

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 524/97

Date of Decision:

2-12-97
~~2/12/98~~

M.T.Dahake

Applicant.

Shri S.S.Sohani

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M.G.Bhangde

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. P.P.Srivastava, Member(A).


Hon'ble Shri.

(1) To be referred to the Reporter or not?

No

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

NO


(P.P.SRIVASTAVA)
MEMBER (A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI,
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 524/1997.

Presented this the 12th day of Dec. 1997.

Coram: Hon'ble Shri P.P.Srivastava, Member(A).

M.T.Dahake,
Quarter No.1/15/1,
Type IV, Ordnance Factory
Estate,
Ambazari.

... Applicant.

(By Advocate Shri S.S.Sohani)

V/s.

1. The Union of India
through the Secretary,
Department of Defence Production,
Ministry of Defence,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Ordnance Factory,
Government of India,
Ministry of Defence,
Ambazari.

... Respondents.

(By Advocate Shri M.G.Bhangde)

O R D E R

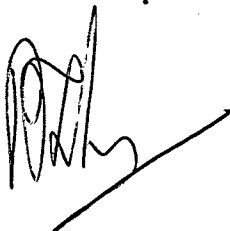
(Per Shri P.P.Srivastava, Member(A))

The applicant joined service as Assistant Foreman in the year 1977, later on the applicant was promoted as Foreman in 1984 and as Assistant Works Manager in 1990 in Ordnance Factory at Ambazari. Since 1990 the applicant has been working at Ambazari. The applicant was promoted as Works Manager in December, 1995 and has been working in the Development and Value Engineering Section of the Ordnance Factory Ambazari. The applicant was transferred initially to

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Medak in Andhra Pradesh vide order dt. 18.6.1996, however, on a representation made by the applicant, the applicant's request has been partly considered and he was retained in the post up to March, 1997. The applicant was later transferred to Jabalpur instead of Medak in Andhra Pradesh vide the Administration Letter dt. 29.11.1996. Aggrieved by this letter, the applicant had challenged the transfer order in O.A. No.224/97 and the Tribunal after considering the submissions of the applicant directed the applicant to make a fresh representation with a direction that the representation should be considered by the respondents and to pass an order within a period of one month and the applicant's transfer order was pended till the disposal of the representation. The respondents thereafter considered the representation of the applicant and passed an order dt. 12.6.1997 rejecting the representation of the applicant (this letter of the administration is placed at Annexure-I). Aggrieved by this disposal of appeal, the applicant has approached the Tribunal through this O.A. and has challenged the order dt. 12.6.1997 on many grounds. The O.A. came up for hearing and the Tribunal disposed of the O.A. by its order dt. 19.6.1997. The Tribunal noted that the applicant has been relieved from duties on 14.6.1997 which has been acknowledged by the applicant. The Tribunal then passed the order as under:

"In the circumstances, I do not find any merit in staying the transfer order issued by the respondents which is in public interest. The ~~the~~ O.A. is disposed of at the admission stage itself. Copy of the order be given to the parties."



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2. The applicant challenged this order of the Tribunal in the Nagpur Bench of the Bombay High Court in Writ Petition No.1724/97. The Hon'ble High Court heard the Writ and passed the order dt. 10.7.1997. The operative portion of the order of the High Court in para 5 reads as under :

"The only question considered by us is whether the petitioner has made out a prima facie case to stay the transfer order and we are satisfied that the petitioner has been relieved on 14.6.1997 from Ambazari Factory. He has stayed at Ambazari Factory for more than six years and he is governed by the conditions of service, which include transfer anywhere in India. We, therefore, reject the prayer for interim relief and we do not find fault with the impugned order passed by the Tribunal so as to stay the transfer order. However, for the reasons stated hereinabove, we restore Original Application No.524/97 and request the Tribunal to dispose it of on merits as expeditiously as possible. The petition thus stands disposed of with no order as to costs."

In view of the order of the Hon'ble High Court, the present petition has been heard.

3. The counsel for the applicant has challenged the transfer order on many grounds which has been enumerated in para 5 of the O.A.

4. Firstly, the counsel for the applicant has argued that the order passed by the respondents dt. 12.6.1997 is against the direction of the Hon'ble Tribunal issued in O.A. No.224/97. The counsel for the applicant has argued that the Hon'ble Tribunal had directed in that order that the applicant may file a representation highlighting his difficulties relating to construction of the house at Nagpur which is under way and the fact of availability of seven vacancies in Nagpur including vacancies at Regional

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Training Institute, Ambazari and Ordnance Factory Staff College, Ambazari. The applicant's counsel has further argued that ^{the} the representation of the applicant which was submitted as a result of direction by the Tribunal vide order in O.A.224/97, he had brought out all the factors, but the respondents have not applied their mind on various factors listed out therein while replying to the applicant vide their order dt. 12.6.1997. The counsel for the respondents on this issue has argued that the Respondent Administration has considered the issues raised therein and at para (a) in their reply dt. 12.6.1997 they have clearly taken into account the issue concerning the building of the house as brought out by the applicant and that is why he has been transferred from Medak to Jabalpur. Regarding his posting in the vacant post at Nagpur, the counsel for the respondents has argued that the administration has transferred the applicant to Jabalpur in the public interest as per the functional requirement and the availability of the vacancy at Nagpur cannot be a ground for retaining the applicant at Nagpur. As he is an Officer of All India Service in Group 'A' and has transfer liability all over India.

