

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 181 / 97.

Pronounced this the 8<sup>th</sup> day of JANUARY 1998.

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

V.K.Dikshit,  
Wildlife Inspector,  
Wildlife Regional Office,  
Ministry of Environment & Forests,  
11, Air Cargo Complex,  
Sahar,  
Mumbai - 400 099.

... Applicant.

(By Advocate Shri R.C.Kotiankar)

V/s.

1. Union of India through  
Secretary to Govt. of India,  
Ministry of Environment & Forests,  
Paryavaran Bhavan, CGO Complex,  
Lodhi Road,  
New Delhi - 110 003.
2. Director (WLP),  
Ministry of Environment & Forest,  
Paryavaran Bhavan, CGO Complex,  
Lodhi Road,  
New Delhi - 110 003.
3. Regional Deputy Director (WLP)  
Wildlife Regional Office,  
Ministry of Environment & Forest,  
11, Air Cargo Complex, Sahar,  
Mumbai - 400 099.

... Respondents.

(By Advocate Shri V.D.Vadhavkar)

ORDER

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

In this O.A. the applicant is aggrieved by the order dt. 28.1.1997 (at Ex. P-I page 13) transferring him to Sub-Regional Wildlife Office at Guwahati in an identical post with an identical pay scale. The above order is in two parts. The first part of the order speaks of the promotion of one Shri S.V.Sheshadri, Technical Assistant, in the scale of Rs.1400-2300 on ad-hoc basis to the post of Wildlife Inspector in the scale of Rs.1640-2900. In the second part of the order Shri V.K.Dikshit is transferred and in the resultant vacancy Shri S.V.Sheshadri is posted. The

basic contention of the applicant is that the order of transfer is punitive in nature and is mala fide. It is punitive in nature because the order has been issued to take a revenge on the applicant for his action of making representations to the authorities in connection with his promotion to the higher post of Assistant Director in the pay scale of Rs.2,200-4,000. The order would also compell the applicant to work under one Shri M.K. Deb Roy, Assistant Director who was junior to the applicant in Zoological Survey of India, ~~where~~ both were employed earlier. Thus, the order of transfer is stated to be deliberate and designed to force the applicant to work under his junior, thereby causing humiliation to the applicant. The order is stated to be mala fide because Shri S.V. Sheshadri a junior official who has been promoted only on ad hoc basis and who ought to have been posted out has been favoured by being posted in Mumbai, although he had stayed for 7 years in Mumbai and although the practice is for ad-hoc promotees to be posted out. It is further contended that the order of transfer has been issued by Under Secretary of the Department who has no authority to transfer the applicant and such an authority is vested only with Secretary of the Department. It is also contended that there is no recital in the order that the transfer order is in public interest and in the absence of such a recital the order must be construed to be not in public interest and is liable to be quashed and set aside. <sup>it is alleged that</sup> On the other hand, the public interest would be better served by retention of the applicant at Mumbai because the applicant has been handling an investigation into an important case of smuggling of tiger skin by a

courier service and the case having been handed over to State Wildlife Authorities, the services of the applicant would be required by the State Wildlife Authorities at the stage of filing of chargesheet, as well as, during the prosecution. Lastly, it is stated that the transfer of applicant would cause harm to him since applicant's mother is a Cancer Patient and the medical facilities comparable to Mumbai are not available in Guwahati and secondly, the applicant's daughter is studying in XIth standard and transfer of the applicant would affect her chances of admission to Professional Colleges after the XIIth standard.

2. The respondents in their reply have stated that the applicant has remained in Mumbai since 16.6.1988 and has thus completed more than 8 years service in Mumbai and has become due for transfer to some other station in the normal course of administrative exercise. So far as the posting of Shri S.V. Sheshadri is concerned it is stated that since his promotion was on ad hoc basis and liable to be terminated, it was not considered desirable to disturb his <sup>station of</sup> posting. The post held by the applicant carries all India transfer liability and this is well known to the applicant because the applicant was earlier posted at Madras (now Chennai) in 1986 and from there he was transferred and posted to Mumbai to which he did not object. It is stated that the applicant after completion of 5 years regular service on 14.5.1991 has become eligible for consideration for promotion to the next post of Assistant Director, but that post is a selection post and the applicant is third in the seniority list of the feeder cadre. His promotion, therefore, cannot be

automatic and the question of taking revenge for filing representation does not arise. So far as the association of the applicant with the Tiger Skin smuggling case is concerned, it is stated that during Prosecution the applicant's services would be required as a witness, but there would be no difficulty for him to come from Guwahati to Mumbai and when called and that it is for the Government to decide how best public interest is served. The ad hoc promotion of two Technical Assistants including Shri S.V. Sheshadri was done on the advice of Department of Personnel and Training and there can be no question of any "ouster" of the applicant. ~~Seniority~~ The inter se seniority of the applicant vis-a-vis Shri Deb Roy in the Zoological Survey has no relevance in the present department and the question of any humiliation to the applicant does not arise. Moreover, it is stated that Shri Deb Roy is being repatriated <sup>to parent cadre</sup> after completion of tenure. So far as the decision of the transfer is concerned, it is stated that the same was taken by competent higher authority. Under Government of India <sup>(Authentication of Rules and</sup> Orders and Instruments) <sup>Under Secretary is competent to</sup> sign orders regarding appointment, transfer and other administrative matters. So far as the recital of the transfer being in public interest is concerned, it is stated that the transfer has been ordered in the exigency of work and in public interest and it is not customary to mention in every normal order of the transfer that the same has been done in public interest.

...5.

3. The applicant has relied on the following case-law. In T.Yadagiri V/s. The Director General, All India Radio, New Delhi and Ors. (1992(4) SLR 160) ~~the transfer was quashed because the~~ Tribunal found that it was made to accommodate some one else. The Tribunal found that the Transfer was not in public interest.

