

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. : 626 OF 1995.

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Date of Decision : 27.7.95

Shri S. K. Chavan,

Petitioner

Shri A. I. Bhatkar,

Advocate for the  
Petitioners

Versus

Union Of India & Others,

Respondents

Shri R. K. Shetty,

Advocate for the  
respondents

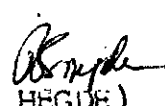
C O R A M :

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

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(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).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNALBOMBAY BENCHORIGINAL APPLICATION NO.: 626 OF 1995.

Shri S. K. Chavan ... Applicant

Versus

Union Of India &amp; Others ... Respondents.

CORAM :

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

APPEARANCE :

1. Shri A. I. Bhatkar,  
Counsel for the applicant.
2. Shri R. K. Shetty,  
Counsel for the respondents.

JUDGEMENT :

DATED :

27.7.95

{ PER.: Shri B. S. Hegde, Member (J) }

1. The applicant in this O.A. challenged the transfer order passed by the respondents dated 08.05.1995 (exhibit-1) transferring the applicant from Bombay to Aurangabad and Shri S. S. Gaikwad from Aurangabad to Bombay. In the transfer order it is stated that the transfer of the above incumbents have been made in public interest with immediate effect and they are entitled to transfer TA/DA, joining time, etc. as per rules. Accordingly, the applicant was relieved on 08.05.1995 (AN) and after expiry of leave, will report for duty at Aurangabad. The said transfer order is issued by Respondent No. 3.

2. The applicant has been working in the office of the Respondent No. 2 for the last 24 years w.e.f. 1970 and he states that he has been victimised by the Respondent

No. 3 by transferring him from Bombay to Aurangabad. Accordingly, the applicant submits that the said transfer is a malafide action and arbitrary in nature by the Respondent No. 3 because the applicant had made a complaint against one casual worker, Shri Wankhede, who is Respondent No. 3's man, who used to attend office late and the junior most peon has been appointed as 'Care Taker' in the place of the applicant while the applicant was on leave, which is nothing but an highhanded action on the part of the respondents. The contention of the Learned Counsel for the applicant is that, there was no exigencies of service nor any public interest was involved in transferring the applicant, therefore, the transfer is nothing but an arbitrary and malice action on the part of respondent no. 3, who did not like him to make any representation, etc. The Learned Counsel for the applicant further contends that when personal allegations are made against Respondent No. 3, he ought to have filed a separate affidavit in reply to the O.A., which they did not do so and therefore, it is deemed that they have accepted the allegations made in the application. However, on perusal of the title of the O.A., I find that Respondent No. 2 and 3 are one and the same and the written affidavit has been filed by Respondent No. 3 denying the various allegations made by the applicant. Therefore, the contention of the learned counsel for the applicant that respondent no. 3 should have filed a separate affidavit does not have any basis and the said contention is rejected. On perusal of the documents I find, except the allegations made in the O.A., there is nothing to substantiate the allegations through documentary proof that the respondent is biased against the applicant. The applicant has not produced the appointment

letter stating that he cannot be transferred from Bombay to Aurangabad or anywhere in Maharashtra in the office of the respondents.

3. Heard the arguments of both the counsel and perused the records. The respondents in their reply submitted that under the rules, the services of the applicant are transferable anywhere within the State of Maharashtra. Since the applicant was appointed as Class-IV employee in the year 1970 and in the administrative exigencies of service and on account of his constant absence from office, the respondents were perforced to take the aforesaid action by merely transferring him to Aurangabad office. The applicant was on unauthorised leave with effect from 19.04.1995 to 01.05.1995 and thereafter he has sent a leave application from an unauthorised Doctor and remained absent from 02.05.1995 to 16.05.1995 without furnishing the fitness certificate from the Doctor who gave him the medical certificate. On receipt of the leave application, the respondents sent a letter to the concerned doctor vide dated 31.05.1995 asking him to state whether he had furnished any fitness certificate but there was no response from the Doctor concerned, who alleged to have given the medical certificate to the applicant. The respondents though sent a registered letter to the residential address of the applicant, he absented himself not to take the letter or denied the receipt of the same. In the circumstances, as per law, in case the applicant repeats not to take delivery of the registered letter, the presumption would be that the letter is deemed to have been delivered to the applicant. The contention of the applicant that he was sick and he could not attend the office does

not hold good and it is made clear that the medical certificate furnished by the applicant is a fictitious one and not by the authorised medical attendant. Neither he submitted the fitness certificate nor the certificate required by the department as per the procedure in vogue. Admittedly, the applicant is a C.G.H.S. beneficiary and he did not avail of the same and availed the certificate of a fake doctor who is not in existence. It is for the respondents to verify and find out the genuineness of such certificate if they choose to do so. In the instant case, they did not accept the said certificate nor any fitness certificate from the competent doctor was furnished, thereby, the respondents action in transferring the applicant, relieving him from duty on 08.05.1995 is not to be faulted with. He has been specifically directed that after recovery he shall report for duty at Aurangabad and it is for him to decide whether to report for duty in accordance with the direction or to face the disciplinary proceedings. The applicant has obtained the interim order on 23.06.1995 stating that he was not relieved and the Tribunal has directed status-quo to be maintained in the meanwhile. Such a statement of the applicant that he has not been relieved is found to be incorrect because the order clearly states that he has been relieved from Bombay office on 08.05.1995, therefore, the question of status-quo does not arise. The allegations of malice and bias are only oral allegations and are not based on records unless the proof of malice and bias is proved through documentary proof, such contention cannot be sustained. The Learned Counsel for the applicant, Shri Bhatkar, draws my attention to two decisions of the Tribunal {1989(3)SLJ CAT 321} and {1995(29)ATC 45} on the ground of malice. Since the allegation of malice has not been established, I find that those decisions are not relevant to the facts of this case and the same are distinguishable and cannot be applied to the facts of this case.

4. The Learned Counsel for the Respondents, Shri R. K. Shetty, draws my attention to the recent decision of the Supreme Court in State of Madhya Pradesh & Anr. V/s. Sr. S. S. Kourav & Others {1995 (2) SLJ (SC) 109 }

wherein it is held that -


"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 of 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."

5. In the light of the above, in the present case I have seen that the transfer order is issued on administrative grounds and in public interest, therefore, I cannot go into the expediency of posting an official at a particular place if the rules provides for it. The Apex Court in Union Of India V/s. S.L. Abbas [AIR 1993 SC 2444] held that -

"While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it..... The Administrative Tribunal is not an Appellate Authority sitting in judgement over the orders of transfer....."

6. The ratio laid down by the Apex Court is very clear that the High Court and the Tribunal should give due regard to the orders of the Supreme Court which are binding on all Courts as well as Union of India. Therefore, the citation made by the Learned Counsel for the applicant, in view of the Apex Court's order, is no longer a good law. As stated earlier, the point of malice or bias on the part of the Respondent No. 3 except stating in the application, there is nothing borne on documentary proof.

7. In the result, the transfer order passed by the Respondents cannot be faulted with and I see no merit in the application and the same is dismissed but with no order as to costs.

  
(B. S. HEGDE)  
MEMBER (J).