5. The counsel for the applicant has also argued that the transfer of the applicant is against the provision of Articles 14 and 16 as many Officers in Ordnance Factory, Ambazari with more number of years service than the applicant are continuing, while the applicant has been singled out for transfer. The counsel for the applicant has argued that the General Manager of the Factory Shri S.K.Mohanty is prejudiced

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against the officer and has transferred him in colourable exercise of power in order to accommodate persons of his choice. The counsel for the respondents has argued that the mala fides against Shri S.K.Mohanty cannot be considered as the applicant has failed to make Shri S.K.Mohanty as a party to this application and Shri S.K.Mohanty has not had any opportunity to rebut the allegations against. The counsel for the respondents has further argued that it is well established principle after many Judgment of the Apex Court that in the matter of prejudice the person against whom the mala fide intentions and prejudice has been alleged should be made a party by name and he should have an opportunity to submit his side of the case.

6. The counsel for the respondents has also argued that in terms of the Hon'ble Supreme Court Judgment in the case of Union of India V/s. S.L.Abbas the order of transfer is an incident of Government service and who should be transferred where is a matter for the appropriate authority to decide. The counsel for the respondents has further argued that unless the transfer is vitiated by mala fides or is made in violation of statutory provisions, the Tribunal and Courts cannot interfere with the transfer. The counsel for the respondents has further argued that there is no mala fides on the part of Shri S.K.Mohanty against whom the applicant has charged mala fide. The respondents counsel has also argued that Shri S.K.Mohanty is not the authority to transfer the applicant, the applicant's transfer has been ordered by the Ordnance Factory Board at Calcutta. The counsel for the respondents further argued that the issues raised by



the applicant concerning the difficulty in building his house which is under construction or concerning the education of the Children ~~and the~~ ^{are the} issues which may be considered while issuing the transfer order, but it does not give any legal rights to the applicant for challenging the transfer order and therefore in terms of the Hon'ble Supreme Court Judgment the applicant cannot challenge the transfer order as he has not been able to show any mala fides or any law which has been violated by the respondents in issuing the transfer order.

7. After considering the arguments of both the parties, I am of the view, that the applicant being a Group 'A' Officer, being a member of the Indian Ordnance Factory Service Group 'A' has an all India liability of transfer and is liable to be transferred anywhere in the interest of the administration. The applicant has ^{not} been able to prove any mala fides, all that he has charged is that Shri S.K.Mohanty had mala fide intention. But in view of the fact that he has not made Shri S.K.Mohanty as a party to the O.A. and Shri S.K.Mohanty has had no occasion to rebut the allegation, I am unable to accept the plea of the applicant concerning mala fide intentions on the part of the General Manager. Even ^{the} mala fide of the General Manager is not a determining factor in this case as the order of transfer has been issued by Ordnance Factory Board, Calcutta and the applicant has not made any allegation against the Ordnance Factory Board or its Chairman saying that they are biased against him. Therefore, the ground of mala fide intentions is not

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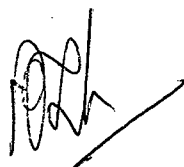


established in this case. The issues concerning the difficulties of the applicant in house building, education of his children etc. are such that these do not give any legal right to the applicant to challenge the transfer order. Therefore, following the law laid down by the Apex Court in S.L.Abbas's case, I am of the view, that the applicant has no legal ground to challenge his transfer order. As far as the Respondent administration's letter dt. 12.6.1997 is concerned, I am of the view that the issue raised by the applicant has been considered by the Chairman, Ordnance Factory Board and the order passed by the Chairman, Ordnance Factory Board dt. 12.6.1997 cannot be considered arbitrary or an order passed without application of mind. I therefore, do not see any reason to interfere with the order dt. 12.6.1997 passed by the respondents rejecting the representation of the applicant.

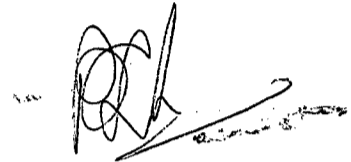
8. In the result, I see no reason to interfere with the transfer order which is passed by the Respondent Administration. The O.A. is dismissed with no order as to costs.

9. At the end of the pleadings the counsel for the applicant requested that the case of the applicant should be considered for retaining at Nagpur for a period of three years after which he could be transferred anywhere, as this will enable him to complete the childrens education who are studying in 11th and 12th class, as well as, he would be able to

...8.



complete the construction of his house. Since I have already dismissed the O.A. I am not able to give any direction to the respondents in this regard. However, the applicant would be at liberty to submit a representation to the administration concerning his difficulties. It is made clear that these observations of mine do not give any legal right to the applicant.



(P.P.SRIVASTAVA)
MEMBER (A)

B.