4. In Smt.Saroj Kumari Singh V/s. Union of India & Ors. ((1989) ATC 55) the Tribunal on facts held that if transfer was ordered by an Officer not competent to do so, subsequent approval of the competent officer does not make it valid. The order of transfer was quashed.

5. In Ramadhar Pandey V/s. State of U.P. & Ors. (1993(4) SLR 349) the Hon'ble Supreme Court observed in para 16 as below :

"The order dt. July 8, 1992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter-affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved. It cannot be gainsaid that transfer is a necessary concomitance of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, "the public interest" being absent, the impugned order of transfer cannot be supported."

6. In Kamlesh Trivedi V/s. Indian Council of Agricultural Research & Anr. (Full Bench Judgments of CAT (1986-1989) Volume-I of ~~the~~ Bahri Brothers) the principles relating to transfer matters have been summarised in para 18 which reads as below :

"In view of the above discussion, we hold that any order of transfer must (1) be in public interest and in the exigency of service on administrative grounds. (2) It must not be in colourable or mala fide exercise of power. (3) It should not be arbitrary. (4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy. (5) The transfer

itself must be ordered by a competent authority in bonafide exercise of the power. (6) It should not be a "fixed" transfer of for settling scores. (7) However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. (8) The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary proceedings. (9) It does not amount to a double jeopardy."

7. According to the counsel for the applicant in view of these Judgments which fully support him it has to be held that the order of transfer is punitive, is not in public interest, is not ordered by competent authority and is mala fide and therefore deserves to be quashed and set aside.

8. On the other hand, the counsel for the respondents has contended that the Judgment cited by the applicant do not apply to the facts of the case. He has relied on the following Judgments of the Supreme Court (1) State of U.P. & Another V/s. V.N.Prasad (DR) (1995) 29 ATC 677 where it was observed by the Hon'ble Supreme Court as below :

"We are of the opinion that at the stage at which the matter was brought to engage the attention of the High Court, there was no prima facie material to establish any mala fides which required strong and convincing evidence. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. The interlocutory order of the High Court is, in our opinion, unjustified. The order is set aside. We request the High Court, however, to dispose of the main matter itself as expeditiously as possible."

(2) Union of India & Ors. V/s. Ganesh Dass Singh (1995) (30) ATC 629 where the head note reads as below :

"Transfer - Transfer made by competent authority for administrative reasons - Held, not subject to judicial review - Where the allegation that transfer to another Depot was mala fide, was made without specifying the officers to whom

that allegation was attributed and the further allegation that the transfer had been made on account of the transferee's complaint about the working of the Depot was rejected by the Tribunal, such order of transfer, should not have been quashed as being the result of trade union activities of the transferee - Even otherwise, on facts, the Tribunal's view that the transfer was made in colourable exercise of powers, held, not justified - Mala fides - Administrative Law- Judicial Review."

9. I have considered the rival contentions.

First of all, I consider the contention that the order is void for having been issued by an authority not competent <sup>to do so.</sup>

With reference to the ratio in Smt. Saroj Kumari Singh's case ~~wherein~~ the Tribunal was concerned with inter-cadre or inter-departmental transfer. The authority for such transfer vests only in the Chief Personnel Officer of a Zonal Railway, it does not vest in the Senior Divisional Personnel Officer.

On this footing the transfer order was quashed. In the present case the transfer is not inter-departmental or inter-cadre. The applicant is being transferred in an identical position in an identical pay scale.

It may be ~~so~~ that the order has been issued by an Under Secretary, but that does not mean that the transfer is ordered by the Under Secretary. The presumption is in favour of the transfer order having been ordered by the Competent higher authority, unless the presumption is rebutted. In Smt. Saroj Kumari Singh's case the transfer order on the face of it showed that it was issued by an in-competent Officer, the transfer being inter-departmental. Such is not the case in the present O.A. I<sup>am</sup> therefore not inclined to accept the contention that the transfer is bad having been issued under the signature of Under Secretary, especially considering the provisions of Government of India (Authentication of Orders and Instruments) Rules.

10. I next consider the contention of transfer not being in public interest since there is no such recital. I am of the view that the reliance placed by the applicant on the case of Ramadhar Pandey does not help him. In that case the Hon'ble Supreme Court has held on facts after going through the records and after noting the absence of counter-affidavit and considering other circumstances that the transfer was not in public interest. The facts, therefore, were entirely different. In State of U.P. v/s. V.N.Prasad(DR) cited by the Respondents, the Hon'ble Supreme Court has pointed out a correct legal position viz. that the presumption is in favour of the bona fides of the order unless contradicted by acceptable material. In my view, the mere absence of a recital of 'public interest' does not show that the order was not in public interest. The applicant had completed more than 8 years of service and the post at Guwahati was vacant and the department has shown that the efforts to fill the post at Guwahati were being made and since they did not succeed, the applicant was transferred to see that the work at Guwahati did not suffer especially when the Assistant Director himself was being repatriated. I am of the view, therefore, that the transfer of the applicant cannot be impugned on the ground of not being in public interest.

11. The reliance placed by the applicant on T.Yadagiri is also not helpful because in that case the Tribunal had seen the original file and it found that the applicant was being transferred to accommodate an office bearer of the Union and the

Tribunal therefore quashed the transfer order. Such is not the case in the present O.A. Lastly, the <sup>decision</sup> Full Bench/in Kamlesh Trivedi's case also does not help the applicant and the applicant has made out no case that his transfer is punitive or mala fide.

12. I am therefore, of the view, that the O.A. has no merit and the same is therefore dismissed with no orders as to costs.

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

B.