

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1266 of 1995.

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DATE OF DECISION: 18.3.96

Shri D. K. Avhad,

Petitioner

Shri H. A. Sawant,

Advocate for the Petitioner

Versus

Union Of India & Others,

Respondent s

Shri V. S. Masurkar.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri V. Ramakrishnan, Member (A).

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1. To be referred to the Reporter or not ? *No*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

V. Ramakrishnan

(V. RAMAKRISHNAN)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR,
PREScot ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1266/95.

Dated this Monday the 18th day of MARCH, 1996.

CORAM : Hon'ble Shri V. Ramakrishnan, Member (A).

Shri D. K. Avhad ... Applicant

Versus

Union Of India & Others ... Respondents.

APPEARANCE :

1. Shri H.A. Sawant,
Counsel for the applicant.
2. Shri V. S. Masurkar,
Counsel for the respondents.

: ORDER :

¶ PER.: SHRI V. RAMAKRISHNAN, MEMBER (A) ¶

 The applicant is serving as a Store-Keeper in the Naval Stores Organisation (N.S.O.) and has challenged his transfer from the Materials Organisation to Base Victualling Yard, in Bombay itself as per transfer order dated 20.04.1995 at annexure A-1.

 2. I have heard Shri H.A. Sawant for the applicant and Shri V.S. Masurkar for the official respondents.

3. The main grounds urged in support of the application as seen from the pleadings and the submissions made by Shri Sawant, are as follows :-

The applicant claims that he is an active trade-union worker of the Indian Naval Employees Union and contends that as a 'Protected Worker', he is not liable to be transferred. It is also urged that he has been shifted from one post to another in the same grade and the transfer is not on promotion. It is also stated that there are a number of persons in the Materials Organisation who have stayed for a longer period and he has been purposely picked up for transfer and hence the transfer is punitive in nature. It is alleged that it has been effected at the instance of one Shri Asija, who was then officer incharge, Naval Stores Organisation, Dockyard, Bombay for the reason that the Trade Union of which the applicant was an important Office Bearer had levelled charges of misuse of powers against Shri Asija and this officer wanted to settle scores with the applicant. It is also argued that the transfer is in violation of transfer policy and the various guidelines in this regard and was not effected on account of any administrative exigency and has been ordered through colourable exercise of power. According to the applicant, this would be evident from the fact that on the same date the applicant

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was transferred to Weapons Equipments Depot, Bombay, first and subsequently to Base Victualling Yard, Bombay and as such the transfer has been done in an arbitrary manner without application of mind. For these reasons it is prayed that the transfer order should be quashed.

4. The department strongly resist, the application. Shri V.S. Masurkar appearing for the respondents contends that the grounds urged in support of the O.A. are untenable. The applicant's job entails All India transfer liability but he has been working in the same station for over 18 years and had been shifted to Base Victualling Yard, which is in Bombay itself and not to some other station. He points out that the impugned order at Annexure A-i would show that the applicant was not the only person who was transferred from one establishment to another, as this order transferred 32 officers. It is also submitted by Shri V.S. Masurkar that earlier the applicant was transferred but this order was cancelled. There is some doubt about the status of the applicant in the trade-union set-up but even assuming that he is an active worker and office bearer, this would not in any way materially affect the position. The applicant is being transferred from one unit to another in the same station and the category of Storehouse Staff having an All India transfer liability, the transfer of the applicant cannot jeopardise the interest of either the

applicant or the union since the cadre management of the category of Storehouse Staff is centrally controlled on all India basis and not on unit basis and the contention of the applicant that he enjoys special immunity as a 'Protected Worker' is clearly not tenable. The respondents also do not agree that the transfer has been effected in violation of guidelines. They contend that there are no set guidelines of Naval Headquarters for transfer within the same station. The various guidelines by and large normally envisage transfer/posting from one station to another and there are no set guidelines for transfer of Storehouse Staff within the same station. However, the accepted principle of transfer is that the "transfers other than on promotion will be effected where warranted by exigencies of service or on grounds of administrative necessity or in public interest." The Naval Headquarters had kept in view the various aspects including the tenure of the applicant in the Materials Organisation and had decided that he should be transferred alongwith a number of others. As such, the transfer is not arbitrary.

Shri V.S. Masurkar submits that the reference to Shri Asija, the then Officer Incharge of N.S.C. Dockyard, is not at all relevant for the purpose of the present O.A. The transfer order has been issued by the Naval Headquarters and not by Shri Asija. There is no substance in the allegation that Shri Asija could influence Naval Headquarters with regard to the transfer of the applicant. It is true that certain

allegations were made by the Union against Shri Asija and they were enquired into but were not substantiated. After the orders of the Naval Headquarters were received transferring the applicant to Base Victualling Yard, Bombay, a communication was issued to comply with the order. However, through inadvertence the applicant was shown as transferred to Weapons Equipments Department, Bombay, as against Base Victualling Yard, Bombay. This mistake was detected immediately and all the copies of the Movement Order were withheld except the copy to the Officer-in-Charge, Naval Stores Office (Dockyard), Bombay, which was forwarded earlier. Subsequently, a fresh Movement Order was issued on the same date reflecting the correct position of the applicant's transfer to Base Victualling Yard. The order issued showing transfer to Weapons Equipments Department instead of Base Victualling Department, Bombay, was only a mistake and nothing more needs to be read into it when the orders of the Naval Headquarters were very clear on the point. Above all, it is the stand of the department that the transfer is a management function and is best ~~if~~ left to the management to consider and to take proper action.

5. I have carefully considered the submissions of both the parties. It is now well settled that the jurisdiction of the Tribunal to interfere in the matters of transfer is limited and can be invoked only when the transfer has been effected on malafide consideration or the same is

orders were issued by the Naval Headquarters. There is nothing to disbelieve the respondents' version that the transfer has been ordered by the Naval Headquarters in the normal course and not at the instance of Shri Asija. It is too much to accept the applicant's contention that the intention was to single him out for transfer and 31 others have been transferred only as a cover up to achieve this objective and this has been done at the instance of Shri Asija. In this connection, it is relevant to take note of the observations of the Supreme Court in disposing of the SLP (Civil) No. 21756 of 1995 dated 04.12.1995, which is reproduced below :-

"In view of series of judgements of this Court, it was not proper on the part of the Tribunal to interfere with an order of transfer, merely on basis of assertion made on behalf of the respondents that he had been making complaints in respect of corruption against some of the authorities because of which he had been transferred."

6. The applicant has alleged that his transfer has been done in violation of guidelines, which contention has been denied by the respondents. Even if the order of transfer was made without following the guidelines in full, the same cannot be interfered by the Court unless it is vitiated by malafide or is made in violation of statutory provisions, as has been held by the Supreme Court in

Union Of India V/s. S.L. Abbas [AIR 1993 SC 2444]. I may also refer to the decision of the Supreme Court in State of Madhya Pradesh & Ors. V/s. Sri S.S. Kourav & Ors. [JT 1995 (2) SC 498] wherein the Apex Court has observed as follows :-

"The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels 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 places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case, we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

6. In the light of the foregoing discussions and in the context of law as laid down by the Supreme Court, I find that the present O.A. is devoid of merits and accordingly the same is dismissed. No costs.

V. Ramakrishnan
18/3/1996
(V. RAMAKRISHNAN)
MEMBER (A).