

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 401/97

Date of Decision: 5.12.97

Shri S. P. Rai, Applicant.

Shri M. S. Ramamurthy alongwith Advocate for  
Shri I. J. Naik. Applicant.

Versus

Union of India and others, Respondent(s)

Shri V. S. Masurkar, Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (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)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 'GULESTAN' BUILDING NO:6  
PRESOT ROAD, MUMBAI:1

Original Application No. 401/97.

5th the following day of December 1997.

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

S.P. Rai  
The Dy. Director of  
Agriculture (Former)  
Administration of Daman  
& Diu, Presently  
Dy. Director of Horticulture  
Fort Area, P.O. Moti Daman. ... Applicant.

By Advocate Shri M.S. Ramamurthy alongwith Shri I.J.Naik.

V/s.

The Administrator  
Administration of U.T. of  
Daman and Diu  
Secretariat, Moti Daman.

Union of India through  
The Secretary,  
Ministry of Home Affairs  
Central Secretariat,  
North Block, New Delhi. ... Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

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

Heard counsel for the parties.

2. In this O.A. the applicant is challenging the impugned order dated 30.4.97, which reads as below:

" The Administrator of Daman and Diu & Dadra and Nagar Haveli is hereby pleased to order the transfer of Shri S.P. Rai, Deputy Director (Horticulture), Daman alongwith the post of Deputy Director held by him at Daman and to post him in the Agriculture Department, Diu with immediate effect. The transfer is ordered on administrative ground and in the public interest. "



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3. The applicant ~~is~~ is working as Deputy Director of Agriculture in the scale of Rs. 2,200/- to Rs. 4,000/- since 1987.

4. The main contention of the applicant is that the person who has replaced the applicant at Daman is a Junior Officer and he did not work as Dy. Director, Even though he has been treated as Head of Office and also designated as Dy. Director of Agriculture which is contrary to the Rules. The person who was replaced the applicant, Shri Mohan Lal is of a lower cadre of a Zonal Agriculture Officer, who is drawing lower pay scale than the applicant has been appointed as Dy. Director and cannot be treated as Head of Office. There is some force in the contention of the learned counsel for the applicant. In this application, the applicant has filed a comparative statement of himself and Shri Mohan Lal, wherein it is stated that the applicant is holding Grade 'A' post and Shri Mohan Lal is holding Group 'B' post. The applicant has been selected through UPSC for ~~the~~ post of Zonal Agriculture Officer, whereas, Shri Mohan Lal was promoted to the post of Zonal Agriculture Officer on Ad-hoc basis and not through UPSC. Therefore, the transfer order issued by the respondents alongwith the post is not in the public interest or any Administrative Exigencies. Therefore, merely stating that it is public interest and administrative exigencies is not sufficient unless the respondents are able to prove that the transfer of the applicant is not in the nature of punishment.

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5. On the other hand the learned counsel for the respondents denied the various contentions raised by the applicant in the application. It is submitted that the applicant is working in Daman in different capacity for the last 10 years, therefore, the transfer of the applicant to Diu is neither frequent, unscheduled nor unreasonable which can be established from the fact that during the past 10 years, he has not been shifted to any other place and the transfer effected to the applicant is prior to the opening of the School/College. The applicant is a Gazetted officer having transfer liability to serve any where within the Administration of U.T. of Daman and Diu. The learned counsel for the respondents further submits, that in view of catena of decisions of the Supreme Court which time and again observed that " The Courts or Tribunals are not appellate forum to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunal's are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration with factual background foundation.

