

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 205/97

Transfer Application No.

Date of Decision 18.9.97

G.R.Chippal-Katti

Petitioner/s

Shri S.P.Kulkarni

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri Wadhavkar for Shri M.I.Sethna

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ? *Yes*
(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *No*

P.P.SRIVASTAVA
(P.P.SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

BA. NO. 205/97

Thursday this the 18th day of Sept- 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Gopal Raghunath Chippal-Katti
Assistant Information Officer,
I.I.S.Group 'B' Senior Grade,
Ministry of Information & Broad-
Casting, Panaji.
R/at : L.G.-37, Housing Board Colony,
PARVARRIM (GOA).

By Advocate Shri S.P.Kulkarni ... Applicant
v/s.

Union of India through

1. Under Secretary,
Ministry of Information
& Broadcasting, Shastri
Bhawan, New Delhi.

2. Deputy Principal Information Officer, Press-Information Bureau, G.O.I., C.G.O. Building Annex, 101, M.K.Road, Mumbai.

3. Principal Information Officer,
Press Information Bureau,
Shastri Bhawan, New Delhi.

By Advocate Shri Wadhavkar along with
Mr. M. I. Sethna, C.G.S.C.

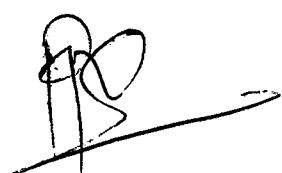
4. Shri S.V.Jog,
Assistant Information Officer,
P.I.B., Panaji (on leave),
H.NO. 29, Vaddem Socorro,
P.O. PARVARRIM, GOA.

By Advocate Shri S.M. Dharap ... Respondents

0 R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant was appointed at Bombay in 1995 as A.I.O.under Ministry of Information & Broadcasting.



The applicant had requested for being transferred to Panaji office as A.I.O. to look after his ailing parents in-laws who were living in Belgaum. On the ^{panaji} applicant's request, he was transferred as A.I.O. ~~on~~ 2.4.1996 and the transfer was on his own request and he was not paid any Transfer Allowance or transit. The applicant has further brought out that Respondent No. 4 was transferred to Bombay on promotion on 21.6.1996. Respondent No. 4 approached the applicant and requested that the applicant should agree for transfer to Belgaum so that Respondent No. 4 could be accommodated at Panaji. The applicant has mentioned that since his parents-in-law are at Belgaum and since he has specifically come to Panaji to look after his in-laws, he agreed for transfer to Panaji and he wrote a letter dated 26.9.1996 placed as Annexure to the written statement submitted by the official respondents No. 1 to 3. This letter reads as under :-

" Since the reasons put forward by Shri Suryakant V. Jog are genuine, I am ready to cooperate with him by way of getting myself transferred to the post of Correspondent, All India Radio at Belgaum (Karnataka State). I will have no objection if I am transferred to this particular post.

I am writing this letter at the request of Shri Suryakant V. Jog."

A copy of this letter was also given to Respondent No. 4 (Shri Jog) representation dated 27.9.1996 which is written statement Exhibit No. 1 with the ~~of~~ of Respondent No. 4.



Therein Respondent No. 4 requested the Respondent administration to retain him at Panaji instead of transferring him to Mumbai on promotion. He also enclosed the letter of the applicant dated 26.9.1997 along with his representation showing that the applicant is willing to get transferred to Belgaum in Karnataka State.

2. The respondent administration was willing to consider the case of the applicant as well as Respondent No. 4. However, since the post of Correspondent, All India Radio at Belgaum had been surrendered, the applicant was posted as Field Publicity Officer, Directorate of Field Publicity, Shimoga and Respondent No. 4 was retained at Panaji. The Government of India order transferring the applicant dated 2.1.1997 is placed as Annexure-'A-1' with the OA. The applicant is aggrieved by this order in as much as since he had agreed for his transfer to Belgaum, the Respondent administration has transferred him to Shimoga instead of transferring him to Belgaum, for the purpose of accommodating Respondent No. 4.

3. The learned counsel for the applicant has argued that the transfer of the applicant is not in the interest of administration and is malafide exercise of powers by the respondent administration only to favour Respondent No. 4 by accommodating him at Panaji. Although he was promoted for the first time, and as a measure of policy, the officer being promoted is posted out of the Station where he was working before promotion.



4. The learned counsel for the applicant has also argued that the transfer order is in mid-session and the applicant's child would suffer on the account of this transfer. The Ld. counsel for the applicant has argued that the very reason of his coming to Panaji was to look after his parents in-laws and since he had only agreed for transfer to Belgaum, the present transfer is the breach of trust which the applicant has reproached in the administration in good faith so that he could help the Respondent No. 4 as well as get himself posted at Belgaum where his parents in-laws reside.

