

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 533/98

Date of Decision: 10/12/98

Puntambekar
Shri Madhukar Ramchandra / Petitioner/s

Shri M.M. Sudame Advocate for the
Petitioner/s.

v/s.



Union of India & 2 Ors. Respondent/s

Shri S.S. Karkera for Advocate for the
Shri P.M. Pradhan Respondent/s

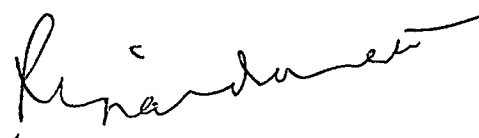
CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri

- (1) To be referred to the Reporter or not? 
- (2) Whether it needs to be circulated to other Benches of the Tribunal? 

abp


(R. G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4th FLOOR, PRESCOT RD,
FORT, MUMBAI-400 001..

ORIGINAL APPLICATION NO:533/98..

DATED THE 10TH DAY OF DECEMBER, 98.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Madhukar Ramchandra Puntambekar,
Mechanical Enineer(senior),
Geological Survey of India,
presently at Nagpur,
Resident of 77, Cosmos Town,
N.I.T.Colony,
Jaitala Road, Nagpur.

... Applicant.

By Advocate Shri M.M.Sudame.

V/s.

1. The Union of India,
through its Secretary,
Ministry of Mines,
Shastry Bhavan,
New Delhi-110 001.

2. The Director General,
Geological Survey of India,
27, Jawaharlal Nehru Road,
Calcutta-700 016.

... Official Respondents.

By Advocate Shri B.S.Karkera for
Shri P.M.Pradhan.

3. Shri H.R.Chawla,
Mechanical Engineer(senior),
Central Region,
Geological Survey of India,
Nagpur.


ORDER

{ Per Shri R.G.Vaidyanatha, Vice Chairman }

1. This is an application seeking enforcement of order of transfer. Respondents have filed reply opposing the application. I have heard the learned counsel appearing on both the sides and also respondent No.3 who has appeared in person.

Usually, we come across cases where the applicants challenge the transfer order. The applicant was forced to approach this Tribunal for enforcement of order of transfer. ^{few} ~~Two~~ facts are necessary for disposal of this OA.

2. The applicant is a Mechanical Engineer(senior)

...2/- 

in the Geological survey of India now posted at Calcutta; on his request on personal grounds, he was transferred from Calcutta to Nagpur by transfer order dated 6/12 January, 98. In the same order, respondent No.3, Shri H.R.Chawla was transferred to Calcutta from Nagpur. Then by end of the month a message was received dated 29/1/98 deferring the order of transfer of applicant which was followed by written order dated 29/1/98 in which the order of transfer was deferred by three months. After waiting for some time, the applicant approached this Tribunal seeking for a direction to respondents to give effect to the order dated 29/1/98 so that he can come and join at Nagpur. During the pendency of the application, the administration has subsequently cancelled the order of transfer of applicant by order dated 22/9/98.

3. Respondent Nos.1 and 2 have filed reply justifying the order of ~~deferring~~ the order of transfer in the first instance and subsequently cancelling the order of transfer.

Respondent No.3 Shri Chawla has already filed a separate Written Statement opposing the application. After hearing both sides, I am not satisfied that any case is made out either for direction to enforce the order of transfer dated 6/12 January, 98 or to interfere with the order of cancellation of transfer dated 22/9/98. It is the prerogative of the administration to decide as to who should be posted where and a Court or a Tribunal cannot sit in appeal. It is not for this Tribunal to give a direction whether Chawla should be transferred from Nagpur to Calcutta or the applicant Shri Madhukar Ramchandra Puntambekar should be transferred from Calcutta to Nagpur. It is for the administration to



decide whether the applicant should be kept at Calcutta or should be transferred to any other place. The judicial review can be exercised regarding an order of transfer only when there ^{are} ~~is~~ grounds of malafides as per the catena of decisions of Supreme Court recently. The Supreme Court has laid down two circumstances for interfering with the order of transfer, namely the transfer is bad on the grounds of malafide, or transfer is contrary to any statutory rule.

