grounds that the impugned transfer order is
illegal as it is not in public interest and that
the Respondents have concealed material information
and deliberately twisted facts. According to the
applicant, sanction for the post of Deputy Director
(Staff Training) under the Plan proposals including
the post at Regional Labour Institute, Calcutta stand
terminated with effect from 1.3.1993, which allegation
has, however, not been substantiated by any documentary
evidence. The other grounds taken by the applicant
are that there was no public interest involved in
transfer of the officer, Shri Raja Ram, from Calcutta

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to Bombay necessitating the applicant's transfer to Calcutta. He has also referred to the various documents annexed to the O.A. to substantiate his contention that the submissions made by the Respondents are false and mala fide making the transfer order illegal and calling for a re-appraisal of the evidence.

3. The review petition does not refer to any error apparent on the face of the record of the order or refer to any other grounds on which the order can be reviewed. The Supreme Court had held in Chandra Kanta v/s. Sheikh Habib (AIR 1975 SC 1500) that "once an order has been passed by the court, review thereof must be subject to the rules of the game and cannot be lightly entertained. Review of a judgment is a serious step and reluctant resort to it is proper only when a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility."

4. Having regard to the settled principles on which a review petition may be allowed, This petition does not disclose any error apparent on the face of

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the record or other grounds including any new facts warranting review of the judgment. The grounds taken in this review petition do not justify review of the order. Accordingly, the review petition is dismissed.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judicial)