5. Learned counsel for the respondent administration has argued that the Respondent administration has acted fairly and has transferred the applicant in Karnataka where he wanted to go as Belgaum is in Karnataka. The Ld. counsel for the respondents has also argued that the distance from Shimoga to Belgaum is same as from Panaji to Belgaum and purpose of the applicant for coming to Panaji to look after his ailing parents in-laws will not suffer by his posting to Shimoga. The counsel for the respondents has also argued that there is no colourable exercise of powers or malafides as the administration has fairly tried to accommodate both, the applicant as well as Respondent No. 4. Ld. Counsel for the Respondent administration has also emphasised that although the transfer of the applicant is being primarily agreeing to go out of Panaji to Karnataka, the transfer also take into a functional requirement of the administration. The learned counsel for the private respondent No. 4 has concurred the arguments advanced by the Ld. counsel for the official respondents.



He has further added that in terms of various judgements of the Hon'ble Supreme Court, the applicant has no case and the Tribunal should not interfere in the administrative transfers ordered by the administration unless they are against law or ordered with malafides. Lt. counsel for private respondents has further argued that the Hon'ble Supreme Court has held time and again that for proving malafides, it is necessary that the person against whom malafides are charged, should be made a party and should have a chance to rebut the allegations. In this case, the applicant has instigated the charges of malafides against none in particular by ~~name~~ and therefore also legally the charges of malafides and colourable exercise of powers are not tenable.

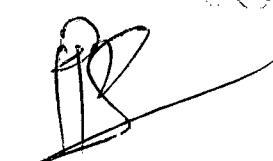
6. After hearing all the counsels, I am not convinced that the malafides intentions have been established by the applicant in his transfer from Panaji to Shimoga. Therefore, this ground is not available to the applicant to challenge the transfer. As far as the transfer in mid-session is concerned, the applicant has a very young child and education of that child cannot be a ground for interfering with the transfer. Also it is seen that sufficient time has passed and ~~scholastic session~~ is already over from the date the applicant has challenged the transfer. However, in my opinion these are not the main issues in deciding this case. It is seen from the pleadings as well as from the transfer orders that this transfer order is not in the interest of administration ^{or} in the exigency of service.



Applicant has not been transferred in the interest of exigency for manning the post at Shimoga but has been transferred there on the L that he wanted to go to Karnataka so that Respondent No. 4 could be accommodated at Panaji. The whole chain of event started with the applicant giving an undertaking for being transferred to Belgaum so that Respondent No. 4 could be accommodated. But for this letter, there was no occasion for the applicant to be transferred to Shimoga as Respondent No. 4 has already been transferred to Mumbai on promotion and was also relieved by the administration for joining at Mumbai. The letter at page 24 Annexure-'4' shows that Respondent No. 4 was promoted as AIO at Mumbai in June, 1996 but due to his personal problems, he requested for remaining in Panaji and therefore he was relieved in December, 1996 only and was asked to join PIB, Mumbai.

7. After considering the facts of this case, I am of the view that the applicant has sought transfer to Belgaum in good faith both in his personal interest as well as to accommodate Respondent No. 4. He was not aware of the fact that there is no post for him to be accommodated at Belgaum. When the administration could not post him at Belgaum, it was incumbent on their part to inform the applicant of the position and in all fairness sought his willingness for his posting at Shimoga if the administration wanted to accommodate Respondent No. 4 at Panaji. Therefore the unilateral L on the part

decision & assumption



of the respondents to post the applicant at Shimoga by treating his request for transfer to Belgaum as that of his request for being posted in Karnataka state is not justified. Had the respondent administration posted the applicant to Shimoga in the interest of administration and exigency of service, the applicant would have had no case for approaching the Tribunal. The applicant would have no case for being granted relief on his transfer as the Tribunal is not generally interfering in the matters where transfer orders are in the interest of administration and where malafides have been proved. However, this is not the case here. The applicant has been transferred not in the interest of administration but to accommodate Respondent No. 4 at Panaji.

8. I am, therefore, of the view that the transfer order dated 2.1.1997 is not in good faith. This order is also cannot be treated as transfer in exigency of service or in public interest and is, therefore, liable to be quashed. I, accordingly, quash the transfer order dated 2.1.1997. The OA. is disposed of with the above directions with no orders as to costs.



(P.P. SRIVASTAVA)

MEMBER (A)

mrj.