4. The learned counsel for applicant stated the order of deferring the transfer order and subsequent cancellation of order of Transfer is malafide. The ground made out is that the order has been cancelled to allow respondent No.3 to continue at Nagpur. It may be that respondent No.3 had given a representation pleading some difficulties including his wife's illness for being retained at Nagpur. If by retention of respondent No.3 at Nagpur as a consequence of his representation, the order of transfer from Calcutta to Nagpur of applicant should be held as malafide as now pressed, then applicant's transfer from Calcutta to Nagpur is ^{not} ~~is~~ malafide because that order of transfer was made to accomodate the applicant on his personal grounds and therefore he was transferred from Calcutta to Nagpur and now he cannot apply double standards while dealing with the case of Respondent No.3, that on the grounds of personal difficulties, it is made to accomodate respondent No.3 and that it affects the earlier order of transfer of applicant and that order has to be struck down. In my view that ^{is} ~~is~~ the right approach to deal with a matter like this.

5. May be that the applicant's claim was considered and the respondents had ordered his transfer from Calcutta to Nagpur but now the administration pointed

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out that at the relevant time vigilance case was pending since his wife had directly or indirectly doing business and dealings with the office he was holding and therefore the transfer order was kept in abeyance (deferred) in public interest. After such a decision is taken by administration, it is not for the Tribunal to sit in appeal to enforce the order of transfer and post the applicant at Nagpur. It is also brought on record that subsequently Disciplinary Authority issued order of penalty of censure to the applicant dated 16.4.98. A perusal of the order shows that the applicant had practically admitted ^{his} ~~guilty~~ ^{best plea} ~~guilty~~ that he was not aware of the relevant rules. Whatever that may be in view of the vigilance case and the applicant being found guilty, the administration cancelled the order of transfer from Calcutta to Nagpur. It cannot be said that such a decision of the administration is malafide or bad in law.

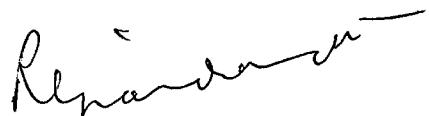
6. The learned counsel for respondents invited my attention to the two recent decisions of Apex Court. State of Madhya Pradesh V/s. S.S. Kourav reported at (1995 SCC L&S 666 ¶), where the Supreme Court has pointed out that the question of expediency of transfer cannot be subjected to judicial review and the personal difficulties of officers are not matters which can be gone into by Court or Tribunal. Similar view has been taken by Apex Court in another case report at 1994 (28) ATC 255 in State of Madhya Pradesh V/s. R.S. Yadav.

7. Learned counsel for applicant however submitted that the applicant's wife has closed down the business which was subjected to Departmental Enquiry. I do not want to say anything in the matter. The applicant is holding a senior position of Group 'A' Post in Central

Government and he is liable for transfer anywhere in India. Personal difficulties are not matters which can be gone into though they are matters which can be considered by Competent Authority.

8. I do not find that any case of malafides is made out. It is not a case where we can give any direction to enforce the order of transfer or interfere with the subsequent order of cancellation. The arguments of learned counsel for applicant that even when earlier order of transfer dated 6.1.98 was issued, the administration was aware of the pending Departmental enquiry and inspite of it the order of transfer was issued and therefore there is no sufficient grounds to cancel the order of transfer, ^{has no merit.} The learned counsel for official respondents pointed out that normally the administration branch is concerned with the transfer and disciplinary cases are dealt by Vigilance section. At the time of transfer Administration Branch does ^{not} consult Vigilance Branch. If after issuing order of transfer, Administration Branch comes to the knowledge of vigilance case it may cancel or modify the order of transfer. In this case in view of vigilance case applicant's transfer to Nagpur was cancelled. I do not find any illegality in the order of transfer.

9. In the result, the application is dismissed at the admission stage. No order as to costs.


(R.G. Vaidyanatha)
Vice Chairman