

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 249/97

Date of Decision: 27.7.97

N.S.Mate.

.. Applicant

Shri R.B.Jagtap

.. Advocate for
Applicant

-versus-

ESIC & Ors.

.. Respondent(s)

Shri Wadhavkar

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.249 / 1997.

28/1, this the Monday day of July 1997.

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

N.S.Mate,
3, Gopal Park,
Paud Phata, Erandawana,
Pune - 411 038. ... Applicant.
(By Advocate Sh. R.B.Jagtap)

V/s.

1. Employees State Insurance Corpn.,
Panchdeep Bhavan,
Bibwewadi,
Pune - 37.
2. Shri Jose Cherian,
Director, Address as above.
3. Shri Arun Kumar,
Dy. Director (Admn.),
Address as above. ... Respondents.

(By Advocate Shri Wadhavkar).

O R D E R

(Per Shri B.S.Hegde, Member(J))

Heard Shri R.B.Jagtap, counsel for the applicant and Shri Wadhavkar, counsel for the respondents.

2. In this O.A. the applicant has challenged the transfer order issued by the Respondents dt.28.6.96, along with applicant 10 other people have also been transferred from different places which reads as follows :

"The Director, SRO Pune has ordered the transfer/posting of the following officials with immediate effect.

.....

Since the transfer/posting of Shri N.S.Mate LDC has been ordered at public interest, he will be entitled for T.A./D.A. and joining time etc. as per the rules. Since the transfer posting of Shri A.J.Tambe LDC has been ordered at his own cost and request he will not be entitled for any T.A./D.A. and joining time etc.....

Shri Tambe LDC will be relieved on reporting for duty by Shri N.S.Mate LDC at LO Chalisgaon."

3. The respondents contention is that the transfer order is issued as far back as on 28.6.1996 and it is further stated that the applicant is relieved from his duties on 30.6.1996, but he has not yet joined at Chalisgaon and has filed this O.A. on 19.2.1997. The thrust of argument on behalf of the applicant is that he was elected as Vice-President of the Employees State Insurance Corporation on 6.6.1996 thereby his transfer orders would adversely affect the Union. Further, the applicant has an unblemished record of service till this date and that he has been served only with Memos based on false and frivolous information and that memo is replied elaborately by Petitioner and also by Union. The applicant also stated that in the transfer order two grounds have been taken up viz. (1) The applicant was convicted by the Judicial Magistrate and (2) The applicant's work in the Posting Section had come in for adverse criticism by his superiors. However, on a perusal of the transfer order, I do not find any such allegations except stating that the transfer order is in public interest and administrative exigencies. Further, it is contended by the applicant that though the transfer order has been issued on 28.6.1996, the same has not been implemented. The subsequent order of transfer specifically and clearly takes care of the person, who was to be relieved by the petitioner and there is a relieving person, who has been mentioned in the subsequent order and he has already taken charge. Therefore, the order passed by the respondents is mala fide and prejudicial in nature.

4. The learned counsel for the Respondents Shri Wadhavkar denied the contention of the applicant stating that the application filed by the applicant is

a belated one i.e. after a lapse of 8 months of the transfer order. Secondly, the applicant has not exhausted any departmental remedies under Section 20 which required to be done and has straight away has approached the Tribunal for cancellation of the transfer order. He further submitted that nowhere it is mentioned in the transfer order about his conviction or any other mis-conduct of the applicant. The respondents counsel relying on the letter issued by the Director Shri Jose Cherian dt. 30.10.1996 with reference to his representation dt. 7.10.1996 and 28.10.1996 seeking cancellation of the order issued by his predecessor ~~in his capacity as~~ has the Director/stated that he ought to have complied with the direction of the administration. In that letter he has also mentioned that since he has been convicted by the Court of Judicial Magistrate for being moving spirit behind "gheraoing" of my predecessor and further he has been implicated in some other cases such as for Contempt of Court etc. and that his work in the Posting Section had come in for adverse criticism by his superiors. Considering the overall situation it is not appropriate on his part to modify the transfer order at this belated stage. Further the learned counsel for the respondents submitted that he has not alleged in the pleadings about mala fides and proved any incidence, but has merely alleged that the transfer order is mala fide is not sufficient by itself. Even if there is mala fide action on the part of the respondents, the concerned Officer has to be named in the O.A. by impleading as a party respondent, it is also not clear against whom the mala fide allegation is made. The

counsel for the respondents further submitted that Shri Tambe has joined at Pune on 14.1.1997 and Shri Joshi has joined at Chalisgaon in December, 1996 itself. The respondents hoping that the applicant would adhere to the transfer order waited for a considerable period and since the work was suffering at Chalisgaon as an ad interim measure they posted Shri Joshi at Chalisgaon and it is not disputed by the applicant that he has been relieved from his duties on 30.6.1996. Consequent thereupon Shri Tambe has joined at Pune.

The counsel for the respondents further submitted that the Respondent Corporation has a 'grievances redressal machinery' by which the complaints are investigated and settled expeditiously and in a definite time frame, but the applicant has not resorted to any such procedure. Therefore, the failure to seek his remedy under the 'grievances redressal machinery' operates as a bar under Sec.21 of the Administrative Tribunals Act, 1985 for entertaining this petition. In support of his contention he relied upon the decision of the Hon'ble Supreme Court in Shilpi Bose's case (1991 (17) ATC 1935) wherein it was held that "the Courts should not interfere with the transfer order which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of statutory Rules or on the ground of malafide". Since Shri Tambe has already joined at Pune the petitioner's transfer has become a fait-accompli the moment the petitioner is relieved from duty by the authority concerned on 30.6.1996.

It is further stated that the applicant's transfer to Local Office at Chalisgaon on no grounds other than administrative exigency of work and in public interest, further that the transfer is not because of unsatisfactory work of an employee or his conviction on criminal charges fall in the realm of misconduct or violation of

conduct rules which is subject to the rules of discipline in appropriate proceedings. Further regarding the conviction of the applicant the counsel for the respondents drew my attention to the decision of the Apex Court in Dy. Director of Collegiate Education V/s. S.Nagoor Meera (1995 ATC 576) wheren it is held that "taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence of order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court." Therefore, the contention of the applicant that his conviction had been stayed by the High Court does not hold good. Apart from that, his transfer order was not passed on conviction as stated earlier. In this connection, it is relevant to quote the observation of the Apex Court in Gujarat State Electricity Board V/s. A.R.Sungomal Poshani

(AIR 1989 SC 1433) wherein the Apex Court has held as follows :

"Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules."

as

Applying the aforesaid principle, in the instant case there is no stay granted by the Tribunal staying the operation of the transfer order, the applicant ought to have joined the place of transfer and then made his representation if he intends to do so. Since he has not complied with the direction of the Tribunal he would expose himself to disciplinary action in case he fails to join the place of transfer. As stated earlier, regarding mala fide, firstly the applicant has not impleaded the party by name against whom mala fide is alleged, secondly, he has not been able to establish any mala fide action on the part of the respondents during the course of the hearing. In the absence of ^{any} ~~the~~ mala fide action on the part of the respondents or the transfer order is issued against the statutory rules, the applicant has no locus standi to challenge the transfer order in view of the decisions of the Apex Court. In the result, I do not find any merit in the O.A.

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the same is dismissed. The applicant to join his duties at Chalisgaon within a period of 15 days from the date of receipt of this order. Failure to abide by the decision of the Respondents, they are at liberty to proceed against the applicant in accordance with the Rules. No order as to costs.



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

B.