

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 1

O.A.NOS. 930/94 & 941/94

Proclaimed this the 30th day of Nov 1996

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

1. Shri Bhagwan Sirumal Lalchandani
2. Shri Kanta Prasad

By Advocate Shri G.K.Masand

... Applicants

V/S.

Union of India & Ors.

By Advocate Shri P.M.Pradhan

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

As the issues raised in these two OAs. are similar, they are being disposed of by a common order. The facts in the OA.NO. 930/94 are taken as illustrative. The applicant has impugned the order dated 29.7.1994 by which he has been transferred from the post of Deputy General Manager, India Security Press, Nashik to India Govt. Mint, NOIDA. According to the applicant, he was recruited by the UPSC for the post of Assistant Master in the India Security Press, Nashik. He has been serving in this organisation right from the beginning. India Govt. Mint, NOIDA is a separate and independent organisation and although there is a post of Deputy General Manager in IGM, NOIDA, but that post constitutes a different cadre. Although the designations may be the same, the cadres are separate. In this connection, the applicant has pointed out ^{that} in relation to Security Printing Press (SPP), Hyderabad to which the applicant in OA.941/94

has been transferred ^{ing} the staff/pattern is entirely different and there is no post of Deputy General Manager in the Security Printing Press, Hyderabad. In OA.NO. 941/94 the applicant is working as Works Manager in India Security Press Nashik from which post he has been transferred to post of Works Manager in Hyderabad but it is contended that it is on the face of it clear that promotion chances ^{adversely} of the applicant in OA.941/94 are ^{adversely} affected because the next promotion channel ^{is} is available in the India Security Press Nashik ^{is} not available in the Security Printing Press, Hyderabad. According to the applicant, therefore the transfer is not ^{transfer or} ~~simplicit~~ but is transfer ^{of} on deputation and in all such cases ^{of} transfer on deputation, the consent of the concerned employee is required to be obtained. The applicant has given examples showing that in the past all such transfers were ordered only on deputation preceded by procurement of consent. The applicant refers to F.R.15 which provides that President may transfer Government servant from one post to another post but this is permissible only if he is transferred ^a to ^a post in the same cadre. The applicant also refers to Supplementary Rule No. 2(18) which defines the term transfer. The relevant part reads as follows :-

"Transfer means the movement of a Government servant from one headquarter station in which he is employed to another such station, either

(a)

(b) in consequence of a change of his headquarters."

The applicant contends that this provision contemplates more than one post in the same cadre or Organisation and each such post has different headquarters.

The Supplementary Rule 59 provides that the headquarters of a Government servant shall be in such place as the competent authority may prescribe. However, for applying the above mentioned definition of transfer both the Government servants must belong to the same cadre. The words "another such station" may be interpreted to mean another station of the type in which the concerned staff is employed in the earlier station.

2. The applicant relies on the ratio of judgement of Bombay High Court in the case of Prakash R. Borkar vs. Union of India & Ors. reported in 1984 LAB.I.C.739. from Para 12
The relevant extract / reads as below :-

"Fundamental Rule 15 does not permit transfer of a Government servant from one cadre to another cadre without his consent. A cadre may consist of several posts, temporary or permanent.

The person holding a civil post or being in civil service of the State is entitled to certain conditions of service prescribed for that post. If he is in a cadre or post he continues to be in that cadre or post unless promoted or any penalty of dismissal or removal from service is imposed upon him. In the absence of imposition of such a penalty, such holder of a civil post is entitled to serve the Government till the date of superannuation. It is a guarantee which flows from Art. 16 and Part XIV of the Constitution. When a person is transferred from one cadre to another he is sent on deputation and always with his consent. It is inconceivable that deputation can be ordered without the consent of the concerned employee."

The applicant contends that similar view is also taken in the case of Kunwar Bahadur vs. State of U.P. reported in 1979 S.L.J. 700. The applicant, therefore, seeks the relief of quashing and setting aside the order of transfer.

