

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 338/97

Date of Decision: 26.5.97

Yogesh Pratap Singh

.. Applicant

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.T.Tulpule with Shri V.S.Masurkar for R-1 to 4,
Shri S.Venkateswaran for R-5

.. Advocate for
Respondent(s)

and Shri M.I.Sethna along with Shri Jamwal
for R-7 and 8.

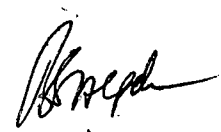
CORAM:

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.338 / 1997.

W.P.2624/97

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

26th this the Monday day of May 1997.

Yogesh Pratap Singh,
B-18, Hyderabad Estate,
Nepean Sea Road,
Mumbai - 400 026.

... Applicant.

V/s.

1. Government of Maharashtra
through the Additional Chief
Secretary (Home) Mantralaya,
Mumbai.
2. The Additional Chief Secretary
General Administration Department
Mantralaya
Mumbai.
3. The Director General of Police
Maharashtra State Police
Headquarters
Mumbai.
4. Shri Gopinath Munde
Deputy Chief Minister and Home
Minister
Maharashtra
5. Shri Dinesh Afzulpurkar
Chief Secretary
Government of Maharashtra
Mantralaya
Mumbai.
6. Shri P.Subrahmanyam
Additional Chief Secretary (Home)
Government of Maharashtra
Mantralaya,
Mumbai.
7. Shri Joginder Singh
Director, Central Bureau of
Investigation,
Lodhi Road,
New Delhi - 110 003.
8. Shri Krishi Pal Raghuwanshi
Deputy Inspector General of Police
Central Bureau of Investigation
Tanna House, Nathalal Parekh Marg,
Mumbai - 400 039.

... Respondents.

[Signature]

O R D E R

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

Heard the applicant in person. Shri V.T.Tulpule along with Shri V.S.Masurkar for Respondents No.1, 4 & 6, Shri S.Venkateswaran for Respondent No.5 and Shri M.I.Sethna along with Shri Jamwal and Suresh Kumar for Respondent No.7 and 8. The Tribunal had given ex-parte interim order on 11.4.1997 for a period of 14 days. The matter was finally heard on 24.4.1997 after giving sufficient opportunity to all the parties to advance their case, since the pleadings were complete and decided to dispose of the O.A. with the consent of parties at the admission stage itself.

2. The brief facts giving rise to this O.A. are that the applicant is an I.P.S. Officer working with the Maharashtra State Police. The order impugned in the present application concerns his transfer from Mumbai to Nagpur vide letter dt. 1.4.1997.

3. The contention of the applicant is that the transfer effected by the Respondents is unconstitutional, malafide, illegal, arbitrary, unreasonable and vindictive and requires to be quashed. He was initially posted as an Assistant Inspector General of Police (Establishment) in Maharashtra Police Headquarters, Mumbai in 1996 after his repatriation from CBI. He has been transferred to Nagpur as 'Commandant State Reserve Police Force after 10 months of his posting as AIG of Police and he was relieved on 2.4.1997 without affording him any time to make representation. His further contention is, that even while he was prematurely repatriated by the Director of CBI, the said order is illegal as the Competent Authority to

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repatriate the applicant is the Central Government and not the Director, CBI. The said order is illegal for the reasons which were malafide in nature, prompted by the vested interests who had committed crimes of immense quantum and those cases were investigated by the applicant, therefore he was repatriated before the expiry of the tenure period of 4 years. Against which he has sought redressal from this Tribunal in O.A. No.469/1996 which is pending consideration. He further urged, that the impugned order of transfer violates rules, because the normal tenure is for 3 years, however, the applicant has been transferred within 10 months. Further, as per the policy guidelines as far as possible husbands and wives should be given postings at the same place and should not be separated unless there are compelling reasons to do so. Further, the transfer was not effected in consultation with the Director General of Police and as such the same is not valid in law, in view of Rule 30 of the Bombay Police Manual and further state that while working in CBI, the applicant had made enemies in powerful persons, by exposing their corruption cases through his personal crusading efforts. It is further submitted, that this transfer was done at the behest of Respondent No.4 because since he had adopted a very uncomplimentary posture. With regard to the pressure, the former had exerted transfer/posting of Police Officers, this annoyed him and got him transferred etc.

