

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1069.98

DATE OF DECISION: 20/9/99

Harihar Vibhute Pandey Applicant.

Shri B.Dattamoorthy Advocate for
Applicant.

Versus

The Union of India & 2 Ors. Respondents.

Shri V.S.Masurkar Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N.Bahadur, 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

(3) Library.

No

B.N. Bahadur
(B.N. BAHADUR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1069.98.
DATED THE 20TH DAY OF SEPT,1999.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

HARIHAR VIBHUTE PANDEY,
Assistant Superintendent of
Post Offices, Jalgaon,
Sub Division, residing at
C-4, Postal Colony, Bahrampeth,
Jalgaon 425 001. ... Applicant.

By Advocate Shri B.Dattamoorthy.

v/s.

1. The Union of India
(Represented by Chief
Postmaster General),
Maharashtra Circle,
II Floor, G.P.O.Building,
Mumbai - 400 001.

2. The Postmaster General,
Aurangabad Region,
Aurangabad 431 002.

3. Superintendent
Jalgaon -425 001. ... Respondents.
By Advocate Shri V.S.Masurkar.

(ORDER)(ORAL)

This is an application made by Shri H.V.Pandey challenging his order of transfer dated 11/12/98 through which he has been transferred from Jalgaon Sub Division to the Goa region in the Interest of Services. The applicant seeks the quashing of this order as being bad in law on the grounds brought forth in application and arguments. The facts of the case are simple that



applicant challenges this transfer order vide impugned order at Annexure A-I. Subsequently, on a representation by applicant, he was given Nagpur Region since he had made a request for a posting in Gondia in the same region.

Respondents have filed reply indicating that this transfer was not caused either on the complaints of the Union or as a punitive measure. In fact, he pointed out that if it was so, the request made for modification of transfer by the applicant would not have been considered, but the request was considered and the applicant was subsequently transferred to Nagpur Region vide transfer order dated 4/1/99.

2. All papers filed in the application have been perused. The two original files of the department produced at the time of arguments by Counsel for Respondents as requested by applicant vide MP-331/99 have also been seen.

3. Learned Counsel for Applicant strenuously argued the case after taking me through the facts and rested his case mainly on two grounds. Firstly, he contended that the transfer comes at the behest of the Union and has been made to placate the Union which had been wrongfully complaining against the applicant, to meet their wrongful ends. In this connection the complaints of the Union and the incidence of misbehaviour which have been made are annexed to the application.

A handwritten signature in dark ink, appearing to be 'B. B.', is written over a horizontal line.

4. The second point on which the case of the applicant was argued related to the disciplinary action initiated against applicant. It was contended that this transfer came as a consequence of this action, and hence was punitive in nature and therefore bad in law. It was also argued that the "interest of service" in ordering the transfer was not explained. Support was sought to be drawn from the case of U.C.Chaturvedi v/s. Union of India reported at 1997(2)ATJ-608. ^{4(a) Bns} ~~the~~ Arguing the case for Respondent, their learned counsel raised preliminary point that the Impunged order was no longer operative, since it was modified by applicant's transfer to Nagpur Region on Applicant's request and hence the OA did not stand.

5. Arguing the case on merits, the learned counsel for respondent took support from the files referred to (File Nos. ^{Bns} ~~the~~

1. Union-17/Kalbadevi/98 and 2. STA/10-10/17/98). It was stated that the request of the Unions for action against the applicant was duly replied on various points and no promises or anything relating to the transfer of the applicant was agreed to, even indirectly.

6. In regard to the second point relating to the nexus between the disciplinary enquiry and the transfer to the Goa Region, Counsel for Respondents strongly denied any connection between the two. It was argued that the disciplinary action was not under consideration here. Further, support was drawn from the judgement in the case of A.D.Veer ^V State of Maharashtra reported at (1999(4) L&S-125)(Copy filed). It was held that the Bombay High Court has held that the diffusion

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of tension should not be held to draw the conclusion that the transfer was an act of punishment.

7. On an analysis of facts and circumstances of the case, it is seen that there is some kind of tension prevailing with regard to the Applicant and the environment in which he is working. There is also some tension discernable from the annexure filed (by the applicant), between the applicant and his immediate superior i.e. Superintendent of Post Offices. It is also seen that the Unions have been complaining about him. However, on the facts brought out and the documents and considering the arguments made, it cannot be held that the transfer made was a direct outcome of some kind of pressure from the Unions. Similarly, there is no evidence to the effect that the action was taken only to placate the Union. The Counsel for Applicant strenuously contended that even the relieving of the applicant from his post by Superintendent in great haste was an act of prejudice, which was a part of the malafide action by the department. In fact, ~~from~~ Bans it is seen that it was the higher authorities which had asked for his relief on 12/12/98 and hence no malice on the part of Superintendent is seen. It is obviously a fact that the Union had some grounds, right or wrong, against the applicant, but to conclude that the authorities had acted only as a result of pressure from the Unions in making the transfer and that too at the higher level would not be correct. Similarly, I find reason to draw support from the circumstances in the case cited by Counsel for Respondents i.e. the case of A.D.Veer v/s. State of Maharashtra. In facts and circumstances brought out, it cannot be inferred that the action to transfer the applicant was relatable to a desire to

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punish the applicant. Certainly, if a nexus had existed Respondent's action could have been held as illegal in terms of the case cited by Counsel for Applicant in his support. But here no such inference can be drawn. I have seen the two files produced before me and though no detailed note regarding the transfer order of Shri Pandey is available, there is nothing to show any malice or nexus by which it can be concluded that this transfer came as action of punishment.

8. Needless to say, no detailed papers regarding the enquiry are before me nor is the applicant making a grievance here about the disciplinary case against him. That is a separate issue and no views on the subject are being expressed herein by the Tribunal.

9. It has to be taken into account here that even when a request was made by the applicant for change in the transfer order from Goa Region to Nagpur, such a request was granted even though the technical point that the OA is ^{not} maintainable because of this is not being considered. There is no doubt that grievance of the applicant have been considered in a manner that could be held to be open-minded, in that his request for change in transfer orders is partly conceded. No prejudice on the part of senior officers is thus discernible.

10. In view of the detailed discussions made above, the application is rejected. There will be no orders as to costs.

B.N. Bahadur
B.N. BAHADUR

MEMBER (A)

abp