

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.: 1014/97

24.1.2000
Date of Decision :

Dr.(Mrs.) P.K.Abhyankar Applicant.

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V.G.Rege Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library


(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1014/97

Dated this the 24th day of January 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Dr.(Mrs.) Prabhat Keshav Abhyankar,
Senior Chief Medical Officer,
Zonal-in-charge,
C.G.H.S. Dispensary No. 5,
Santacruz (E),
Mumbai - 400 099.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through Secretary,
Ministry of Health &
Family Welfare,
Nirman Bhavan,
New Delhi.
2. Director,
C.G.H.S.,
Nirman Bhavan,
New Delhi.
3. Additional Director,
C.G.H.S.,
United India Building,
2nd Floor,
Sir P.M. Road,
Mumbai.

... Respondents

By Advocate Shri V.G.Rege

..2/-

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

This OA. has been filed challenging the transfer of the applicant from Mumbai to Pune as per the impugned order dated 11.7.1997 and the subsequent orders dated 18.11.1997, 19.11.1997 and 20.11.1997 passed thereof.

The applicant after filing OA., filed a Misc. Application proposing amendment in the OA. particularly with regard to allegations of malafides and making the two officers party by name against whom the malafides are alleged. This amendment application was allowed.

The applicant joined Central Government Health Services (CGHS) as a Junior Medical Officer in 1969. The applicant since then had continued at Mumbai and got all promotions upto Senior Chief medical Officer at Mumbai only. When Respondent No. 3, i.e. Additional Director (CGHS) went on leave, the applicant was also posted vice her from 16.6.1997 as per order dated 13.6.1997 and continued till 18.8.1997. However, as per the order dated 11.7.1997, the applicant was transferred as Additional Director, CGHS Pune. The applicant made a representation against the same on 30.7.1997. This was followed by another representation dated 15.8.1997. However, without giving reply to the representations, a series of orders dated 18.11.1997, 19.11.1997 and 20.11.1997 were issued directing to relieve the applicant immediately on transfer to Pune as per the earlier order dated 11.7.1997. Feeling aggrieved by the same, the present OA. has been filed on 24.11.1997.

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2. The applicant has challenged the transfer order advancing the following grounds :-

- (a) The transfer order is actuated by malafides and is punitive in nature. Transfer is based on instigated and motivated complaints without any reference to the applicant and giving opportunity for explanation against the same.
- (b) Ignoring of Home Ministry's standing orders not to disturb the office bearers of the recognised union.
- (c) Impending date of superannuation of the applicant was less than 2 years.
- (d) In spite of availability of vacancies of Sr.CMOs at Mumbai, the applicant was transferred. Post of Additional Director, Pune has been lying vacant for a long time and Senior CMO was looking after the work and there was no urgent need to fill up.
- (e) Transfer has caused hardship to the family by way of separation of husband and wife and difficulty in looking after the aged mother.

3. The official Respondents No. 1 to 3 have opposed the application through the written statement. The Respondents No. 1 to 3 maintain that the transfer order has been passed by the President of India after considering all the aspects and facts and is not motivated by the complaints as alleged by the applicant in public interest. The challenge of the transfer order

on the allegations of malafides against Respondents No. 4 and 5 is not tenable as no malafides have been alleged against Respondents No. 1 & 2 who are connected with issue of the transfer order. Respondents No. 4 & 5 have no role in the transfer of the applicant and the allegation of malafides is an after thought so as to improve her case. It is further stated that the transfer is not a punitive in nature but is a normal and usual transfer in public interest. It is also submitted that the applicant's posting at Pune is made on the post of Additional Director, CGHS which carries higher responsibilities and supervisory/administrative powers as compared with Senior CMO. It is also averred that the representations of the applicant making a request to continue at Mumbai were considered and the same could not be acceded to. Thereafter only the letter dated 18.11.1997 was issued directing the applicant be relieved immediately on transfer to Pune.

4. Respondent No. 4, Dr.(Mrs.) A.K.Bhasin made party respondent by name has filed separate written statement. The Respondent No. 4 strongly controverts all the allegations made against her as these are baseless and submits that she had no role in the applicant's transfer to Pune as the transfer has been ordered by the superior authorities at Delhi. It is further stated that allegations are made with ulterior motives and intention to strengthen her case challenging the transfer to Pune. She has also denied that complaints against the applicant were made at her behest.



5. The Respondent No. 5, Dr.R.Ramesh Naik has also filed separate affidavit strongly refuting all the allegations made against him. He has also submitted that the allegation against him are an after thought to strengthen her case.

6. The applicant has filed separate rejoinder replies for the written statements of the Respondents No. 1 to 3 and that of Respondents No. 4 and 5. The applicant has controverted the submissions made in these written statements reiterating her grounds taken in the OA. She has maintained her allegations of malafides against Respondents No. 4 & 5.

