

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1223/95

~~Transfer Application No.~~

Date of Decision 13.11.95

Shri A.S. Khoparde

Petitioner/s

Shri A.D. Sugdare

Advocate for
the Petitioners

Versus

Union of India & Others

Respondent/s

Shri V.S. Masurkar

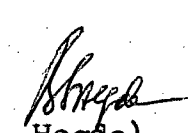
Advocate for
the Respondents

CORAM :

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

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 ?


(B.S. Hegde)
Member (J)

ssp.

(5)

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

O.A. NO. 1223/95

Dated this 13th day of November 1995.

HON'BLE SHRI B.S. HEGDE, MEMBER (J)

Shri A.S. Khoparde ... Applicant
By Advocate Shri A.D. Sugdare

v/s


Union of India & Others ... Respondents
By Advocate Shri V.S. Masurkar,
Central Govt. Standing Counsel

O R D E R

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

1. Heard Shri Sugdare for the Applicant and Shri Masurkar for the Respondents. In this O.A. the Applicant has challenged the impugned order dated 22-9-1995 transferring the Applicant alongwith others from respective places as per the order. The Applicant has been transferred from Aurangabad to Ahmedabad. Against this, he has approached the Tribunal on 9th October 1995. After hearing both the parties, the Tribunal passed the following order :

"... that one Shri M.R. Moghe, who was to join from Indore at Aurangabad has already reached Aurangabad on 8-10-1995. He has produced the telegram received in this regard. The learned counsel for the applicant states that this this telegram is contrary to the order dated 4-10-1995 because the charge could not have been assumed on 8-10-1995 which is a Sunday. After hearing the parties, the Court has passed status-quo as of today i.e. to say, in case Shri Moghe has reached Aurangabad, he should not be precluded from



From pre-page:

taking over the charge of Shri Khoparde but Shri Khoparde will not be penalised for not joining at Ahmedabad. In other words, his status will be that of compulsory waiting or leave, as the case may be, till the next date of hearing."

2. The main contention of the Applicant is that the transfer order issued by the Respondents is to victimise the Applicant as he is actively associated with the Akashdarshan Backward Classes Employees Association, Aurangabad etc. Secondly, the transfer^{which} was issued on 22-9-1995 is a mid-term order which is normally not being done. His further contention is that the transfer is malafide though the allegation is made against Shri Bakshi, Station Engineer who has not been impleaded as party respondent. During the course of the hearing, the learned counsel for the Applicant, Shri Sugdare draws my attention to the circular issued by the Department of Personnel & Training on 24-6-1995 which envisages that Government servants should desist from any act of discrimination and harassment against scheduled castes and scheduled tribes employees in Central Government services/posts etc. He also draws my attention to the Transfer Policy issued by the Directorate General, All India Radio vide dated 4-8-1981 by which the transfers will, as far as possible, be synchronised with end of the calendar year so that education of children does not suffer etc.

3. The Respondents in their reply refuted the contention of the Applicant saying that the allegation of malafide is not borne out of records and the said contention has been denied by the Respondents and the Applicant has not impleaded the Station Engineer

From pre-page:

as a party respondent in this case. Regarding the allegations that he is involved in an attempt of murder case etc. are not germane to the issue involved in this case and are all private matters and so far as Union activities are concerned, it makes it clear in para 7 that the statement of the Applicant that he is the Unit Secretary of Akashdarshan Backward Classes Employees Association, Aurangabad is incorrect and all the members have already given in writing to their office that the above Association is abolished as far back in 1965. The learned counsel for the Respondents further contended that even if he is Unit Secretary, it is not recognised by the Department and he cannot take advantage of his alleged position in the said Association in the O.A. by not going on transfer. It is an admitted fact that the Applicant has worked during the most of his service in Nagpur i.e. 9 years and at Aurangabad for a period of 12 years. Though he was transferred in the year 1990, after considering his representation, the said transfer order was cancelled; therefore, keeping in view the administrative exigencies and public interest, he has been transferred to Ahmedabad.

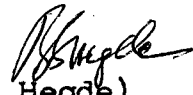
4. As per the procedure in vogue, the Applicant is liable to be transferred anywhere in the zone of Madhya Pradesh, Gujarat and Goa and no malicious intention is there in the transfer of the Applicant from Aurangabad to Ahmedabad. Therefore, the transfer order passed by the Respondents cannot be decided by the Tribunal on extraneous consideration. In support of their contention, the learned counsel for the Respondents relied upon the case of State of Madhya Pradesh and Ors. v/s

From pre-page:

Kourav and Ors. JT 1995(2) SC 498 wherein the Apex Court has held that "the Courts or Tribunals are not appellate forum to decide on transfers of Officers on administrative grounds. The wheel of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the Administrative system by transferring the officers to proper place. It is for the administrative to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundations".

5. In the light of the above, it is an admitted fact that a transfer is an incidence of Government service and to whom and where to transfer it is for the administration to decide. As rightly stated by the Apex Court, unless the transfer is vitiated or is made in violation of the statutory provisions, the Tribunal cannot interfere with it. Since Shri Moghe has already taken the charge in place of the Applicant at Aurangabad, the Applicant has no alternative but to go on transfer and resume duty at Ahmedabad within a period of 15 (fifteen) days from the date of receipt of this order. In case the Applicant is aggrieved by the order of the Tribunal, it is upto him to make a proper representation to the Competent Authority who may consider his request and pass appropriate order as they deem fit.

6. In the result, the O.A. is dismissed with no order as to costs.


(B.S. Hegde)
Member (J)

ssp.