

6

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 261/95

Transfer Application No:

DATE OF DECISION: 31.3.95

S.Mitra

Petitioner

Shri G.K. Masand

Advocate for the Petitioner

Versus

Union of India and others

Respondent

Shri P.M.Pradhan

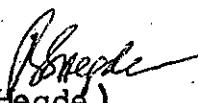
Advocate for the Respondent(s)

CORAM :

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

The 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)

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No 261/95

S. Mitra

...Applicant

V/s.

Union of India through
the Secretary in the
Ministry of Finance,
Department of
Economic Affairs,
North Block,
New Delhi.

... Respondents

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

Appearance:

Shri G.K. Masand with
Ms. S.Gode, counsel
for the applicant.

Shri P.M. Pradhan,
counsel for the
respondents.

JUDGEMENT

Dated: 3/7/95

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

In this O.A. the applicant has
challenged the order of transfer issued by the
respondents dated 6.3.95, Annexure A, which
reads as follows:

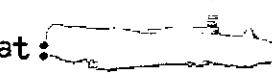
Br
" The undersigned is directed to say
that Shri S.Mitra, General Manager,
India Security Press Nasik is hereby
transferred from the post of General
Manager, India Security Press, Nasik
and posted as General Manager, Security
Printing Press, Hyderabad. Shri Mitra
is hereby directed to hand over charge
today itself to Shri A.V. Dhekne,
General Manager of Currency Note Press
Nasik who will hold additional charge
of the post of General Manager, India
Security Press, Nasik until further
orders."

(8)

Shri Mitra will take over charge of the post of General Manager, Security Printing Press, Hyderabad from Shri K.K. Parkalan (presently holding additional charge) on 7.3.1995 positively and send compliance report to the undersigned the same day."

2. The undisputed facts are that prior to coming on deputation to India Security Press, Nasik the applicant was working as Dy. Director General in his parent cadre of Ordnance Factory Board at Calcutta in the pay scale of Rs. 5900 - 6700 with effect from 31.3.86 on regular basis. He was selected for appointment on deputation basis as General Manager of India Security Press at Nasik. The applicant joined the post of General Manager, India Security Press, Nasik in pursuance of the order issued by the respondents on 7.10.91, which reads as follows:

" I am directed to refer to your letter No. 626/A/G dated 6.11.90 on the above subject. Shri S. Mitra, has been selected for the post of General Managers at India Security Press, Nasik Road, in the scale of Rs. 5900 - 6700 on transfer on deputation basis for a period not exceeding 4 years. You are requested to relieve the Officers and direct him to join duty at Nasik Road immediately."

The respondents vide their letter dated 25.10.91, Exhibit 'G' intimated the applicant that: 

" you have been selected for the post of General Manager at India Security Press at Nashik Road in the scale of Rs. 5900 - 6700 on transfer on deputation basis for a period not exceeding 4 years."

MR
You are hereby requested to convey your willingness to accept the above assignment and to indicate when you would be able to

(9)

join the above, so that the matter may be taken up for approval with Ministry of Defence as required. Your reply may kindly be sent by 29.10.91."

Accordingly, the applicant has given his consent and he has been relieved from the parent department on 25.11.91 (Exhibit H) alongwith A.V. Dhekne. He has taken over the charge of the Office of the General Manager Ex-Officio Controller of Stamps, India Security Press, Nasik Road on 27.11.91, persuant to the acceptance of the offer of the respondents (The President) vide order dated 6.12.91 issued the appointment notification, (Exhibit K) which reads as follows:

" The President is pleased to appoint S/Shri S.Mitra and A.V.Dhekne as General Managers (Pay scale Rs. 5900 - 6700) India Security Press and Currency Note Press, Nasik Road respectively, on transfer on deputation basis for a period not exceeding four years with effect from the date of their joining the said post. "

3. As per the Rules, the deputation period of the applicant will be over by 25.11.95, but while he was performing the duty of General Manager, the applicant proceeded on medical leave for a period of 45 days which was sanctioned and the same was extended till 3.3.95. Prior to his proceeding on medical leave the applicant has sent a request for reversion to his parent cadre on 25.11.94 and urged the respondents to revert him to his parent cadre for the reasons stated in the letter. Since no response is received from the respondents, he again wrote another letter dated 2.2.95 (Exhibit E) addressed to the Ministry of Finance, Dept. of Economic Affairs, North

Block, New Delhi reinstating his grounds and requested for reversion to parent cadre and stated that he may be relieved from the post of General Manager, India Security Press, Nasik to the parent department in May/June '95. Instead of answering his request for repatriation, the respondents have sent a letter dated 6.3.95 transferring him to Security Printing Press, Hyderabad immediately which has been challenged in this O.A. The applicant has prayed for the following reliefs.

