

30/1
CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 562/1995

Date of Decision: 09-04-97

Shri D.G. Tillu

Petitioner/s

Smt. N.V. Masurkar

Advocate for the
Petitioner/s

V/s.

Union of India and others

Respondent/s

Shri Suresh Kumar for

Shri M.I. Sethna

Advocate for the
Respondent/s

CORAM:

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

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?

M.R. Kolhatkar
(M.R. Kolhatkar)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD., 4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 562/95.

DATED THIS 9th DAY OF APRIL, 1997.

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

D.G.Tillu,
District Saving Officer,
National Savings Thane,
2, Sai Sanket, Ganeshwadi,
behind Nitin Co. Panch Pakhedi,
Thane.

... Applicant.

By Advocate Smt.N.V.Masurkar

V/s.

1. Union of India, through
Secretary, Ministry of Finance,
Jeewandep Building,
Parliament Street,
New Delhi - 110 001.

2. National Saving Commissioner,
National Savings, (Govt. of India),
12, Seminary Hills, Nagpur - 440 006.

3. Regional Director,
National Savings (Govt. of India),
Bombay Region,
Bombay - 400 023.

... Respondents.

By Advocate Shri Suresh Kumar for
Shri M.I.Sethna.

I O R D E R I

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

The applicant is a District Saving Officer in National savings Organisation at Thane. He has challenged the order of transfer dated 6/6/95 at Annexure-1 by which he has been transferred from Thane in Bombay Region to Nagpur in Central Office. According to the applicant, the impugned transfer order is arbitrary, malafide, discriminatory and in violation of guidelines of transfer dated 15/2/84 whereby tenure of 6 years is prescribed. According to the applicant, he has also been subjected to frequent transfers and in this connection he has referred to 6 transfers undergone by him from February, 1983 onwards vide page-7 as below:-

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1. From 18.1.1983 to May 1984 applicant served as District Saving Officers at Nagpur.
2. From May 1984 to December 1987 applicant worked at Nasik.
3. From December 1987 to 19.5.1993 applicant worked at Thane on mutual transfer.
4. From 19.5.1993 to Feb, 1995 end applicant worked at Ratnagiri.
5. From 22.2.1995 applicant was transferred to Thane on reallocation of region to Bombay region.
6. The impugned transfer order dated 6.6.1995.

2. According to the applicant, there is no valid administrative ground for transfer of the applicant. There are several people who are staying at one place but they have not been affected and there is also an employee at Bombay who wants to be transferred to Nagpur and it was expedient to transfer that employee to Nagpur in place of the applicant but the respondents are bent on harassing him. He has also referred to some other cases where employees have been favoured. He has therefore sought the relief of quashing order of transfer.

3. Respondents have opposed the OA. According to the respondents, it is not a fact that the applicant has been subjected to frequent transfers. He was selected as District Savings Officer, in Nagpur Region in January, 1983., and after completion of training he was given regular posting at Nasik in May, 1984. After three years he made a request for transfer to Thane at his own cost and in December, 1987 he was posted to Thane where he completed his full tenure of 6 years. After completion of his tenure at Thane he was transferred to Ratnagiri in April, 1993. In February, 1995 a decision was taken by Government to detach Ratnagiri from Bombay Region and to attach it to Pune Region. Hence it was necessary to shift the applicant from Ratnagiri and temporarily post him to the nearest Headquarters of the Dy. Regional Director, and he was posted to Thane as a stop-gap arrangement only. According to respondents, the applicant holds a post with All India Transfer Liability and he could as well have

have been transferred to Bihar, Kerala, North East, etc but an effort has been made to post him as near to his place as possible, that is Nagpur. So far as the suggestion that ~~Shri Godbole~~ should be transferred to Nagpur ~~Shri Godbole~~ working as UDC in Mumbai whose request transfer to Nagpur is ~~pending~~ it is stated that he was promoted from office to field ~~for~~ the first time ^{and} he is required to get the basic knowledge of publicity, etc and he could not be immediately posted to Nagpur. So far as the other ~~cases~~ discriminatory cases of transfer referred to by applicant are concerned, there was one case of Shri Pandit who was transferred from Mumbai to Hoshangabad (Bhopal Region) and Bangalore, but his transfer was not cancelled but deferred on humanitarian grounds as his newly born son had got some acute medical problems.

