

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1335 OF 1994.

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DATE OF DECISION: 8/2/95

Digambar Shripad Kamat, Petitioner

Smt. N. V. Masurkar, Advocate for the Petitioners

Versus

Union Of India & Others, Respondents

Shri M. I. Sethna, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

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


(B. S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

ORIGINAL APPLICATION NO.: 1335 OF 1994.

Digambar Shripad Kamat ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

APPEARANCE :

1. Mrs. N. V. Masurkar,
Counsel for the applicant.
2. Mr. M. I. Sethna,
Counsel for the respondents.

JUDGEMENT :

DATED : 8.2.95

¶ Per.: Shri B. S. Hegde, Member (J) ¶.

1. In this O.A., the applicant has challenged the impugned order of transfer dated 11.08.1994 as well as the relieving order dated 02.12.1994 at annexure A-1, and A-2. As per the transfer order, the applicant has been promoted to the post of Superintendent Grade 'B' of Central Excise in the pay scale of Rs. 2000-3500/- with immediate effect and has been directed to report to duty at Goa on 31.08.1994. As against the transfer order, he made ¶ representation to the Principal Collector, Central Excise vide dated 17.08.1994, which was rejected by the Competent Authority on 19.10.1994.

Again, he made ~~representation~~ further representation to the Competent Authority on 21.10.1994 for which he states, no reply has been sent by the Respondents. The applicant has also prayed for the interim relief seeking stay of the Relieving Order dated 02.12.1994, which has been considered by the Tribunal and the said plea has been rejected.

2. The Respondents in their reply averred that the applicant has already been relieved from his posting at the office of Bombay Collectorate-II, in view of the promotion/posting order dated 11.08.1994, thereby, he ought to have joined his new posting inasmuch as the Hon'ble Tribunal has not granted any mandatory injunction directing the respondents to withdraw and/or with-hold the order, relieving the applicant from his Bombay posting. In the circumstances, it is for the applicant either to report to his new posting with the Collectorate of Goa and/or ought to have obtained, if permissible, appropriate leave from the said Collectorate from absenting himself on and after 3.12.1994. The Learned Counsel for the respondents therefore, contends that on promotion, the applicant in the routine manner was transferred to ~~the office~~ of the Collectorate of Central Excise and Customs at Goa and such transfer orders, normally should not be interfered by the Tribunal in view of ~~the~~ settled principles laid down by the Supreme Court in ~~catena of decisions~~. Unless the order appears to be patently malafide and mere allegation of malafide, is not adequate, if the

applicant intends to rest his case on this contention, etc. etc.

3. I have heard the rival contentions of the parties, Smt. N. V. Masurkar for the applicant and Shri M.I. Sethna for the respondents. The main contention of the Learned Counsel for the applicant is that the respondents have not given any reason while rejecting the representation made by the applicant and has not applied their mind while rejecting the representation of the applicant. Further, the impugned order passed is by the respondents ~~against~~ the instructions of the Principal Collector on inter-connected transfer and therefore, the same is required to be quashed and set aside. Thirdly, the applicant's juniors are retained in Bombay whereas the applicant's case is rejected and has been transferred on the basis of pick-and-choose category. Lastly, the respondents have not given any sufficient opportunity to the applicant to exercise the option to forego promotion before receiving the relieving order, etc.

4. I have heard the parties and on perusal of the pleadings and documents, the contentions raised by the applicant, does not have any merit and the same is not tenable. The applicant is not the only person who is chosen for transfer on promotion. There are ~~about~~ ten other persons who are transferred on promotion, therefore, the contention of the applicant that he is being isolated, does not appear to be correct. In the representation, he has stated that on account of his

mother's illness, he is not in a position to go on transfer to Goa. Nevertheless, the respondents did not consider the representation of the applicant sympathetically and hence the transfer order is required to be quashed. The said allegation is not based on any specific ground and it is clear from the policy of transfer of the department that on promotion, the officials are liable to be transferred, unless, there are clear vacancy existing in the Office of the Collectorate in which he or she is working. It is for the Competent Authority to lay down the policy decisions and to act in accordance with the said policy decisions. In the instant case, no such allegation has been made against any official that they have acted malafidely or arbitrarily. In this connection, the Learned Counsel for the applicant draws my attention to the decision of the Tribunal in S.M. Bhagwat V/s. Ministry of Defence in O.A. No. 1272/93 dated 08.04.1994 and submits that though the name of the applicant has been struck off from the rolls as a consequence of the refusal to carry out the imminent transfer order and the remedy to be pursued by the department would be to hold a departmental enquiry against the incumbent for the refusal to carry out the order of transfer. In that case, having regard to the circumstances of the case by way of interim order, the Tribunal directed the respondents that the applicant should be allowed to resume the work on the original post from which he was transferred as Store Keeper with liberty to the respondents to take such departmental action as it may be advised.

In the instant case, no such action has been taken by the respondents against the applicant and the facts of this case is distinguishable from the case cited above and the simple order of transfer on promotion cannot be assailed simply on the ground of illness of some relatives or on account of some inconvenience, as per the procedure in vogue. If the applicant is not inclined to go on transfer, he has to give an undertaking that he is prepared to forego the promotion and the consequences shall follow. No such undertaking has been given by the applicant in this case.

5. The Supreme Court in Gujarat State Electricity Board V/s. A.R. Sungomal Poshani [AIR 1989 SC 1433] held that "transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules, etc." In the instant

case, as stated earlier, no interim relief was granted by the Tribunal nor the order of transfer has been modified by the competent authority. In the circumstances, the ratio laid down by the Supreme Court in the aforesaid decision would squarely apply to the facts of this case. The Supreme Court in catena of cases, held that Courts should not interfere with a transfer order which is made for administrative reasons unless the transfer order is malafide in violation of any mandatory statutory rule or on the ground of malafides and the allegation of malafides, the inference must be based on firm foundation of facts pleaded and established and not merely on insinuation or vague allegations, etc.

6. In the instant case, admittedly, the applicant has not made out any case that the transfer-cum-promotion order passed by the Respondents is against any statutory rules or on the ground of malafides, except stating that he could not go on transfer to Goa on account of his mother's illness. In the result, I am of the view, that keeping in view the ratio laid down by the Supreme Court in the cases of transfer, there is no merit in this O.A. and the same is liable to be dismissed at the admission stage itself. Accordingly, the O.A. is dismissed at the admission stage but no order as to costs.


(B. S. HEGDE)
MEMBER(J).