4. As against this the counsel for Respondents No.1 to 4 and 6 Shri V.T.Tulpule along with Shri V.S.Masurkar while denying various contentions of the applicant had submitted that the accusation

made by the applicant is wild, baseless and false allegations which are extraneous to the case under consideration and while making the said allegation the applicant seeks this Tribunal to embark upon a fishing inquiry devouring the issue of his transfer. The applicant was sent on deputation to CBI in 1993 and was repatriated to the State Cadre in March, 1996. He was posted as Assistant Inspector General of Police, Mumbai where he reported for duties from 27.5.1996. The transfer of the applicant was effected for administrative reasons. The contention of the applicant that he was prematurely repatriated is an independent issue and has no relevance with the present transfer. It is further contended, that the transfer is illegal and not sustainable in view of Rule 30 of the Bombay Police Manual is mis-conceived inasmuch as based on Sec. 6 of the Bombay Police Act which is modified by an amendment to 1989 Act; whereby the respondent is the ultimate authority to decide various issues relating to Force including transfer of Police Officers. Further, it is contended, that normally, Director General of Police puts up the proposal of Transfer/Promotion. However, the same is not binding on the Respondent No.1. The Respondent No.1 is free to take decisions on its own in respect of transfer. Regarding policy of the Government stating whether both husband and wife employed with the Government, in that case, as far as possible they should be posted together in the same place, but that is only a guideline and cannot be construed as Statutory Rules. Whereas, in the instant case the applicant's wife is working in Central Government and not in the State Government and the applicant is working in the State Government,

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therefore, the guidelines referred to above, does not apply to the present case. Further, it is contended by the applicant that his transfer is contrary to Article 166(2) of the Constitution, this plea of the applicant is not applicable to the present case because transfer of the Police Officers are considered by the Director General of Police by letters, thereafter the Government issues necessary notifications. The notification is only consequential to the decision of Respondent No.1. Therefore, merely because notification has not been issued it cannot be said that the transfer is ultra-vires to Article 166(2) of the Constitution. The applicant's reliance in support of his contentions on certain news paper reports is uncalled for and no assurance is given by Respondent No.5 that he would not be transferred out of Bombay for a period of one year because Respondent No.5 is not directly concerned with the transfer of Police Officers of the rank of Superintendent of Police and below. Further, Respondent No.5 at no point of time recommended or proposed the transfer of the applicant, thereby the allegation made against Respondents No.4 and 5 are totally false and unsustainable.

5. The learned counsel for Respondent No.5 Shri S.Venkateswaran submitted that the vituperative language used by the applicant in making wild allegations without any specifications itself is sufficient to satisfy the Tribunal that the applicant is in the habit of making such wild allegations. He had also filed a petition for his repatriation from CBI to State Government which is pending consideration and he denies the various allegations made by the applicant against Respondent No.5. It is further

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contended that Respondent No.8 became a beneficiary of a discretionary allotment by the State Government Flat and the Respondent No.5 has nothing to do with the allotment of flat either in his personal capacity or in his official capacity and sufficient and satisfactory explanation is given at para 6 of his affidavit and the Tribunal may draw its own inference. He had no malice against the applicant, but strongly objected to the allegation of the applicant regarding his 'integrity' which was not beyond doubt. Since he did not cite any incidence in which he could assess the integrity of Respondent No.5, such allegations is required to be deleted and not be taken cognizance of.

6. Shri M.I.Sethna, Senior Counsel along with Shri Jamwal and Shri Suresh Kumar counsel for Respondents No.7 and 8 urged that the impleading of Respondents No.7 and 8 as party respondent is uncalled for. This is a petition relating to transfer of the applicant from Mumbai to Nagpur, therefore, Respondents No.7 and 8 have no role to play in the transfer of the applicant, thereby no relief can be sought against Respondent No.7 and 8, therefore, neither the transfer nor the impugned challenge in respect thereof has anything to do as far as Respondents No.7 and 8 are concerned. They are unnecessarily impleaded as party respondent, because the applicant has impleaded these respondents with totally malafide intention and with ulterior motive. Since he had already made several malicious, baseless and irresponsible allegations against various officers of CBI, therefore, it is but necessary that their names should be deleted from the party respondents. Further, respondent No.8 has denied

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that he had secured favours from State Government Officers in obtaining membership of the Housing Society and also stated that he has cited certain cases against Respondent No.5 which has been investigated by him while in CBI etc.

7. I have heard the learned counsel for the parties and carefully perused the pleadings. In view of the interim order granted by the Tribunal which is continuing and since it is a transfer matter I thought it fit that the O.A. can be disposed of at the admission stage itself.

8. During the course of the hearing the learned counsel for the respondents No.1 to 4 and 6 Shri V.T. Tulpule with Shri V.S.Masurkar drew my attention to the fact that after repatriation from the CBI the then Director General of Police in May, 1996 had stated that one post of Assistant Inspector General of Police is lying vacant in the Police Headquarters at present and he proposes that Shri Y.P.Singh, the present applicant may be adjusted against this vacancy at the Police Headquarters till his posting is decided. Therefore, pursuant to that, the Competent Authority has transferred the applicant to Nagpur since the post of Commandant Reserve Police Force was vacant and as such there is no malice in the order of transfer and that all allegations made against Respondent No.4, 5 and 6 are not relevant to the issue that is under consideration, therefore, there is no malice or arbitrariness in the order of transfer effected by the respondents. In this connection, the learned counsel for the respondents relied upon the decision of the

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Supreme Court in N.K. Singh V/s. Union of India & Ors. ((1994) 28 ATC 246) wherein the Apex Court has held "that Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce ~~and~~ rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Otherwise, no further inquiry into this aspect is necessary and its ~~absence~~ absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer". It is further observed "that the element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection." Observation of the Apex Court at para 24 of N.K.Singh's case may also be noted in this connection.

