

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 997/95
Transfer Application No.

Date of Decision : 4-4-96

S.G.Poul.

Petitioner

Shri S.P.Kulkarni.

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri S.S.Karkera.

Advocate for the
respondents

C O R A M :

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

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?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 997/ 1995

pronounced, this the 4th day of April 1996.

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

S.G.Poul. ... Applicant.
(By Advocate Shri S.P.Kulkarni)

V/s.

Union of India & Ors. ... Respondents.
(By Shri S.S.Karkera, Counsel)

O R D E R

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

In this O.A. the applicant has challenged the order dt. 24.7.1995 by which a reply was given to his representation against the transfer order rejecting the same and also the transfer order dt. 29.5.1995 transferring him from the post of Savings Bank Postal Assistant (SBPA) ^{Barsi} to the post of Postal Assistant, Vairag. He has prayed that the transfer order dt. 29.5.1995 resulting in curtailment of tenure of five years as S.B.P.A. Barsi, be held as arbitrary and so also the letter of the respondents rejecting his representation against the transfer be held as arbitrary. He has further prayed that the reply dt. 13.6.1995 from the Senior Superintendent on the subject of transfer orders be held as arbitrary.

2. The facts of the case are as below.

The applicant was transferred to Barsi Main Post Office on 6.11.1990 on the post of Savings Bank Postal Assistant carrying a special pay. The tenure of the post is five years. As per the guidelines on the subject of transfer vide (Annexure A-7) page 32 para 7 the station and post tenures should be followed strictly subject to compliance with above

rotational transfer policy. It is contended by the applicant that the guideline relating to the post tenure was violated in transferring him out of Barsi to Vairag before he completed five years ~~which~~ he would have normally completed on 6.11.1995. The transfer ~~was~~, however, ~~took~~ as noted by us on 29.5.1994 i.e. about six months in advance. The applicant contends that he had received permission ^{place} by letter dt. 13.5. 1991 to pursue his studies for LL.B. and there are no facilities for pursuing his studies at Vairag. The applicant admittedly belongs to S.C. community and it is contended by the applicant that the transfer was vindictive with a view to harrass ~~an~~ SC employee. It is contended that the applicant was a loyal government employee who had worked during the strike period and this fact was not kept in view while transferring him. There are also orders of the D.G.P & T on the subject of setting up of SC/ST cells in the attached/subordinate offices for the enforcement of reservation orders and nomination of Liaison Officer. The Circular dt. 30.6.1994 conveys the decision that there should be one Liaison Officer in respective P.M.G. Office and Director, Postal Services would be nominated for Liaison Officer as SC/ST. According to the applicant there is nothing on record to show that the Liaison Officer was consulted while effecting the transfer. The applicant has therefore sought cancellation of transfer and other reliefs as mentioned above.

3. The O.A. has been opposed by the Respondents. According to the Respondents Transfer Guideline No.9 provides as below :

"Deviation from above guidelines are permissible where transfer to the officials in urgent public interest because necessary and such

m

transfer should be effected with prior approval of the Regional Postmaster General or Head of the Circle as the case may be."

Thus departure from the guidelines is permissible in public interest after obtaining prior approval of the P.M.G. and this is what has happened in the present case. According to the Respondents although the applicant had completed ^{only} four years seven months in the post of S.B.P.A. he had remained at the same station for a longer time (1.1.1985) and so far as the post of S.B.P.A. is concerned there were innumerable complaints against the applicant both from the small savings department members of the public and members of the staff as a result of which the work of Small Savings was adversely affected mainly attributable to the applicant's non-cooperation and rude manner of conduct. It was under such circumstances that the applicant was required to be transferred and the order of transfer so far as the applicant is concerned was approved in advance by the P.M.G. Pune vide his orders dt. 26.5.1995 as required by guidelines because it involved a departure from post tenure rule. According to the respondents since the transfer of the applicant was ordered by the respondents in the interest of service or administrative grounds the Tribunal cannot interfere with the same. According to the respondents the reply given to the applicant only reflected the factual position or position as in rules. Thus the reply dt. 13.6.1995 at page 44 was in response to his representation regarding the transfer and in this reply sent by S.S.P. all this position was explained to the applicant. So far as

the reply dt. 24.7.1995 is concerned it only conveys that the representation of the official against his transfer has been rejected by the P.M.G.