4. Respondents have also referred to a judgement delivered by the Bangalore Bench of the Tribunal in case of S.M. Kanamadi, District Savings Officer, Karnataka which reads as follows ^{and} which according to them fully covers the case.

"The applicant has been transferred from Bijapur to Silliguri in West Bengal. He belongs to National Savings Organisation, an All India Cadre, with liability for transfer all over India. We are informed that the Applicant was transferred because there was no place anywhere in Karnataka particularly in Bangalore to which place of posting the Applicant harps on. In these matters of transfers, there is little a court can do. This is not a case in which malafide are alleged. The transfer has been done in the usual course. That being the position, it is not open to us to interfere with such an order of transfer. In that view of the matter, we find no substance in this application. The application fails and is dismissed accordingly."

5. On a perusal of the facts as brought out above, it would appear that the contention of the applicant that he has been subjected to frequent transfers is not borne out. It would appear that applicant is seeking retention at Thane because his wife is employed at Thane and his old father

required medical attention. But that cannot be a consideration for not implementing the transfer order in respect of an employee who is subject to All India Transfer Liability.

Guidelines relating to couple concession are not statutory and the department is not required to consider the same and the reliance there-on is of no avail.

6. The Counsel for the applicant submits a series of allegedly case law supporting his case. The same are referred to below:-

i. B.Varadha Rao, v/s. State of Karnataka
AIR 1986 SC 1955.

In para-5 thereof regarding

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers cannot but be held as mala fide. A transfer is malafide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose (that) is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair." In my view this judgement does not help as no malafide have been made out.

ii. Anju Rani Das v/s. Union of India. It was decided by CAT, Calcutta Bench on 30/1/92:-

Relief was granted on the basis that the respondents conceded that the transfer was ordered contrary to guidelines given in Central Public Works Department under pressure of staff association of CPWD. That case therefore does not help the applicant.

iii. Rajendre Roy v/s. Union of India reported at AIR 1993 SC 1236. It was held that in an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. (Para-7)

The only relief granted was permission to make a fresh representation. ~~As I am~~ not satisfied that any mala fide have been established in the instant case.

iv. S.A.Engineer v/s. Government of Maharashtra - in OA-182/94 decided on 5/8/94 by this Bench.

~~It~~ Tribunal dealt with the circumstances in which transfer can be legally challenged at length. However, the final outcome of the case turned on failure of the Government to comply with the guidelines relating to repatriation from deputation and established malice.

In my view the facts in the present case are different.

7. On the other hand, the respondents have relied on the following judgements:-

i. Shrichand v/s. Union of India decided on 16/8/89 reported at (1992)20 ATC 474 (Ahmedabad Bench of CAT) Held that

Scope for judicial review of transfer is very limited. It is only when there is mala fide, arbitrariness, and exercise of colourable authority vitiating the order that the tribunals/courts may interfere with the order of transfer.

ii. Union of India & Ors v/s. S.L.Abbas - AIR 1993 SC 2444 it was held the guidelines relating to couple concession do not confer upon employee legally enforceable right.

iii. State of Madhya Pradesh v/s. Sri S.S.Kourav - 1995(1) SC 350 -

It was observed that the courts or tribunals are not appellate forums to decide on transfer 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 decision shall stand unless ~~it is~~ vitiating either by malafide or by extraneous consideration without factual background foundation.

8. Keeping in view the various judgements, I am of the view that the scope for judicial interference in the orders of transfer is strictly limited to the cases of established mala fide, arbitrariness and violation of statutory guidelines. I am also not satisfied that the applicant is subjected to repeated transfers. The applicant having availed of 6 years' stay at Thane cannot claim further tenure of Thane for a period of 6 years. His transfer from Ratnagiri to Thane appears to have been made as a stop gap arrangement only. The applicant could have been transferred to a far off place, but the respondents have transferred him to a comparatively nearer place viz. Nagpur.

9. Assuming that there are certain cases in which the respondents have retained individual employees for a longer period, that does not give any right to the applicant to claim a similar treatment of being retained at Thane. I am therefore of the view that the OA has no merit and the same is therefore liable to be dismissed and is accordingly dismissed. There will be no orders as to costs.

abp.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)