7. Both the Respondents No. 4 and 5 have reacted to the rejoinder reply to their written statements by filing additional written statements reiterating their earlier averments and denial of their influence and role in the transfer of the applicant to Pune.

8. I have heard the arguments of Shri S.P.Saxena and Shri V.G.Rege, learned counsel for the applicant and Respondents No. 1 to 3 respectively. None represent^{ed} Respondents No. 4 & 5.

9. The applicant at the time of filing the OA. had carried out the transfer order. The OA. has been filed with a prayer to declare the transfer as illegal and to post the applicant back to Mumbai.

10. The law with regard to judicial review in the matter of challenge of transfer order is well settled by the Hon'ble Supreme Court in the catena of judgements. The scope of judicial review is limited to the extent if the transfer order is in violation of statutory rules or is passed with colourable exercise of power with malafide intentions. Two such judgements as under have been cited by the counsel for the respondents :-

(a) Union of India vs. S.L.Abbas, (1993) 4 SCC 357.

(b) N.K.Singh vs. Union of India & Ors.

1994 SCC (L&S) 1304.

In the case of S.L.Abbas, their Lordships have observed as under :-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

In the case of N.K.Singh, the Apex Court has expressed its views as under in para 23 :-

"The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

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Keeping in view the law laid down by the Hon'ble Supreme Court, I will now make judicial scrutiny of the grounds advanced by the applicant in challenging the transfer order to find out whether any interference is warranted.

11. The main thrust of challenge of transfer order is that it is issued with malafide intentions and is punitive in nature as it is based on instigated and motivated complaints. Before we consider this ground, we will deliberate on the other grounds as detailed in para 2 above. The first ground is that the applicant is the office bearer of the recognised Association and therefore in terms of Ministry of Home's standing instructions, she could not be transferred. We note that this contention is vague and is not supported by any details. The standing instructions of Ministry of Home have not been brought on record. It is not known whether the Association took up this matter with the concerned authorities for violation of standing instructions instead of the applicant making representation in her personal capacity. Such a vague contention with^{out} citing the instructions does not merit consideration and vitiate the transfer order.

12. The second ground is that the transfer has been effected when the impending date of superannuation was less than 2 years. Here also the applicant has not cited any rules/guidelines relied upon. During the hearing, the counsel for the applicant drew our attention to the suggestion made by the Fourth Pay Commission in para 26.28 in support of this ground. We find that in this para

only suggestion has made to Government for consideration. The counsel of the applicant could not however say whether the suggestion was accepted by the Government of India and whether any orders/instructions to this effect were issued. In the absence of any such details, we fail to appreciate any substance in this ground of challenge.

13. The third ground is that the family has been put to hardship as husband and wife will have to stay separately. It is also averred that her husband needs her presence in view of medical problems in addition to the responsibility of looking after old mother. Transfer often causes dislocation in the family set up with attendant difficulties. But the same cannot be the basis for challenge of the transfer order. This is the matter for the concerned authority to consider. In this connection, we refer to the judgement of the Apex Court in the case of Rajendra Roy vs. Union of India, 1993 (1) SLR 126 SC. In para 5 their Lordships have expressed as under :-

".....It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

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In view of what is held by the Hon'ble Supreme Court, we are unable to interfere with the transfer order on the score of the personal difficulties.

14. Now we come to the last ground of alleged malafides and which is the main plank for challenging the impugned transfer order. The applicant alleges that the transfer order is tainted by malafides of Respondents No. 4 & 5. It is further stated that the transfer is punitive in nature as it is based on the instigated and motivated complaints against the applicant for which the applicant has not been given any opportunity to explain his position. Taking the first allegations of malafides, both the Respondents No. 4 and 5 have been made as party respondent. The applicant has laid down the foundation for alleged malafides in paras 4.10 to 4.13 and 5.1 to 5.9 through the amendment in OA. The main thrust of the allegations is (a) Respondent No. 4 was in close terms with Respondent No. 5 and Respondent No. 5 on the inducement of the Respondent No. 4 has sent false complaints against the applicant. (b) The Respondent No. 4 had been sending wrong and prejudiced reports against the functioning of the applicant by forwarding the copies of the complaints without even referring the same to the applicant first with the aim of damaging reputation of the applicant. Both the Respondents No. 4 and 5 have filed separate written statements. Respondent No. 5 has strongly refuted the allegations of sending motivated complaints against the applicant and has also stated that these allegations have been made as^{an} after thought to strengthen her case before the