- a) That this Hon'ble Tribunal will be pleased to quash and set aside the impugned order dated 6.3.1995 (Exh.A) by which applicant, working as General Manager, India Security Press, Nasik is sought to be transferred and posted as General Manager, Security Printing Press Hyderabad.
- b) That respondents be permanently restrained from posting the applicant at any Press other than India Security Press at Nasik during the period of Applicant's deputation to India Security Press at Nasik.
- c) That respondents be directed by a mandatory order issued by this Hon'ble Tribunal to take decision on the applicant's representation dated 25.11.94 and 2.2.95 for applicant's representation to his parent cadre.

4. The learned counsel for the applicant Shri G.K. Masand urged the circumstances under which the applicant has came on deputation to India Security Press, Nasik, although he was drawing the same scale in the parent department. Nevertheless the applicant has accepted the appointment as a matter of challenge.

11

The learned counsel for the applicant also submitted written request in November '94 for repatriation to his parent department. The main contention of the applicant is that he has been posted as General Manager, India Security Press, Nasik on deputation basis, and a person on deputation from different cadre to a particular post is not liable to be transferred to any other post. However, since his deputation period is almost coming to an end, he expressed his willingness for repatriation to the parent cadre, the respondents are not entitled to refuse the said request and at the same time transfer the applicant to another unit i.e. as General Manager, Security Printing Press, Hyderabad especially when there is hardly 8 months left for repatriation. The learned counsel for the applicant also draws our attention to the order issued by the respondents on 1.9.80 (Exhibit F) wherein it is stated that prior to bifercation of the India Security Press in 1986 the post of General Manager at India Security Press was in the higher grade than the post of General Manager of other four Presses of the respondents. After the recruitment Rules 1986, the pay scale of General Managers were made uniform. Further, he contended that the post of General Manager offered to the applicant and stated that he will be posted at India Security Press Nasik and having accepted the offer of General Manager, India Security Press Nasik, it is not open to the respondents to state that it is within their right to post him in any one of the 5 units without his consent etc.

(12)

5. As against the above, the learned counsel for the respondents, Shri P.M. Pradhan submitted that the post of General Manager is a common cadre. In this connection he draws our attention to (Exhibit B) wherein the Ministry of Defence, Ordnance Factory Board has recommended 10 eligible officers including the applicant for consideration to the post of General Manager. Out of which, two have been selected. The persons were taken on deputation for the post(s) of General Manager, therefore the transfer/shift from Nasik to Hyderabad should not be treated as transfer in the normal sense. In this connection, he draws our attention to (Exhibit A) O.M. issued by the respondents dated 10.9.90 para 2 which reads as below:

" There are vacancies in the post of General Manager and applications are invited from Central/State Govt. Department, Public Sector Undertakings and Autonomous Bodies to fill up the posts by transfer on deputation basis. The selected candidate(s) are liable to be posted to any one of the above 5 units."

He also urged, that at the time of giving advertisement calling for the post of General Manager there were two vacancies. Eligible applicants names were put up to U.P.S.C. for scrutiny and U.P.S.C. made the selection. He further submits, that under the recruitment Rules, $66\frac{2}{3}$ % of recruitment through deputation on transfer and rest by promotion. After the publication of O.M. dated 10.9.90 post at Dewas was filled up by promotion of Dy. General Manager to the post of General Manager and Shri Gulati have been promoted for the said post.

(B)

Accordingly, U.P.S.C. selected the applicant for the post of General Manager, Currency Note Press, Nasik. In the meanwhile, vacancy arose in India Security Press, Nasik and applicant was selected and appointed as General Manager, India Security Press, Nasik and Shri A.V. Dhekne was posted as General Manager, Currency Note Press respectively. The learned counsel for the respondents contended that pursuant to the O.M. issued by the respondents the applicant was appointed as General Manager, thereby, it is open to the respondents to post him in any one of the 5 units. The intention of the transfer of the applicant to Security Printing Press, Hyderabad for the remaining period of his deputation was solely for administrative reasons and there was no malafide intention. The applicant has proceeded on medical leave with effect from 2.12.94. He has assumed duty on 4.3.95. The applicant was directed to hand over the charge to Shri A.V. Dhekne and he has to take over the charge of the post of General Manager, Security Printing Press, Hyderabad. The applicant was appointed to the post of General Manager, India Security Press, Nasik on deputation basis with the approval of the appointing committee for a period not exceeding four years, for reversion to the parent cadre also. i.e. Ordnance Factory Board, prior approval of the appointment committee of the Cabinet is required. Therefore, the request of the applicant for reversion to the parent cadre had been processed and already submitted to the Establishment Officer on 28.2.95 i.e. for securing decision of the appointment Committee of the Cabinet. The applicant had requested for his reversion to parent cadre only in May/June 95.

