

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO. 381/97

Date of Decision: 14.8.97.

Dr.R.K.Handa

.. Applicant

Shri G.S.Walia

.. Advocate for  
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Mr. M.S.Ramamurthy

.. 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 ?

M

  
(B.S. HEGDE)  
M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.381/97

14th this the Thursday day of August 1997

CORAM:

HON'BLE SHRI B.S. HEGDE, MEMBER (JA)

Dr. R. K. Handa,  
Asstt. Div. Medical Officer,  
Flat No. M/61/D  
First Floor,  
Western Railway Dispensary,  
Bombay Central,  
Mumbai - 400 008

.. Applicant

By Advocate Shri G.S. Walia

-versus-

1. Union of India  
through  
General Manager,  
Western Railway  
Head Quarters Office,  
Churchgate,  
Mumbai - 400 020.

2. Secretary,  
Railway Board,  
New Delhi - 110 011.

By advocate Shri M.S. Ramamurthy .. Respondents

- : O R D E R : -

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

Heard Mr. G.S. Walia for the applicant  
and Mr. M.S. Ramamurthy for the respondents.

In this OA the applicant is challenging his  
transfer to Surendranagar issued by the respon-  
dents vide dt. 17-3-94 and 5-2-97 respectively.  
and consequent thereof seek for posting at  
Bombay Central. Secondly the respondents be  
ordered to withdraw the impugned notice dt.  
19-6-1991 issued under Section 4 of the Public

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Premises (Eviction of Unauthorised Occupants) Act, 1971. Thirdly to direct the respondents to issue Free Railway Passes to the applicant as a serving employee. By way of interim relief he prayed for a direction to the respondents to take the applicant on duty at Mumbai immediately and pending hearing and final disposal of the O.A. direct the respondents not to proceed with the eviction proceedings etc.

2. On the submission of the learned counsel for the applicant an ex-parte order was passed by the Tribunal on 24-4-97 which continued till date. The respondents have filed their reply on 3-7-97 and thereafter applicant took time for filing rejoinder which he filed on 24-7-97.

3. The brief facts are, that the applicant is MBBS doctor and was appointed as Asstt. Divisional Medical Officer in the Western Railway on 25-2-1969. He was prematurely retired by order dt. 10-12-1990. Being aggrieved by the premature retirement, he challenged the said order by filing an O.A.93/91 which came to be allowed on 15-10-1991 and thus the premature retirement order was set aside by the Tribunal. It is true that at the time of premature retirement he was working at Bombay Central. After his premature retirement order the applicant was granted 'provisional pension'. Pursuant to the direction of the Tribunal respondents have passed reinstatement order dt. 5-5-1992 and also passed the posting order under letter 18/20-5-92 at Morvi

in Rajkot. He made a request vide letter dt. 5-3-93 that he be posted at Bombay Central instead of Morvi on health grounds. Thereafter the applicant suffered a massive heart attack <sup>for treatment</sup> and admitted at Jagjivan Ram Hospital, Bombay and stated that unless his legal dues are paid, he ~~was~~ not inclined to carry out any transfer outside Mumbai. The respondents vide their reply dt. 4-8-92 rejected his request for posting at Mumbai. It is submitted that though he was admitted at Jagjivan Ram Hospital he was shifted to Bombay hospital for a bye-pass surgery. He was operated on July '93 and thereafter transferred to Jagjivan Ram Hospital for post operation treatment.

4. Since he ~~was~~ not given railway passes as he ~~had~~ not joined duty at Morvi, as per posting order, and he was granted provisional pension pursuant to premature retirement, he filed an O.A.244/93 challenging transfer to Morvi which is pending for consideration. He made representation to the Railway Board. Railway Board vide its letter dt. 25-5-93 conveyed that "MR has desired that the transfer order should be stayed and the employee retained at BCT." That is with regard to his posting at Morvi. Thereafter, he was given a change in posting vide order dt. 17-3-94 to 'Surendranagar' which also the applicant did not carryout till today.

5. In reply the respondents have submitted that though the transfer order is issued as back as 17-3-94 the applicant has filed his OA only in April, 1997 thereby the application filed by the applicant is clearly barred by time. As regards order dt. 5-2-97 from the respondents it only held that order dt. 17-3-94 stands. The said letter will not give any independent cause of action. Further it is contended that to the applicant, the allegation of malafide has not been established. Even the earlier premature retirement order was passed in public interest and not because of any malafide intention. So far as Tribunal's direction is concerned the same has been complied with and posted him at 'Morvi' which has been changed pursuant to the instruction received from the Railway Board and he was posted at 'Surendranagar' which is under challenge in this O.A. Therefore any reference to 18/20-5-92 in this O.A. is irrelevant as the said posting order ceased to exist with the issue of order on 17-3-94. The allegation of malafide and harassment are emphatically denied. The post at Morvi was filled up by posting another doctor on 4-1-94. In this case the applicant without joining at Surendranagar is continuing in Mumbai in his official quarters and not carrying out his posting outside Mumbai, right from 1992 till date. Regarding his free pass since the applicant has not reported for duty from May, 1992 till date unless he report for duty, his request for free pass cannot be considered. For non joining duty he has issued with a chargesheet on 1-3-97.

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Unless the applicant joins <sup>duty</sup> at Surendranagar, it would mean that he has not accepted reinstatement and order ~~as~~ he chose to remain absent unauthorisedly.

