

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 992 OF 1998.

Date of Decision: June 10, 1999.

Prithwish Sain,

Applicant.

In Person,

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri R. R. Shetty,

Advocate for
Respondent(s)

CORAM:

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

XXXXXXShetty.

(1) To be referred to the Reporter or not? *W*

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 992 OF 1998.

Dated this Thursday, the 10th day of June, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Prithwish Sain,
Scientific Officer (C),
Health Physics Division,
Bhabha Atomic Research Centre,
Trombay,
Mumbai - 400 085.

Residing at -

Room No. 1002, Nilgiri,
Anushakti Nagar,
Mumbai - 400 094.

(IN Person)

... Applicant.

VERSUS

1. Union Of India through
The Chairman,
Atomic Energy Commission &
Secretary to Govt. Of India,
Dept. of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai - 400 039.
2. The Director,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Mumbai - 400 085.
3. Shri S. J. Raut,
Scientific Officer (F),
Health Physics Division,
B.A.R.C., Trombay,
Bombay - 400 085.
4. Dr. S. R. Sachin,
Scientific Officer,
B.A.R.C., Trombay,
Mumbai - 400 085.
5. Dr. R. K. Singhal,
Scientific Officer (D),
Health Physics Division,
B.A.R.C., Trombay-Mumbai,
Mumbai - 400 085.
6. The Deputy Establishment Officer,
B.A.R.C., Government of India,
Personnel Division, Central
Complx, Trombay,
Mumbai - 400 085.

... Respondents.

(By Advocate Shri R. R. Shetty).



OPEN COURT ORDER

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN. ¶

This is an application challenging the order of transfer. The respondents have filed reply opposing the application. Shri M. S. Ramamurthy, the Learned Counsel appeared for the applicant and argued the case on few dates prior to vacation. Then on his request, it was adjourned to today for further arguments. But today, Shri M. S. Ramamurthy sought leave of the Tribunal to retire from the case since the applicant himself wants to address the arguments. Accordingly, today Shri M.S. Ramamurthy is permitted to retire from the case. Then the applicant himself addressed arguments. Then on behalf of respondents, Shri R. R. Shetty has addressed arguments.

2. The applicant is working as a Scientific Officer (C) in Bhabha Atomic Research Centre at Mumbai. He came to be transferred from Mumbai to Alwaye in Kerala State by order dated 27.07.1998. Being aggrieved by the order of transfer, the applicant has filed this O.A. He has made number of allegations in the O.A. to challenge the order of transfer. The main ground alleged in the O.A. and pressed at the time of argument is that the order is malafide since some of the officers of the Health Physics Division where he is working are enimical towards him. He has even made those officers as party-respondents no. 3, 4 and 5. He therefore wants that the order of transfer should be quashed.



3. The respondents in their reply while denying the allegations of malafide have justified the order of transfer being in public interest. It is stated that the applicant has been in the habit of making reckless allegations against the administration and has given number of representations to various people. In the reply, the allegations made against Respondent Nos. 4, 5 and 6 about malafides are denied. The respondents have clearly stated that the order of transfer is in public interest and does not suffer from the vice of malafides.

4. Shri M.S. Ramamurthy at the first instance and subsequently, the applicant in person, argued ^{at} length to demonstrate that the order of transfer is malafide. Number of documents are filed to show that there used to be some exchange of correspondence or allegations against respondent Nos. 3 to 5. Number of documents are filed to show that the whole administration of B.A.R.C. is vitiated and he even goes to the extent of saying in one of the representation that an enquiry should be conducted against the administration of B.A.R.C. It was therefore submitted by the applicant and his counsel that the impugned order suffers from malafides and requires to be quashed. On the other hand, Shri R. R. Shetty appears for the respondents and submitted that the order of transfer is passed purely in public interest. He invited my attention to the order of the Director on the file dated 23.07.1998 under which he gave a direction for transfer of the applicant. It was therefore submitted that the highest

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administrative authority in the B.A.R.C. has taken decision to transfer the applicant purely in public interest. He denied the allegation of malafides.

