

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 446/97 & 447/97

Date of Decision: 18/9/97

R.S. Ghode & Anr.

Applicant.

Shri P.C.Marpakwar

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M.G.Bhangde.

Advocate for
Respondent(s)

CORAM:

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

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?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;

MUMBAI BENCH, MUMBAI,

CAMP AT NAGPUR.

1. ORIGINAL APPLICATION NO. 446 / 1997,

2. ORIGINAL APPLICATION NO. 447 / 1997.

Thursday, this the 18 day of Sept. 1997.

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

1. Ramkrishna S.Ghode,
34/C, Priyadarshani Nagar,
Near R.T.O., Civil Lines,
Nagpur.

... (Applicant in O.A.447/97)

2. Baban Bhojraj Nakhle,
J-7, Laxminagar,
Nagpur - 22.

... (Applicant in O.A.446/97)

(By Advocate Shri P.C.Marpakwar)

V/s.

1. Union of India,
Ministry of Information &
Broadcasting,
New Delhi through its
Secretary.

2. The Director General,
All India Radio,
New Delhi.

3. The Station Director,
All India Radio,
Civil Lines,
Nagpur.

4. Shri C.S.Basekar,
Programme Executive,
Presently All India Radio,
Chandrapur.

...(Respondents in both
O.A. Nos.446 & 447/97).

(By Advocate Shri M.G.Bhangde)

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

In these two Original Applications, an
omnibus order ~~was~~ issued by Respondent No.2 dt. 29.4.1997
under which 121 Programme Executives are transferred is
impugned in relation Sl.No.81 of the order viz. R.S.Code

...2.

viz.
(applicant in O.A. 447/97) and Sl.No.82/B.B.Nakhle
(Applicant in O.A. No.446/97). Shri Ghode
has been transferred to Aizawl and Shri B.B.Nakhale
to Dibrugarh. The Applicant in O.A. No.447/97 is a
directly recruited Farm Radio Reporter since promoted
and thereafter designated as Programme Executive. The
applicant in O.A. No.446/97 is a departmentally promoted
officer working as Programme Executive. As the basic
grounds for challenging the transfer order are identical,
these O.As. are being disposed of by a common order ^{in O.A. 447/97.} ~~relation of~~
In/O.A. No.446/97, where necessary ~~■~~ supplementary observa-
tions would be made. At this stage it may be necessary
to narrate ~~the~~ the history of the case by way of background.
The Tribunal by its order dt. 16.5.1997 had given a status
quo orders. These status quo orders were vacated by the
Tribunal by its order dt. 29.5.1997. The applicant,
therefore, filed a writ petition No. 1583/97 in the
High Court of Judicature at Bombay, Nagpur Bench which
on 13.6.1997 stayed the order of the Tribunal dt. 29.5.1997.
The Hon'ble High Court passed an order dt. 20.6.1997
permitting the applicant to withdraw the petition with
a request to the Tribunal to decide the petition as
expeditiously as possible. This is how the petition
came to be heard expeditiously at Nagpur Sitting on
14.8.1997.

2. The contention of the applicant is that the
transfer is against the transfer policy which is contained
in the Memorandum dt. 14.7.1991 (At Annexure-2 page 25 of

the O.A.). According to Sl.No. (ii) the normal tenure at Stations/Offices categorised as 'A' and 'B' will be 4 years and at Stations and Office categorised as 'C' will be two years. According to the applicant he has been working at Nagpur only since 26.12.1995 on transfer from Nanded where he had worked for the period from 28.8.1995 to 23.12.1995 and he has not completed four years of tenure at Nagpur which is in the category of 'A' ^{stations.} / Moreover, the transfer policy also envisages that persons over the age of 45 years shall not be ordinarily ~~proceeded~~ ^{proceed} at stations of high altitude (2250 meters and above). The transfer to Mizoram which is said to be a hill station and ^a difficult station is therefore against the transfer policy. It is contended in this connection that there are some officers who have completed more than four years at Nagpur and still they are continued at Nagpur. The choice of station is also required to be considered, the applicant had given ^{Pune,} Sangli, Jalgaon ~~Nanded~~ as his stations of choice, Whereas, he has been transferred to Aizwal.