Tribunal. Respondent No. 4, i.e. Additional Director who is the main target of allegations has also vehemently contested the allegations. She has submitted that she has no role to play in the transfer of the applicant as the decision was taken at the Ministry's level. After careful consideration of rival contentions, we are inclined to hold the view that allegations of malafides against the Respondents No. 4 & 5 cannot be ground for vitiating the transfer order. The transfer order has been passed at the Ministry's level. Therefore, even for a moment the applicant's contention is accepted that the Respondents No. 4 & 5 have managed the transfer of the applicant by sending false reports against her, then the Respondents No. 1 & 2 who are responsible for transfer are equal party to this game plan. If the complaint of Respondent No. 5 and reports of Respondent No. 4 are the foundation of the transfer, then this would imply that the Respondents No. 1 & 2 have also acted malafidely without application of their minds on the complaints received. Allegations of malafide if any in challenging the transfer order are required to be made against the Respondents No. 1 & 2. However, no such allegations have been made against them as rightly pointed out in the written statement of the official respondents. In the light of these observations, until and unless the allegations of malafides are made against the competent authority which passed the transfer order, this ground of challenge does not carry any weight.



15. The official respondents have averred that the transfer order has been passed in the interest of administration. The official respondents were therefore asked to produce the relevant files dealing with the transfer of the applicant and the same have been made available. On going through the files, it is noted that the foundation of transfer is the complaints received against the applicant from the various sources, viz. various employees unions, CGHS staff and reports from the Addl. Director, CGHS about the working and behaviour of the applicant. It is noted that the complaint received in 1994 from All India Posts and Telegraph Administrative Officers' Association was sent to Addl. Director for remarks and explanation of the applicant had been also called. She had also submitted her remarks. However, for the other complaints sent by Additional Director, there appears to be no reference of having called the explanation of the applicant. If there are complaints about the work and behaviour of an official, it is conceded that in the interest of administration, it may be imperative to immediately shift the official from the scene pending investigation into complaints and taking necessary departmental action against him if the investigation/inquiry prima-facie establishes the truth of the complaints, Transfer in such a situation may be a fore runner but cannot be used as a substitute for a such a follow up action on the complaints to get rid of the problem. In the present case, from the file it is noted that the Director (CHS) while forwarding the proposal to Secretary for approval of transfer of

the applicant based on the complaints received, has recorded :-
"..... It is also for consideration whether transfer is the solution for a person stated to misbehave with patients as well as SC/ST personnel in CGHS, Mumbai. I feel that we should get an inquiry report and then proceed against her departmentally submitted for kind consideration."


With these remarks, file had moved to DGHS and Secretary for approval of transfer proposal. However, I do not find any order to conduct inquiry into the complaints as proposed by the Director (CHS). The action proposed by the Director (CHS) was the right approach and after transfer of the applicant, follow up action should have been taken for inquiry and then the departmental action as required. However, the files made available do not reveal any such action after the issue of the transfer order. There is also no whisper of averment in the written statement on this aspect. The allegations^{made} in the complaints are said to be of serious nature and if true, then certainly departmental action against the applicant would have been called for. It appears that after issue of the transfer order, the matter had been closed. This would imply that the complaints made by the Associations and CGHS staff have been taken at the face value and used a tool to transfer the applicant. I further note from the file that the representations made by the applicant against the transfer and brought on the record with the OA. were put upto the Director (CHS). The noting shows that instead of considerations of the points raised in the representations, it was ordered that the applicant be relieved to carry out the transfer immediately. Even at this stage, no

action was taken to order inquiry into the truth of the complaints and consider the points raised by the applicant. It is noted that applicant has been transferred to Pune as Additional Director. This post involves higher responsibilities and administrative powers as stated by the official respondents. It is an irony of the administrative decision that a Doctor who has large number of complaints against her with regard to her misbehaviour with the staff and the patients and is not fit to continue at Mumbai is posted to a post where she has more powers to indulge into such practices. This shows that transfer had been ordered just on the complaints and demand made by one of the Association for the applicant's transfer. In the face of these facts, the transfer is to be held punitive in nature as this has been used as tool to shift the applicant out of Mumbai based on the complaints without establishing the truth in the same. As held by the Hon'ble Supreme Court in the cited judgements, court/Tribunal should exercise restraint in interfering with the transfer order as the transfer is an exigency of the service. However, in the present case. I find that the action to transfer is arbitrary and punitive in nature. The impugned transfer order therefore deserves to be interfered with.

16. The applicant has brought out in the OA. that a number of posts of Sr.CMOs are vacant in Mumbai and has made a prayer to post her back at Mumbai against any of the vacant posts. The official respondents in the written statement have not contested the availability of the vacancies of Sr.CMOs.

17. In the result of the above, the OA. is allowed with the following directions :-

- (a) The impugned transfer orders are set aside.
- (b) The applicant will be posted back at Mumbai as Sr.CMO against one of the available vacant post.
- (c) The compliance of the order to be done within a period of two months from the date of receipt of the order.
- (d) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.