

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 489/97

Date of Decision: 18/9/97

John Francis Lall

Applicant.

Shri Y.R.Singh

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Subodh Joshi.

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? X
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal?

M.R. Kolhatkar

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 489/1997.

-----, this the 18 day of Sept 1997.

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

John Francis Lall,
Block No.5/4,
South Eastern Railway,
Vanjari Nagar, Ajni,
Nagpur - 400 003.

... Applicant.

(By Advocate Shri Y.R.Singh)

V/s.

1. Union of India through
The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043.
2. Divisional Railway Manager,
South Eastern Railway,
Nagpur.
3. The Senior Divisional
Mechanical Engineer,
South Eastern Railway,
Nagpur.
4. The Senior Divisional
Personnel Officer,
South Eastern Railway,
Nagpur.

... Respondents.

(By Advocate Shri Subodh Joshi)

ORDER

{Per Shri M.R.Kolhatkar, Member(A)}

In this O.A. the applicant has challenged the order dt. 13.5.1997 (at page 12) transferring him in the existing capacity and scale from Nagpur to Gondia for a period of six months temporarily along with the post on administrative interest. It is the contention

...2.

of the applicant that the very fact that the applicant has been transferred along with the post shows that the respondents have issued the impugned order in colourable exercise of their powers. The applicant had made a representation (vide page 19), but there has been no reply from the respondents. According to the applicant the real reason for transfer of the applicant is that the respondents are prejudiced against him. The respondents have been unhappy since he successfully won a case in CAT vide Tr. Application No.144/87 decided on 13.9.1991, relating to seniority (vide page 14 of the O.A.).

Secondly, the applicant has stated that he was an

Assistant Secretary of the South Eastern Railwaymen's which was later superseded by General Secretary of Union Union against which applicant along with other office

bearers has filed a Civil Suit No.2629/90 in the Court of XI th Joint Civil Judge, Junior Division, Nagpur. The Union since then ^{has} taken a vindictive attitude towards the applicant and the respondents at the instigation of the Union have transferred the applicant. At pages 4 and 5 of the O.A, the applicant has given particulars of litigation (in all 5 cases, in 2 of which the applicant is a plaintiff and in all remaining cases the applicant is a witness). Two cases date back to 1991 and one case dates back to 1993 and these cases are ripe for evidence and applicant is an important witness. The cases relate ^{the} to allegation of the applicant regarding

...3.

illegal collection of huge amounts from Railway Workers for construction of three - storey Central Union Building, at Garden Reach, Calcutta. Many employees pursuing the case have retired and the applicant is the ^{still} only one / employed and hence the respondents wanted to remove the applicant from the scene. It is alleged that the General Manager, South Eastern Railway had appeared as Chief Guest ~~at the foundation~~ laying ceremony of the said building.

2. The applicant has also contended that the transfer is personally detrimental to him because the applicant is required to look after his old and aged mother who is paralytic and the applicant is the only person upon whom she depends and that the place where the applicant has been transferred lacks the medical facilities she requires. The applicant had taken this contention in his representation (at page 19) which remained unreplied.

3. The respondents have opposed the O.A. The counsel for the respondents has stated that the transfer is in administrative interest. It is stated that Gondia is an important junction station for repair of diesel locomotive and the applicant is an experienced Turner in diesel operation and therefore he has been transferred. The transfer is only for six months. The respondents have denied that there has been any pressure from the Union for the transfer of the applicant. The matters of litigation pertain to Union Affairs with which the respondents have nothing to do nor can respondents

interfere in the litigation. The respondents have pointed out that the applicant was not asked to vacate the quarters because the transfer is only temporary. However, the applicant is guilty of breach of discipline because he refused to accept relief memo and pass for journey and he has sent a private medical certificate for his sickness, although he stays in the staff quarters and he should have no difficulty in obtaining medical certificate from Railway Doctor for any genuine illness.

4. The applicant has relied on the case of Kamlesh Trivedi V/s. Indian Council of Agricultural Research and Another ¶Full Bench Judgments of CAT (1986-1989) Vol.I page 18 of Bahri Brothers¶. In that Judgment the Tribunal confirmed and clarified the ratio laid down by its earlier Judgment in K.K.Jindal V/s. General Manager, Northern Railway ¶ATR 1986(1) CAT 304¶. The Tribunal had observed that an employee though liable for transfer may, therefore, successfully challenge the order of transfer, if the operative reason for ordering transfer is to punish or is an extraneous or impermissible consideration or is mala fide or is arbitrary(para 7). In para 14 the Tribunal has observed that Transfer is always to be ordered in the exigencies of administration and in public interest. Individual hardship and public interest have to be balanced. While petitioner may have a genuine grievance, public interest may require a transfer. Public interest must always have precedence. It should not be

...5.

ordered by way of punishment which means that it should not be the result of colourable or malafide exercise of power. It should not be ordered arbitrarily.

5. On the other hand, the respondents have relied on the Supreme Court Judgment in Union of India V/s. S.L. Abbas (AIR 1993 SC 2444) where it is observed that who should be transferred and to where is the matter of the appropriate authority to decide. Unless order of transfer is vitiated by mala fides or is made in violation of any statutory provisions. The Court cannot interfere with it.

6. In the present case, it has to be noted that the applicant has been transferred along with the post only for six months. The Transfer is stated to be in administrative interest and that administrative interest is stated to be the need for ^{an} experienced at Gondia. Turner/ However, the averments of the applicant relating to various matters of litigation which are pending and as where the presence of the applicant is required in Court/ for evidence the cases have become ripe/have gone unrefuted. It may be that the litigation is an intra-union matter, but the circumstances of the transfer appear to show that the order of transfer has been made under extraneous pressure. It is too much to believe that if Gondia is such an important junction ~~and~~ there still is not a sanctioned post of a Turner against which an employee can be transferred and why there should be a need for transferring

an employee along with his post at the present juncture to Gondia. The contention of the applicant relating to illness of his mother who is a paralytic patient has also not been given due consideration. I am therefore, of the view that the transfer order is vitiated as being mala fide viz. extraneous consideration in terms of Kamlesh Trivedi's case quoted above.

7. The O.A. therefore is allowed. The impugned order is quashed and set aside. There will be no orders as to costs.

M R Kolhatkar

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

B.