

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 392/97

Date of Decision: 29-5-1997

Prakash Ramaji Gajbhiye .. Applicant

Shri G.K.Masand .. Advocate for
Applicant

-versus-

U.O.I. & Ors .. Respondent(s)

Shri R.K.Shetty .. Advocate for
Respondent(s)

CORAM:

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

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.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.392/97

THURSDAY, this the 29th day of MAY 1997

CORAM:

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

Prakash Ramaji Gajbhiye
Flat No.3223/224, Sector-I
C.G.S.Colony, Kanenagar,
Antop Hill,
Mumbai - 400 037.

By Advocate Shri G.K.Masand

.. Applicant

-versus-

1. Union of India
through
The Secretary
Ministry of Industry
Department of Small Scale
Industries, Udyog Bhavan,
New Delhi - 110 011.

2. The Development Commissioner
(Small Scale Industries)
Govt. of India,
Ministry of Industry,
Department of Small Scale
Industries, 7th Floor,
Nirman Bhavan,
New Delhi - 110 011.

3. R.B.Pande,
Director,
Small Industries Service
Institute,
Govt. of India,
Ministry of Industry,
Kurla-Andheri Road,
Saki Naka,
Mumbai - 400 072.

.. Respondents

By Counsel Shri R.K.Shetty

- : O R D E R : -

(Per M.R.Kolhatkar, Member(A))

In this application, the applicant has challenged his order of transfer dt. 21-4-1997 at Ex.'A' transferring the applicant from the post of Deputy Director(Export promotion) SISI¹ Bombay to SISI Calcutta. The contention of the applicant is that the order of transfer has been actuated by malafides as should be evident from the following circumstances:

2. The applicant has filed O.A. 665/96 praying for the relief of expunction of the adverse remarks in the CR for the years 1989-90, 1991-92, 1-4-92 to 30-9-1992 and 1993-94 and 1994-95 and on such expunction to declare the proceedings of the DPC held in March '95 in which respondent No.8 in that OA was selected as null and void and also to quash the order of promotion of respondent No.8 and consequential benefits. According to applicant, respondent No.3 in the present OA has been impleaded in his personal capacity in that OA and the order of transfer has been issued with a view to prevent the applicant from prosecuting O.A. 665/96 which has been admitted and now pending before the Tribunal for decision.

3. According to the applicant the malafides are also patent from the other circumstances that related to the transfer. These are the post at Calcutta is lying vacant for 7 years and during all these years the department had not made any effort to fill up the vacancy now sought to be filled by his transfer. Moreover, a bare perusal of the order of transfer itself makes it clear that it is a solitary order and it is not part of a chain of transfer orders and that there are no orders as to who should take over from him. Inspite of this, respondent No.3 in the present OA has issued relieving orders vide 'B' dt. 25-4-1997 in terms of which the applicant is hand over his charge to his subordinate. At the argument state the counsel for the applicant pleaded one more circumstance which according to him shows that the applicant has been singled out for a penal transfer

namely that there are several other officers who ~~have~~ stayed at one place for more than 10 to 15 years but still they have not been touched.

4. The applicant therefore has ~~prayed~~ for quashing and setting aside the impugned order of transfer.

5. Respondents have filed a reply. It is contended that the applicant has been working in the present position at Mumbai from 11-7-88 i.e. for the last 9 years. The applicant is a Group 'A' officer holding transferable post and liable to transfer in any part of the country. It is not disputed that the post at Calcutta was vacant for more than 7 years. However, it is contended that looking ~~to~~ to the urgent requirement of Export Promotion of Eastern Region the applicant was transferred with immediate effect by the competent authority.

6. Respondents have contended that OA 665/96 has nothing to do with the transfer order which is in public ~~interest~~. Respondents have relied on the decision of the Hon'ble Supreme Court in the case of S.S.Kaurav 1995-II-AISLJ-109(SC).

7. There were also pleadings relating to the absence of the applicant at the time of transfer and the medical certificates filed by him. I am of the view that I am not required to go into those pleadings.

8. It is now well settled that transfer is an incident of service and transfer of an officer holding a transferable position is not part of the

conditions of service. It is further well settled vide illustratively the Supreme Court judgment in N.K.Singh vs. UOI, AIR 1995 SC 423, that the scope of judicial review in the matters of transfer is confined only to the grounds of (i) malafide (ii) violation of specific direction or guidelines; for example contravention of tenure rules. There is no plea that any such statutory guideline about transfer has been violated. In the OA plea has been taken regarding competence of transferring authority viz. Development Commissioner, Small Scale Industry to transfer the applicant but the plea is not supported by any evidence and the counsel at the argument stage confined his arguments to the grounds of malafides. As has been observed, the grounds of malafides are easy to make but difficult to make out. Let me consider whether such grounds of malafides hav been made out. The malafides have been alleged against respondent No.3. But it is not respondent No.3 but it is the respondent No.2 who has transferred the applicant. It is difficult to believe that respondent No.2 has acted under the dictates of respondent No.3. In other words it is difficult to accept the theory of "transferred malice". The fact that the post at Calcutta was vacant for seven years is not material because the post exists and the post is in equivalent grade and the contention of the respondents that the post was required to be filled in looking to urgent requirement of export promotion of Eastern Region is plausible. So far as the plea that there are several officers who have stayed for more than 10 or 15 years at one particular place is concerned, the same does not give a vested right to applicant to remain in the post

held by him for an indefinite period. The fact that the transfer order is solitary or that no reliever has been named does not also show that the order is actuated by malafides.

9. Respondents have relied on the case of State of Madhya Pradesh & Anr. vs. S.S.Kourav & Ors. decided on 19-1-1995. State of MP came in SLP against the order of Tribunal quashing the order of transfer of Executive Engineer from Bhopal to Jagdalpur. The plea that the order was not approved by the Governor was repelled by the Hon'ble Supreme Court after examining the concerned file. The plea that there was ~~an~~ difficult domestic situation (wife of the applicant committed suicide) was not held as being sufficient ground to interfere with the order of transfer and the Supreme Court directed the applicant to make a representation and it was for the Govt. to take a decision in the matter. The plea that the applicant had earlier worked at Jagdalpur for seven years was also not accepted, and it was held that Courts and Tribunals are not expected to interdict the working of the administrative system.

10. Having considered the various grounds raised by the applicant and different decisions of the Supreme Court I am of the view that there is no merit in the O.A. The same is accordingly dismissed with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)