3. The respondents have opposed the OA. According to them, the services of the applicant are transferable in terms of the appointment order. Although the appointment order in OA.930/94 is not available, the appointment order in respect of the applicant in OA.941/94 is available. It states that:-

"Your headquarters will be at Nasik Road, but you may, if necessary, be required to serve anywhere in India under the Govt. of India."

Secondly, the respondents contend that there is no change in the service conditions and the applicant has been transferred along with the headquarters of his post and by virtue of his transfer he will not lose his seniority for future promotion. According to the respondents, F.R. 15 does not apply to the facts of the case and the reliance on F.R.2(18) is mis-placed. According to the respondents, the transfer was for administrative reasons. There was a review committee appointed by the Govt. of India and the committee recommended transfer of senior officers specially holding sensitive posts to the other presses in the interest of these organisations. The transfer orders were issued pending formulation of a regular transfer policy. However, since the Mints & Presses are departmental organisations which are under the administrative control of Currency & Coinage Division of the Department of Economic Affairs, Ministry of Finance which controls nine such presses and since the cadre controlling and budget controlling authority is common, the transfer is in accordance with the rules and cannot be challenged.

On the date prior to the date ^{of final} hearing the respondents were directed to produce the transfer policy if finalised by that time and a telex dated 3.4.1996 on the date of final hearing was produced ^{on the date of final hearing} which showed that the Finance Ministry has not finalised its transfer policy as far as Mints and presses are concerned.

4. The respondents have relied on the judgement of the Supreme Court in State of M.P. & Anr. vs. S.S.Kourav & Ors. (1995) 29 ATC 553, in which the Supreme Court has held that :-

"The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation."

The respondents also relied on the case of G.S.Tandel & Ors. vs. Union of India & Ors., SLJ 1996(1) (CAT) 137, in which relying on case of State of M.P. vs. S.S.Kourav & Ors. referred to above and also Union of India & Ors. vs. S.L.Abbas 1993(25) ATC SC 844, the Tribunal refused to interfere with the transfer order.

5. I am of the view that the main question to be decided in this case is whether the transfer is a transfer simplicitor or it is a deputation described as a transfer. I am of the view that under the facts ^{ratio} and circumstances of the case, the judgement of the Bombay High Court in Prakash R. Borker vs. Union of India & Ors. reported in 1984 LAB. I.C. 739 is attracted.

In that case, an LDC was transferred from Directorate of Transport to Directorate of Civil Supplies and the High Court held that these constituted different cadres and an LDC from one cadre could not be transferred to another cadre without his consent. The High Court also referred to the judgement of Justice D.A. Desai of the Gujarat High Court in Bhagwati Prasad vs. State of Gujarat, (1979) 3 Serv LR 805. The High Court also referred to a different judgement in G.K. Tandon vs. Judicial Commr. AIR 1957 Raj 230 and held that they prefer^{red} the view expressed in Bhagwati Prasad's case to the one that is found in G.K. Tandon's case.

6. In my view, nothing has been brought to my notice which shows that officers of India Security Press, Nashik belong to same cadre as the ^{officers} of Security Press either at NOIDA or Security Press at Hyderabad. The transfer is, therefore, not transfer simpliciter. It is not a transfer within^a cadre but it is deputation in the guise of transfer in^{which the} pre-condition of consent is missing. The respondents have not been able to deny that in the past such transfers were ordered only on deputation. They have also admitted that transfer policy in respect of 9 organisations under C & C Division Ministry of the Finance^{is} yet to be finalised. In the circumstances, I am of the view that impugned transfer is really deputation without consent and is therefore, liable to be interfered. The OA^{is} therefore succeeded^{transfer} and the impugned^{transfer} orders are therefore quashed and set aside. There would be no order as to costs.

Order/Judgment despatched
to Applicants re respondent (s)
on 26.9.96
Office copy filed on 9.10.96

(M.R. KOLHATKAR)
MEMBER (A)

14/6/96 mrj