6. The learned counsel for the respondents further contended that the applicant is challenging his transfer to Surendranagar issued on 17-3-94 but no stay has been granted by the Tribunal. As against his posting at 'Morvi' he filed O.A.244/93 on 19-3-93. In fact the said OA has become infructuous as Morvi transfer has been recalled by the respondent. The said transfer has been superseded by the subsequent transfer order to Surendranagar vide order dt. 17-3-94 keeping in view of the Ministry's direction. It cannot be said that the Ministry's instruction not to post him at Morvi cannot cover future transfer. Further learned counsel for the respondents have pointed out that though he has been reinstated in May, 1992 the applicant has been receiving provisional pension till 1997. That itself shows the conduct of the applicant is not ~~bonafide~~. For delay in filing the O.A. he has not filed any MP for condonation and he did not make any representation against his transfer order to Surendranagar and it is being challenged without any representation. Even the alleged letter to department dt. 9-1-97 has not been annexed to the O.A. The applicant has mainly relied upon the premature retirement order which is <sup>alleged to have</sup> passed on malafide ground, later on it has been set aside by the Tribunal thereafter

he was posted to Morvi. Further contention is that they have not adhered to the Railway Board direction while cancelling the transfer order to Morvi thereby they acted in a malafide manner. The said contention is untenable. Pursuant to the direction of the Ministry, the respondents have changed his posting from Morvi to Surendranagar and it may be noted that any instructions issued by the Ministry does not prevent the authorities to effect transfer or posting in the exigencies of service.

7. Learned counsel for the applicant vehemently urged that atleast on health ground they should have retained him in Mumbai and he is to retire by the end of this year, therefore the posting at Surendranagar is nothing but a punishment transfer and the same is required to be quashed.

8. It is true that the applicant has undergone bye-pass surgery as back as 1993. That does not by itself entitle the applicant to refuse to join duty other than Mumbai. The plea of by-pass surgery by itself does not give undue benefits not to go on transfer especially when he being a Class-I officer. He should know about his responsibilities. During the course of the hearing learned counsel for the respondents submitted that eviction proceedings initiated against the applicant on 19-6-91 and 8-4-97 have been withdrawn. That has been initiated after issue of the premature retirement

*ABK*

that by itself does not prevent the respondents to initiate fresh proceedings in accordance with the law. In the light of the above, the question to be considered here is whether the transfer order issued by the respondent is just and proper and whether such transfer/<sup>order</sup> can be challenged by the applicant in this O.A.

9. It is an admitted fact, that the transfer order is issued in 1994 and the applicant has filed OA after a lapse of three years. There is nothing on record to show that he made representation against this transfer order which has been accepted or negatived by the respondents. The applicant cannot take advantage of the reply of the respondents dt. 5-2-97 which only concurs the stand taken by the department that he stands transferred to Surendra-Nagar and his transfer order cannot be changed. That by itself does not give any cause of action to the applicant. In view of catena of decisions of the Supreme Court regarding transfers, it is settled principle that transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the or ground of violation of statutory rules/on ground of mala fides. The Apex Court as back as in 1989 in Gujarat State Electricity Board vs. A.R. Sungomal Poshani has held that "transfer from one place is generally a condition of service and the employee

*for*

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...."

10. In the instant case, despite his reinstatement pursuant to the order of the Tribunal the applicant did not join duty, over and above, he has been drawing the provisional pension till 1997 which itself shows that the conduct of the applicant is not bonafide. As a matter of fact, he ought to have joined the duty and put forth his difficulties to the competent authorities for re-transferring him to Mumbai. Instead, he defied the transfer order and stayed back at Mumbai for a considerable period which is not expected from an officer of his calibre. As a matter of fact, once the reinstatement order is issued he should have joined duty and reported back

to the department that the provisional pension paid to the applicant be discontinued. On the other hand, he has been drawing provisional pension right upto 1997. In the circumstance, I do not see any justification in interfering with the transfer order issued by the respondents.

11. Applicant has not made out any mala fide action on the part of respondent except stating that the respondent did not adhere to the Tribunal's direction. The administrative action cannot be said to have offended against Article 14 unless it was malafides or actuated by hostile intention. Such malafide action is never presumed but has to be proved. The apex Court in the case of N.K.Singh vs. U.O.I. (1994)28 ATC 246 have observed that "the only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. 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. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

12. In the light of above discussion and for the reasons stated therein, I do not see any reason to interfere with the transfer order issued by the

respondents and the same should have adhered to by the applicant. Therefore, I see no merit in the O.A. and the same is dismissed.

13. The Tribunal had granted interim relief by directing the respondents not to proceed with the eviction proceedings against the applicant under PP Act vide its order dt. 24-4-97 and extended till date. The interim order directing the respondents not to initiate eviction proceedings have been modified by its order dt. 12-6-97 allowing the respondents to complete the eviction proceedings in accordance with the law, but shall not give effect to the order till further orders. Two days after the hearing was over, the learned counsel for the applicant Mr. Walia brought to my notice, a decision rendered by the undersigned in OA 779/96. However, on perusal of the said judgment, I am of the opinion, that the facts and circumstances of this case is clearly distinguishable from that case. That decision will not apply to the case of the applicant in this O.A.

14. Since the OA has been dismissed on merits, the interim order passed earlier vide dt. 12-6-97 regarding quarters stands vacated and liberty is given to respondents to take appropriate action regarding eviction as they deem fit. In the result all the reliefs claimed by the applicant in this O.A. is rejected with no order as to costs.

  
(B.S. HEGDE)  
Member (J)