

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 892/97

Date of Decision: 27.11.97.

Smt. Nidhi Dubey Applicant.

Shri R.D. Deharia. Advocate for 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? X
- (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
PRESCOT ROAD, MUMBAI:1

Original Application No. 292/97

27th the ~~Thursday~~ day of November 1997.

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

Smt. Nidhi Dubey
W/o Shri Upendra Kumar Dubey
R/o 86, Baikuntha Nagar,
in front of S.N. College
Khandwa, Khandwa (MP)

... Applicant.

By Advocate Shri R.D. Deharia.

V/s.

Union of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

The Divisional Rly. Manager,
Divisional Office,
Central Railway, Bhusawal(M.S.)

Shri T.L. Meena,
Station Manager,
Central Railway,
Khandwa (M.P.)

... Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

¶ Per Shri B.S. Hegde, Member (J) ¶

Heard Counsel for the parties. I have
carefully gone through the pleadings and the
rejoinder filed by the applicant and other relevant
documents.

2. In this O.A. the applicant has challenged
the orders passed by the respondents dated 16.6.97
and 19.9.97 respectively transferring the applicant
from Khandwa to Bhusawal. on the basis of the
submission made by the learned counsel for the

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applicant, the Tribunal vide order dated 3.10.97 considered the interim prayer made by the applicant on the ground that the second transfer order was issued without cancelling the earlier transfer order. The interim relief was allowed to continue till today. It is submitted that the applicant was appointed as Junior Clerk in the grade of Rs 950 - 1500 (RPS) and posted under the station Superintendent's office Central Railway, Khandwa in May 1987. The applicant also states that her husband is working in Madhya Pradesh State Government and posted at Khandwa. The main thrust of the argument is since her husband is working in Khandwa and she cannot be transferred to Bhusawal. It is further stated that she was promoted as Senior Clerk grade 1200 - 2040 and transferred to the office of Electrical Foreman Bhusawal. However due to domestic circumstances, and family problems she declined to accept the promotion. Thereafter, after a lapse of one year the competent authority considered the case for promotion and posted at Khandwa station as her husband is a servant of State Government of Madhya Pradesh, as per the extent rules, since her husband and herself are government servants, it is contended that they should be posted at one station. It is contended by the applicant that on 31.7.97, she went in the chamber of Shri T.L.Meena, Station Manager, Khandwa for obtaining his signature in the letter, Shri Meena behaved in an indecent manner, which she has reported to the Railway Police, Khandwa and filed an FIR. It is noticed that on the same day

Shri Meena has lodged a counter complaint to the Station Officer, G.R.P. Khandwa stating that the applicant had abused him like any thing for example SALA, KUTTE and were tried to dominate him by his ~~cast~~ being a ST candidate. Therefor Shri Meena requested the higher authority to take up the matter.

3. On the other hand counsel for the respondents states that the applicant was transferred to Chief Yard Master Bhusawal. Initially the applicant had been transferred from the office of Station Master Khandwa to Khandwa Loc^{yard} in the same grade, which the applicant has challenged and obtained ex-parte interim relief. The Senior Divisional Electrical Engineer, Bhusawal informed the Additional Divisional Railway Manager that, since there are serious complaints against the applicant, therefore, it will not be in ^{the} interest of the office of the Loco Foreman, Khandwa to accept the applicant in her new posting. Accordingly the Additional Divisional Railway Manager, Bhusawal directed the Administration to look into the matter. Considering the request of the Additional Divisional Railway Manager, Bhusawal the Personnel Branch issued office order No. 102/97 dated 4.7.97, whereby her earlier posting was cancelled and she was retained in the office of Station Superintendent, Khandwa, where she was working earlier prior to the issuance of the office order dated 16.6.97. It is further stated that the said order was not brought to the notice of the Tribunal while issuing the ex-parte interim relief. As a matter of fact the


Senior Divisional Personnel Officer and other concerned officer with regard to the complaint made by the applicant of alleged mis-behaviour of respondent No.3, the Divisional Railway Manager, Bhusawal ordered an enquiry on the allegation made by the applicant on the respondent No. 3 and directed to report within a period of one week. Accordingly Shri S.N. Rane, Assistant Operating Manager, Bhusawal conducted the detailed enquiry and submitted his detailed report consisting of his findings. The Enquiry Officer clearly held that the respondent No.3 is not guilty and complaint of the applicant as false, and held the applicant guilty. On the basis of the enquiry report the competent authority initiated disciplinary proceedings against the applicant. The competent authority further ordered to transfer the applicant to maintain discipline and decorum in the office of Station Superintendent, Khandwa. Accordingly, the applicant was transferred in the office of Chief Yard Mastwr, Bhusawal vide order dated 19.9.97, which was given effect to by relieving the applicant on 23.9.97. Annexure A 7 clearly states that ^{the} relieved _{as} as per office order dated 19.9.97 and you are requested to take relieving letter in the presence of two witnesses. The applicant declined to accept the two letters. The applicant was proceeded on medical leave from 25.9.97 to 5.10.97. The respondents have passed the transfer order in accordance with the Rules and the guide lines of the department.

4. In the rejoinder the contention of the applicant is that since she is belonging to ministerial staff and does not come into contact with public and she is not holding sensitive posts, her transfer is not justifiable and not on public interest. Secondly since her husband is working in State Government of Madhya Pradesh and posted at Khandwa. As per extant orders on the subject husband and wife are required to be posted at the same station. Thereby the applicant's transfer to Bhusawal is vitiated and leads to malafide intention. Further it is contended that the finding of the Enquiry officer is kept in dark and the report has not been given to the applicant, whereas in the written statement filed by respondent No. 3 it is stated that the applicant is found guilty.

5. Heard the rival contention of the parties, I am of the view, that the contention of the respondents is more acceptable. Sufficient opportunity was given to the applicant to substantiate her case. In the absence of full facts and particulars in the O.A. the order of transfer cannot be found to be malafide. It is noticed that the first and foremost plea of the applicant, that since her husband is working in Khandwa she should not have been transferred from Khandwa to Bhusawal. The Apex Court in catena of case held that the Court/Tribunal should not interfere with a transfer order which is made in public interest and for administrative reasons, unless the transfer orders are made in violative of any mandatory statutory rules

or on the ground of malafides etc. Regarding posting of husband and wife at the same station, the Railway Board has issued instructions. The Board also desire that while transferring an employee from one station to another the fact that the employees spouse is posted at a particular station may also be kept in view. Similarly requests for transfer to a station where an employee's spouse is working may be considered sympathetically, as far as possible having regard to the administrative convenience and the merits of each case.

6. In the light of the above I am of the opinion that on both the grounds, the applicant has not made out any firm and valid ground for our interference. This Tribunal cannot interfere ^{with} the administrative order issued by the respondents, unless it is arbitrary or malafide or against the Statutory Rules. In the result, I do not find any merit in the O.A. Accordingly the O.A. is dismissed but no order as to costs.


(B.S. Hegde)
Member(J)

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