6. In this connection, the learned counsel for the applicant in support of his contention, relied upon the two decisions, one of Jodpur Bench in the case of Mahendra Kishore Sharma V/s Union of India 1992 (20) ATC 66. Another decision of the Supreme Court in the case of B. Varadha Rao V/s. State of Karnataka 1986 SCC (L&S) 750 wherein

the Supreme Court has observed that " A transfer order which is malafide and not made in public interest, but made for collateral purposes, with oblique motives and in colourable exercise of power is vitiated by abuse of power and is open to challenge before court being wholly illegal and void." It is true that in the instant case the applicant was transferred alongwith the post. Further he submits that the person junior in the rank and pay has been posted to Daman and granted him the rank of Head of Office. Shri Mohanlal has not been promoted in the post of Dy. Director Agriculture, therefore, the said transfer order is a colourable exercise of power and thus gets vitiated etc. In my opinion, though the applicant has been transferred alongwith the post to Diu in the month of April 97, in order to improve both Agriculture and Horticulture based on the report submitted by the applicant, the respondents department after due consideration effected transfer of the applicant to Diu so as to enable him to bestow his attention for the development of both Agriculture and Horticulture. Both the decisions cited by the learned counsel for the applicant are distinguishable from the facts of this case. Since it is not a routine transfer and the Apex Court in Varada Rao's case had observed that in so far as superior posts are concerned, continuous posting at one station is not conducive to good administration. In this case, the applicant is transferred for the first time during his career, it cannot be said that his transfer was not in administrative exigencies or in Public interest. Further since there is no corresponding post at Diu, the Administration is left

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with no other alternative but to transfer the applicant alongwith the post. I do not see any malafide action on the part of the respondents.

7. The learned counsel for the respondents, <sup>submitted</sup> that the applicant has acknowledged the transfer order issued by the respondents dated 30.4.97. On 1.5.97 he has ~~deemed~~ to have been relieved from the post. The applicant has filed this O.A. on 5.5.97 and obtained a stay on 6.5.97, by which order he was allowed to work at Daman and not gone to Diu. The learned counsel for the applicant states that mere acknowledgement by itself cannot be treated as if he has been relieved from the post. Nevertheless the fact is that the applicant is still working in Daman in the post of Dy. Director ~~Agriculture~~ till today.

8. In the light of the above, having heard the counsel for the parties and perusal of the pleadings the question for consideration is whether the transfer order issued by the respondents is vitiated by malafide or against the statutory rules. The respondents were ~~able~~ to explain the reasons for the transfer stating that at the time of delinking Daman from Goa in 1987, there was no Agriculture establishment in Diu. Hence there was no further posting of anybody at Diu, during 1992. A separate establishment of ~~Agriculture~~ department was set up by the Administration at Diu and in Mandai, Zonal ~~Agriculture~~ Officer was posted, therefore, since there is no post of Dy. Director of Agriculture at Daman as such this necessitated the transfer of the applicant at Diu alongwith the post and Shri Mandai was posted at Daman alongwith the post. Therefore, this cannot be treated as malafide or against the Rules. Further, the applicant had gone to Diu on ~~four~~ for nearly 86 days within a period of three months.

Considering the overall position, the respondents have transferred the applicant to Diu.

9. During the course of hearing the learned counsel for the respondents have raised objection as the applicant has claimed multiple reliefs and the matter is required to be decided by the Division Bench. The applicant has deliberately taken the matter before the Single Bench and obtained stay order against the transfer of the applicant. The learned counsel for the applicant is inclined to delete prayer 'C'. Accordingly prayer 'C' is deleted.

10. The applicant by virtue of interim relief allowed to continue at Daman and we are in the flag end of the calender year. The learned counsel for applicant submitted that his children are studying at Daman and his transfer at this stage will effect the children education. The applicant be allowed to continue at Daman till April 1998. Thereafter it is open to the respondents to take appropriate decision regarding the transfer of the applicant to Diu. Till that time the transfer order issued by the respondents is restrained. As stated earlier, I do not find any infirmity in the transfer order issued by the respondents. The transfer order is stayed till April 1998. Thereafter, the respondents may take appropriate decision to transfer the applicant to Diu as they deem fit. With the above directions the O.A. is disposed of. No order as to costs.

  
(B.S. Hegde)  
Member (J)