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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 676/97

Date of Decision: 29.9.32

Shri Satish Kumar Pasricha **Applicant**

Shri Y.R. Singh. Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri R.C.Kotiankar 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? *b*

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

(B.S. Hegde)
Member (J)

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

Original Application No. 676/97

29th the Monday day of September 1997.

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

Satish Kumar Pasricha
Divisional Engineer
R/o Gopekar Society
Flat No.17, Second floor,
Thane (East), Mumbai.

... Applicant.

By Advocate Shri Y.R. Singh.

V/s.

The Union of India
Ministry of Telecommunication
New Delhi.

The Chairman.
Telecom Commission
Department of Telecommunication
Sanchar Bhavan,
New Delhi.

The Chief General Manager
Maharashtra Circle
G.P.O. Mumbai.

The Chief General Manager,
MTNL, Prabhadevi, Dadar
Mumbai.

The Deputy Director General
(Personnel) Sanchar Bhavan,
New Delhi.

The Deputy General Manager,
(CCS -II) MTNL, Mumbai
O/O DGM(CCS II) 5th floor
Charai Tele. Exchange Bldg.,
Mavli, Mandal Road, Thane,
(West).

... Respondents.

By Advocate Shri R.C.Kotiankar.

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O R D E R

¶ Per Shri B.S. Hegde, Member (J) ¶

In this O.A. the applicant is challenging the transfer order issued by the respondents dated 28.2.97, transferring the applicant from MTNL Bombay to Calicut in public interest. The applicant has approached this Tribunal on 31.7.97 challenging the order passed by the respondents dated 23.7.97 which reads as below:

" Pursuant to the instructions contained in the above mentioned orders Shri S.K. Pasricha, DE, St.No. 3858 attached to DGM(CCS -II) is hereby relieved on 1.8.97 A/N (after expiry of his medical leave on 31.7.97) with instructions to report to GM Telecom District, Calicut SSA in Kerala Telecom Circle."

The applicant has obtained ex-parte interim relief for a period of 14 days . For want of reply from the respondents the interim relief was continued till today. The respondents have the reply stating that the applicant was transferred as back as 28.2.97 and the applicant was relieved of his duties on 21.4.97. His name has been struck off in the strength of MTNL(Bombay) . The post vacated by the applicant consequent on his transfer to Calicut has already been filled up by transfer of one Shri G.C. Sakyawar, Divisional Engineer, who has assumed charge of the said post on 5.5.97.

Despite the above, it is not understood how the respondents have issued the order dated 23.7.97. Accordingly The Tribunal directed the concerned officer to file an affidavit. The concerned officer has filed the affidavit stating that the respondents have filed the reply on 1.9.97. Wherein it is stated that Shri Pasricha was transferred to Calicut in public interest and on administrative ground by order dated 28.2.97 and in pursuance of the said order of transfer he was relieved of his duties in MTNL(Bombay) on 21.4.97, his name has also been struck off in the strength of MTNL(Bombay) and the post vacated by Shri Pasricha had already been filled up by transfer of Shri G.C.Sakyawar, Divisional Engineer, who has assumed charge of the said post on 5.5.97. The relieving order of Shri Pasricha on trasfer was received in GM, MTNL(P.S.) office on 22.4.97 and the same was served on him on 23.4.97. Despite the relieving order the applicant did not carry out the transfer order but remained absent and after a period of about three months he submitted an application to the undersigned stating that he had fallen sick due to severe blook pressure and later on with survical spondylosis trouble , he could not attend office. and further he would join on 1.8.97 and he be relieved on 10.8.97. Considering the request and taking a compassionate view respondent No.6 passed orders on 23.7.97 stating that the applicant be relieved

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on 1.8.97 with instructions to report to GM, Telecom District, Calicut . Respondent No.6 further states that the impugned order passed by him was without realising that he had no authority to modify or alter the transfer order issued by the competent authority.

After hearing both the parties, I find that the applicant did not carry out the transfer and remain absent from 21.4.97 to 31.7.97. It is clear from the transfer order issued by the competent authority does not supersede by virtue of the consequent order issued by in-competent authority i.e. respondent No.6. It is an admitted fact that the applicant is liable to be transferred to anywhere in India, the applicant has given undertaking at the time of appointment so he cannot go away with the undertaking at a later point of time. The transfer order is on public interest and administrative ground.

It is a settled law that the Apex Court reiterated in more than one cases that

" Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification

or cancellation of the transfer order. If the order of transfer is not stayed modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to the other."

In the light of the above, and on perusal of the affidavit filed by respondent No.6, I am satisfied that the transfer order issued by the competent authority was in public interest and on administrative exigencies and in fact the applicant has been relieved from the post on 21.4.97 and not on 1.8.97 as alleged. In the result I do not find any merit in the O.A. Accordingly the O.A. is dismissed.

Interim relief passed earlier stands vacated. No order as to costs.


(B.S. Hegde)
Member (J)

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