9. The learned counsel for the respondents also brought to my notice other decisions of the Apex Court

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such as State of M.P. and Anr. V/s. S.S.Kourav & Ors. ((1995) 29 ATC 553) and Union of India & Ors. V/s. S.L.Abbas (AIR 1993 SC 2444) wherein the Apex Court has clearly held that the Courts or Tribunals should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. The contention of the applicant that as per the guidelines issued by the Government both husband and wife should be posted in one place does not survive, firstly because his wife is not working in the State Government and secondly, the guidelines issued by the Government do not confer upon employee any legally enforceable right.

10. In the light of the above, the question to be seen here is whether the allegation made by the applicant against Respondents No.4, 5 and 6 are sustainable in law. In my view, the allegations are void and baseless and not relevant to the issue i.e. transfer from Mumbai to Nagpur. Based on the ratio of the Apex Court in N.K. Singh's case, nowhere, he has made out in the case that his successor is incompetent to hold the post from which he has been relieved. He is mixing up his repatriation from CBI to his parent department and further his transfer from Mumbai to Nagpur. After passing of the order of transfer, the applicant has not made out any representation requesting for re-consideration either on the humanitarian ground or on any other grounds, but he has chosen to file this O.A.

11. In this connection, the learned counsel for Respondent No.5 drew my attention to another decision

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of the Apex Court in the case of Rajendra Roy V/s. Union of India & Anr. (AIR 1993 SC 1236) wherein the Apex Court has observed that "it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee but on that score the order of transfer is not liable to be struck down. Unless such order is passed malafide or in violation of the rules of service and guidelines for transfer without any proper justification the Court and the Tribunal should not interfere with the order of transfer." In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Further regarding malice, the Apex Court has observed that it may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. Therefore, he submits that the allegations made by the applicant is vague and wild and in the absence of the full facts regarding malice, it cannot be said that the transfer of the applicant is one of malice or against the statutory rules.



10. For the reasons stated above, the issue that calls for determination is whether the transfer order of the applicant issued by the respondents is liable to be quashed on the ground of malice or against the statutory rules. It has been held by the Apex Court in more than one decision that the allegation of malafides, the inference must be based on firm foundation of facts pleaded and established and not merely on informations and vague allegations. That an order of transfer is an incident of government service, who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or made in violation of any statutory provisions, the Tribunal cannot interfere with such transfers. On perusal of pleadings and after hearing the oral arguments of the parties, I am of the opinion, that the applicant has not made out any malice or incidence of malice or arbitrariness on the part of the Respondents in the transfer of the applicant from Mumbai to Nagpur. It is true that the decision of the then Director General in 1996 that the applicant be adjusted to the vacancy at the Police Headquarters till his posting is decided could have been endorsed by the present Director General as per the procedure in vogue, however, that by itself does not ^{violate} ~~violate~~ the order of transfer effected by the Competent Authority. It is to be noted that the Apex Court in N.K.Singh's case has stated that any tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bonafide decision of the superiors in service and their honest assessment

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accepted as a part of service discipline. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments." The ^{Ratio of the} above case law is fully applicable to the facts of the present case.

11. The applicant has been in Mumbai since 1993 either on deputation or in State Service. His only contention in this O.A. is that he has been transferred before the tenure period of 3 years. Considering the exigencies of service, the transfer effected by the Respondents in my view is valid in law and it cannot be construed that the said transfer is complied with malice or based on arbitrary decision. It has been told that his wife is working in Central Government i.e. Postal Department since 1996 and if he is transferred irreparable damage to his family would occur for the reasons stated. Accordingly, I direct the applicant to bring forth his difficulties to the Competent Authority by making representation, since he has not made any representation about the personal hardship to the department and on receipt of the same, the Competent Authority should consider the same by passing a speaking order within a period of one month of receipt of such representation. The O.A. was finally heard on 24.4.1997 and reserved for orders and dictated to the Steno before 2.5.1997 but could not be pronounced on account of Summer Vacation. In the meanwhile, the applicant has furnished some papers to Registry on 7.5.1997 regarding complaint.

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made by one Shri Ashish Srivastava to the Chief Secretary about the behaviour of the applicant, while the applicant was in C.B.I. etc. Though I am not bound to take note of this submission, however, I had gone through the same and found that the incident has nothing to do with the present transfer of the applicant and has no relevance to the issue under consideration.

12. In the result, I do not find any merit in the O.A. and the same is dismissed at the admission stage. The interim order passed earlier stands vacated. There will be no order as to costs.


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

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Order/Judgement despatched
to Applicant/Respondent (1)
on 3/6/97
10/6/97