3. It is next contended that the transfer is not for administrative reasons. Several Programme Executives have been transferred on their own request or before completion of tenure. The transfer order refers to abolition of 115 posts which would necessitate reversion of ad hoc employees, but no one has been reverted. Similarly, in the affidavit it has been stated that 10% cut in expenditure of the Programme Executive is being implemented, but here again there is no evidence of the cut

because no one has been reverted. R-4 has been transferred from Chandrapur to Nagpur on having completed more than two years of service at Chandrapur which is 'C' station, but the same protection has not been given to the applicant.

4. Thirdly, it is contended that the Government of India Guidelines regarding keeping husband and wife together have also been violated because the applicant's wife is an employee of Bank of India, posted in Nagpur.

5. The most importantly, however, it is contended that the transfer is mala fide. It is stated that a grudge is borne against the applicant by Shri Gaikwad, DDG, All India Radio, as well as by Station Director (R-3) and that these have engineered the transfer. So far as Shri Gaikwad is concerned, it appears that the applicant stood as a guarantor for a loan of Rs.5000/- obtained by Shri Gaikwad and in this connection correspondence dt. 24.8.1987 and 6.7.1987 from the Bank of India to

(pp 51 & 52)
Shri Gaikwad has been produced as evidence. It is further contended that Shri Gaikwad believed that the applicant

through his contacts in the press had engineered complaints against him while he was working as Station Director at All India Radio, Mumbai.

press cuttings are enclosed with additional affidavit dt.30.6.97. For the purpose, press / So far as the R-3 is concerned,

it is contended that she has been sending adverse reports against the applicant to the Head Office, as

a result of which the applicant has received warning Memos from the Head Office. In this connection reference is made to Memorandum No.13(17)/90-SI(B) dt. 4.6.1996 (at page 41) and also subsequent memo dt. 1.11.1996 (at page 48). The memo dt. 20.5.1996 at page 49 of the O.A. is regarding nomenclature. Further the Station Director although she had no such authority issued a Memorandum dt. 12.3.1997 at page 50 to the O.A. in which she charged the applicant with insubordination towards his superiors. In this connection the applicant has also enclosed with the Rejoinder dt. 30.6.1997 internal correspondence (pp 16 & 18) which is stated to show that there was a conspiracy and a concerted move as a result of which the applicant was transferred out of Nagpur. There was also a complaint dt. 19.6.1993 by Mr. Wasnik, MLC, (p 54) inter alia against the applicant and although the same was withdrawn on 30.10.1993 (p. 61), this also is stated to be engineered by Shri Gaikwad, DDG and R-3 Station Director. The applicant has filed a voluminous correspondence making out that Shri Ghode, former Station Engineer Shri Mehrotra and Shri B.B. Nakhle (applicant in O.A. No.446/97) were together targetted by a Group of Officers including not only Shri Gaikwad and Kum.K.T. Meshram, Station Director but also Shri Shende former Station Director. In relation to the last mentioned officer, the applicant was suspected to have engineered publication of a news item regarding the attempt by Shri Shende to get a change of date of birth approved in his favour which effort did not succeed.

6. The respondents have opposed the O.A. The first written statement filed by the respondents on 3.7.1997 was by Station Director, A.I.R., Mumbai and was devoid of material particulars relating to averments made in the O.A. However, in additional written statement filed by the Respondents material particulars have been given. So far as the transfer policy is concerned it is the contention of the respondents that the applicant has managed to stay at Nagpur which is a 'A' station more or less from 27.4.1981 except for about 11 months in ^{Ratnagiri} / in 1991-92 and 4 months ~~at Nanded~~ at Nanded in 1995. It is contended by the respondents that the applicant brought pressure to bear on three occasions either to cut-short the tenure or to dematerialise the transfer. Thus a transfer to Chandrapur ^{not materialise (As per appli-} in January, 1994 did / ^{this was due to then Station Director's intervention p.30} cant's document / [✓] The applicant brought political pressure to bear for transfer from Ratnagiri to Nagpur and the applicant is reported to have brought unbearable political pressure ~~for~~ for transfer from Nanded to Nagpur. In the additional written statement it is contended by the respondents that although technically the applicant has not stayed at Nagpur for more than 4 years' period, if the period is counted from 26.12.1995, all the same, the respondents have kept in view the C.V.C. instructions dt. 20.5.1966 which has suggested transfer of the Government Officers who have developed vested interests