4. The applicant has in his rejoinder pointed out that a colleague of the applicant had applied for a request transfer to Vairag i.e. the same place to which the applicant has been transferred on 1.6.1995. Inspite of this the applicant has been transferred out of Barsi to Vairag. Even if the applicant could not be retained in the special pay post for any reason have been he could/at least retained at Barsi so that his LL.B. studies ~~are~~ not affected.

5. The counsel for the applicant has relied on Charanjit Lal V/s. Union of India & Ors. which is a Division Bench case decided by Principal Bench, Delhi on 26.11.1986 reported at (ATR 1987(1) CAT 393). This decision lays down that the order of transfer cannot be arbitrary or discriminatory, for that is a constitutional requirement which every order must satisfy. He next relies on H.S.Ajamani V/s. State of M.P. and Ors. which was a case decided by a three Judge Bench of Madhya Pradesh Administrative Tribunal and reported at (1989) 9 ATC 122). This ⁱⁿ lays down that the absence of statutory rules, administrative instructions would have binding force and transfer in violation of government instructions is liable to be interfered with. Next he relies on G.Prabhakaran V/s. D.R.M. Southern Railway, Madras & Ors. which was a case decided by a Division Bench of C.A.T. Madras on 4.4.1994 reported at (1995) 29 ATC 45) in which it is held that transfer of a SC/ST

M

employee in the face of the guidelines issued by department providing that transfer should be ordered rarely and for strong reasons and when transfer was ordered solely for the purpose of thwarting strike, the same was held to be illegal.

6. I have considered the matter. In my view, Prabhakaran's case has no applicability because no guidelines relating to transfers of SC/ST employees rarely being ordered/and for very strong reasons have been shown to us. Moreover, the Tribunal had found, as a matter of fact, that the transfer was with a view to thwart a strike which is a legal mode of redressal of grievance. Prabhakaran's case does not apply to the facts of the case. The ratio of Charanjit Lal & H.S.Ajamani has been over-taken by the latest Supreme Court Judgment Union of India & Ors V/s. S.L.Abbas vide (1994 SCC (L&S) 230) which laysdown that if an order of transfer is questioned in a court or the tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the court or the tribunal can quash the order of transfer, if any of the administrative instructions or guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a court or tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions, and in particular the transfer cannot be challenged on the ground of violation of administrative instructions or guidelines.

7. The reliance placed on by the applicant on the Circular dt. 6.6.1984 to which we have made

reference earlier and the earlier circular dt. 30.11.92 (Annexure A-23) of the application which relates to Postal Services Board is not of any avail to the applicant because these are internal instructions as to the mode of dealing with cases and they do not confer on the applicant any enforceable right. On the other hand, it has been shown to us that the transfer of the applicant was effected as per the guideline No.9 of the transfer guidelines dt. 29.3.1995 at page 32 with the prior approval of the P.M.G.

8. However, there is one aspect of the matter which needs to be noted. The applicant's transfer was admittedly with the prior approval of the P.M.G., the applicant thereafter made a representation to the and Chief P.M.G./simultaneously to Director General Posts, New Delhi and C.P.M.G. by his letter dt. 3.6.1995 page 34. He made a representation to C.P.M.G. on 19.6.1995 page 45. The respondents have contended that the matter stands concluded with the rejection of his representation by the P.M.G. vide letter dt. 24.7.1995, enclosed with M.P. No.668/95. However, this contention does not take account of the fact that the applicant had sent representations to C.P.M.G. as well as, the Director General. When the transfer was with the prior approval of the P.M.G. the appeal against the transfer cannot legitimately be decided by the same authority, therefore, the P.M.G.'s order dt. 24.7.1995 rejecting the appeal is not valid. The representation against the appeal ought to have been disposed of with the approval of the C.P.M.G. and the applicant is also entitled to make a representation against the decision of the C.P.M.G. to the

D.G.P & T. While disposing of the appeal these authorities also should keep in view the fact that there was a request application for transfer to Vairag by an employee, though after the date of transfer order.

9. I am, therefore, of the view that the applicant is entitled to the limited relief of quashing [redacted] the letter dt. 24.7.1995 from P.M.G. The O.A. is therefore disposed in terms of the following orders :

O R D E R

The O.A. is rejected except to the limited relief below. The letter dt. 24.7.1995 from the P.M.G. rejecting the representation of the applicant against his transfer is quashed and set aside. The C.P.M.G. should dispose of the representation of the applicant dt. 3.6.1995 and 19.6.1995 and also keeping in view the fact that an employee has asked for request transfer to Vairag and consider whether the applicant can be retained at Barsi in some other post other than S.B.P.A. This should be done within two months. There would be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.