6. We have heard lengthy arguments of both the parties and also perused the pleadings. The short question for consideration is whether a person came by transfer on deputation for a prescribed post could further be transferred to analogous post elsewhere other than the place in which he was posted without his consent. The answer is in the negative. The learned counsel for the applicant Shri G.K. Masand submitted that the transfer of the applicant to Hyderabad is for administrative reasons is not acceptable and it is for collateral reasons, because though the vacancy existed in Hyderabad since 11/94 and they did not post any one till now. Therefore, there is no imminent need to transfer the applicant to Hyderabad in view of their O.M. dated 10.9.90 at para 2. Therefore, such transfer without his consent is not valid. In this connection, he relies upon the judgement of the Bombay High Court in the case of Prakesh R Borkar V/s. Union of India and others, wherein it is held that:

" The question whether a Government servant who is recruited to a particular cadre can be compelled to serve outside the cadre fell for determination before a single judge of the Delhi High Court in Prem Parveen V. Union of India (1973) 2 Serv. LR 659. It was held by the learned single judge of the Delhi High Court that normally it is to be expected that the Government employees who join a particular cadre would have the range of their transferability determined within that cadre.

This question was more elaborately considered by D.A. Desai J(as he then was) of the Gujarat High Court in Bhagwatiprasad V. State of Gujarat (1979) 3 Serv. LR 805. Before the Gujarat High Court the question was whether the Petitioner, who was a Police Inspector, could be without his consent, deputed to the Civil Defence Organisation. The broad question was: Can a person holding Civil post be sent on deputation outside the cadre or the parent department to which he belongs without his consent.....

It was also noticed that when a person is transferred from one cadre to another he is sent on deputation and always with his consent and even in such a case extra allowances as the deputation allowances are given to the concerned Government employee.....

Therefore, it is inconceivable that deputation can be ordered without the consent of the concerned employee etc. "

7. The learned counsel for the applicant submits that it is not open to the respondents to transfer the applicant at the fag end of the deputation period especially the request of the applicant for reversion to the parent department is pending for consideration. The learned counsel for the respondents Shri Pradhan states that the post of General Manager belongs to a common cadre and the selected candidates are liable to be posted any one of the 5 units. To certain extent the contention of the learned counsel for the respondents is justified because this is not a transfer from one cadre to another cadre as contained in the decision of the Bombay High Court referred to above. However, if we are to interpret the circular of the respondents vide

16

letter dated 10.9.90, para 2, the word 'post' means an appointment, job or office or employment. A position to which a person is appointed. Therefore, that unless there is a post in existence, he cannot be appointed.

8. The question for consideration in this case is whether the applicant having appointed to a particular post by transfer on deputation, can be sent on ^{further} transfer without his consent. In the instant case, the applicant has already submitted his application for repatriation to his parent cadre, admittedly, according to the respondents, is being considered and the papers are put up for taking appropriate action. That being so, we do not think, that the respondents are justified in transferring the applicant to another unit of the respondent without his consent at this belated stage although the pay scale of the General Manager is one and the same after 1986 however, the General Manager, India Security Press, Nasik grade is different to that of other units. Even assuming that we rely upon the O.M. issued by the respondent, it is not open to the respondents to transfer the deputationist to any one of the 5 units without his consent. Though the applicant had attributed malafide in law, we do not think that it is necessary to go into its merits, since the issue can be adjudicated without considering the point of malice. The request for reversion to his parent department is pending before the appointing committee of the Cabinet for consideration and it is an admitted fact, that deputation cannot be extended for more than the period specified in the appointment letter, because the order itself made it clear that the

183

period of deputation is not exceeding 4 years. Therefore, it is open to either parties to exercise their option before the expiry of the period of deputation to seek for repatriation to parent department or to allow the deputation to continue till the expiry of 4 years. Applicant has already sought for repatriation to the parent department which is being considered by the respondents, hence the request of the applicant is justified.

9. In view of the Apex court decision in the case of Union of India Vs. S.L. Abbas, it is well settled that unless the order of transfer is vitiated by malafide or is made violative of statutory provisions, normally the court/ Tribunal cannot interfere. In the instant case, though the ground of malice has not been established. However admittedly, the applicant was appointed to a particular post i.e. General Manager, India Security Press, Nasik and the offer made to the applicant was accepted, therefore, no further posting or appointment shall have to be made without his consent, especially when he came on transfer on deputation. Since the aforesaid transfer order is made without his consent and is violative of statutory provisions and against the terms of appointment order and the ratio laid down by the Apex Court, the said order of transfer cannot be sustained.

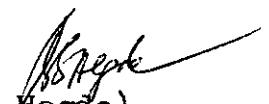
10. Accordingly, I allow the O.A. and quash the transfer order dated 6.3.95 and direct the respondents to consider the request of the applicant to repatriate him to the parent department which

18

admittedly have been processed by the respondents. The transfer order has already been stayed by this Tribunal vide its order dated 7.3.1995. The O.A. has not been admitted so far and heard the counsel on merits. In the fitness of things, this O.A. can be disposed of at the admission stage itself.

11. For the reasons stated above, the O.A. is allowed and the transfer order dated 6-3-1995 is hereby quashed and set aside. The Respondents are directed to process ~~the~~ application of the Applicant for repatriation to his parent department as expeditiously as possible. However, the Applicant shall not be disturbed from the post of General Manager, India Security Press, Nasik till he is repatriated to his parent department.

There will be no order as to costs.


(B.S. Hegde)
Member (J)

NS.