7. Regarding the contention of the applicant that the transfer is not for administrative reasons the respondents have stated that the abolition of 115 posts is on All India basis so also the cut of 10% is also

So far as the question of on all India basis./ the officials who have stayed for more than four years at Nagpur is concerned, the respondents have given the reasons as to why individual officers were retained.

8. So far as the allegations of mala fides are concerned the same have been denied by the Respondents. It is further pointed out that Shri Shende is no more in service and Shri Gaikwad has not been made a party respondent by the applicant although it was open for him to do so. So far as the memos served on the applicant are concerned, the same have been issued on the basis of material on record.

9. So far as the transfer guidelines are concerned, these have no statutory force. The mere violation of these guidelines therefore would not be a ground for interfering with the order of transfer. Moreover, the transfer guidelines are also required to be considered in the context of C.V.C's. instructions referred to by the respondents. From this point^{of}/view it would appear that the contention of the respondents that the applicant had managed to stay almost uninterruptedly from 1981 at Nagpur and therefore he had developed vested interest would appear to be borne out. In this connection the particulars furnished by the respondents are listed below in respect of both the applicants :

"Shri R.S.Ghode, Programme Executive"

<u>Sl. No.</u>	<u>Posting place.</u>	<u>Transfer Place</u>	<u>Date from</u>	<u>To</u>	<u>Remarks in r/o tenure at AIR Nagpur.</u>
1.	AIR, Jalgaon	-	26.9.80	25.4.81	Shri R.S.Ghode initially appointed at Farm Radio Reporter at AIR, Jalgaon.

2. AIR, Nagpur - 27.4.81 18.2.91 Promoted as Farm Radio Officer and posted at AIR, Ratnagiri.
3. AIR, Ratnagiri - 27.2.91 24.1.92 Transferred same capacity at AIR, Nagpur on his own request.
4. AIR, Nagpur - 27.1.92 (FN) Joined at AIR, Nagpur.
5. - - - - The applicant was transferred to AIR, Chandrapur in Jan.1994 but the same did not materialised.
6. AIR, Nanded - 28.8.95 23.12.95 The applicant transferred to AIR, Nanded but he again came back & joined at AIR, Nagpur on 26.12.1995(FN).
7. AIR, Nagpur - 26.12.95 Continued up to 14.5.1997 at AIR, Nagpur.

As could be seen from above, the applicant has gone on transfer once to AIR, Nanded that too for a limited duration of four months only. His transfer to AIR, Ratnagiri was on promotion as Farm Radio Officer & accepted by the applicant. Hence most of his tenure from 27.4.1981 to 14.5.1997 is at AIR, Nagpur.

Shri B.B.Nakhale, Programme Executive :

Sl. No.	Designation of the post	Tenure at All India Radio, Nagpur.		Remarks.
		From	To	
1.	Stenographer	29.6.66	26.11.75	Initial appointment at AIR, Nagpur.
2.	Sub-Editor	27.11.75	29.10.81	at AIR, Nagpur
3.	Assistant Editor(Script)	30.10.81	30.04.93	Promoted as AE(S) at AIR, Nagpur.
4.	Assistant Editor(Script)	30.4.93(AN) (Relieved for AIR, Ratnagiri)	-	Transferred in the same capacity to AIR, Ratnagiri but continuously on leave 23.11.93. He joined on 24.11.93 (Fore noon) at AIR, Ratnagiri.

5. ~~Shri~~ B.B.Nakhale, AE(S) promoted as PEX and posted to AIR, Barmer but the promotion/posting did not materialised.

6. Programme Executive 18.3.94 Continued
up to 14.5.97-

N.B. - In between the applicant transferred from AIR, Nagpur to AIR, Jalgaon, vide Directorate order dt. 20.12.1995, the transfer did not materialised except for very short stay of approximately four months i.e. 24.11.1993 to 15.3.1994 at AIR, Ratnagiri only. The applicant's stay at AIR, Nagpur w.e.f. 29.6.1966 to 14.5.1997. "

It would appear that there is no violation of any ~~standing~~ transfer guidelines. The mere fact that some Executives who have completed more than four years are retained at Nagpur does not give a right to the applicant to claim retention at Nagpur. So far as the contention[^] regarding transfer not being for administrative reasons is concerned, it is not necessary to deal with the same.

10. So far as the couple concession is concerned, the applicant's wife is not working in the same organisation, but is working in a Nationalised Bank. The applicant's service carries with it liability to serve all over India and the Supreme Court Judgment in S.A. Abbas V/s. Union of India ^{(JT 1993(3) SC 678)} / has laid down that guidelines relating to couple concessions do not give any right to government employee to remain at a particular place.

11. So far as the allegations relating to ~~transfer~~ being mala fides are concerned, the voluminous correspondence produced by the applicant does make a sorry reading. At the same time the impression

gained is that some proxy fights were being fought in which the applicant was not entirely blameless. Since the applicant has not made Shri Gaikwad as a party respondent, any allegations relating to Shri Gaikwad and especially the allegation relating to malice being borne by him on account of an episode more than 10 years old without clarifying how the matter has been concluded cannot be attached much weight. The correspondence addressed by strangers to Shri Gaikwad or to some other Senior Officers (Shri Shashi Kapoor) (p. 16 & 18 of additional affidavit) making out that they bear grudge against the applicant cannot be given credence in the absence of production of response if any of these officers to the letters relied upon. In relation to R-3, it has to be kept in view that she is Head of the Department and she therefore sent a report to Shri Gaikwad on 2.9.1993 (p. 86 of additional affidavit) in that capacity. I am therefore, not inclined to hold that the allegations of mala fides against R-3 have been made out. So far as Shri Shende is concerned, he is no longer in service. No allegations of mala fide against R-1 & R-2 have been made. I am therefore, of the view that allegations of mala fide have not been made out.

12.

Lastly, it is contended that the applicant is undergoing medical treatment since 1984 when he met with an accident and hospitalised and the Doctor advised him to remain in dry weather station like Nagpur and therefore it is contended that the posting to Mizoram which is a Hill Station and Bad Climate station is not proper.

First it may be noted that this contention stands on a different footing than the other contentions. The applicant is not challenging the vires or bonafides of the transfer, but is only requesting for a change of posting. On this point, I notice that at page 38 is the certificate by the Civil Surgeon, Nagpur dt. 18.12.1989 which states["] that the applicant's is the case of Post Head Injury Syndrome, frontal sinous and headache. He is having Allergy for Sultry weather at sea-shore. His medical care is important at Nagpur.["] It is noticed that the certificate contra indicates posting at a coastal station with sultry weather. It is not clear that Mizoram is such a station. The possibility cannot^{still} be ruled out that the applicant's posting to Mizoram is medically contraindicated. This aspect of the matter, can however, be dealt with by appropriate directions.

13. In my view, therefore, the transfer orders of the applicant are not liable to be interfered with on the ground that they are mala fides or they violate any statutory guidelines or that they are punitive or discriminatory.

14. However, so far as the medical grounds^{dis} concerned, it is open to the applicant to make a representation to the respondents and the respondents may consider the same and amend the transfer order from Aizawl to any other suitable station if that is administratively feasible.

15. Subject to this liberty, however, the O.A. is dismissed with no orders as to costs.

O.A. No.446/97 :

16. As observed earlier, the grounds for challenge in this O.A. are more or less identical with ~~the~~ difference that the applicant's wife is employed at Dhanvate National College, Nagpur and so far as the medical grounds are concerned, the applicant is stated to be a chronic patient of Asthma, there is a certificate to this effect at page 52 of the O.A. This O.A. also stands dismissed with a liberty to the applicant to represent regarding his medical condition and seek a change of posting from Dibrugarh (Assam) to any other place. No orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

B.