5. Nodoubt, the applicant has made some allegations against Respondent Nos. 3, 4 and 5, who are his senior colleagues in the Health Physics Division. Both the applicant and Respondents 3 to 5 are Scientific Officers in the Health Physics Division. Respondents 3 to 5 have no administrative control over the applicant. They are not the boss of the applicant. They cannot pass any order of transfer against the applicant. It may be possible that in a department there may be some dispute or ill-will between some colleagues. But the order of transfer is not passed by Respondent Nos. 3 to 5. Merely because there is some ill-will or dispute between the applicant and Respondent nos. 3 to 5, it is no ground to interfere with the order of transfer, which is issued at the instance of the Head of the Institution, namely - the Director.

6. I put a specific question to the applicant, who argued the matter before me in person, whether he has any personal ill-will or hostility against Mr. Anil Kakodar, who is the present Director of B.A.R.C. The applicant fairly submitted that he does not have any such personal ill-will between him and the Director. If that is so, then the question of malafides falls to the ground since the impugned order of transfer is not passed by anybody except the Director.

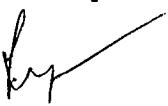
There is not even a report by Respondents 3 to 5 or by Mr. Gupta or Dr. Nambi, against whom some allegations are made by the applicant, to the Director to transfer the applicant. I find from the original papers now produced by the Learned Counsel for the respondents that it is purely a su-moto decision taken by the Director to transfer the applicant in public interest. It was also submitted at the bar that Dr. Nambi, against whom some allegations are made, has retired from service.

7. The applicant has made one representation dated 21.07.1998 to the Director of B.A.R.C. making some complaints about working of Health Physics Division, where he is working. After receiving this letter, the Director in his own hand-writing on 23.07.1998 has written as follows :

"I am perturbed at this attitude of Mr. Sain. He did not get along well in Environmental Assessment Division. Same is repeating in Health Physics Division in Trombay. Perhaps yet another change of place may be tried. May be at an outstation this time."

It is because of this direction personally given by the Director in his own hand-writing, the impugned order of transfer was issued. Four days later, the applicant has been transferred by the impugned order dated 27.07.1998.

As already pointed out, the applicant himself admits that he has nothing personal ill-will against the Director. In this case, the decision is taken by



the Director on his own. Therefore, it cannot be said that the order of transfer is malafide only because the applicant has some dispute with the Respondent Nos. 3, 4 and 5, who are not his administrative superiors and who are not responsible for the impugned order of transfer.

8. In addition to this, from the perusal of the O.A. I find that by his own conduct he has become a nuisance in the B.A.R.C. campus. Bhabha Atomic Research Centre is one of the pioneering institution in India. It is a prestigious institution doing a lot of scientific activity in the field of scientific research and allied matters. But here, the applicant has sent petitions against his own Institution to the President of India, to the Prime Minister and Members of the Parliament making all ^{sorts} ~~sorts~~ of allegations against such a prestigious institution and seeking an enquiry into the administration. How can the administration keep such a man in the ~~Headquarters~~ ^{B.A.R.C. Headquarters}, whose conduct is borne out by this letter. That is why the Director has mentioned in the note that he is perturbed by the attitude of the applicant. If in these circumstances the administration wants to shift the applicant to another place so that a change of place may cause improvement in him, it cannot be called a/ malafide order. In my view, the Director has taken a proper step in shifting the applicant from Bombay to some other place, so that this change may bring some improvement in the conduct of the applicant.

He must serve the institution where he is working.

He cannot make allegation against each and everybody and the whole Institution where he is working. He should not have sent letters to the Members of the Parliament directly and that too, making allegations against his own Institution.

9. In my view, no ground is made out for interfering with the order of transfer. As pointed out by the Supreme Court in S. L. Abbas' case [1993 (25) ATC 844], an order of transfer can be quashed by a Court or Tribunal only on two grounds, namely - that the transfer is in violation of statutory rules or it is malafide. In this case, there is no allegation that the order is in violation of statutory rules. I have rejected the ground of malafide. Therefore, there is no ground to interfere with the order of transfer.

As per the ^{note} ~~note~~ by the Director in the above note, the applicant should accept the order of transfer ~~—~~ and proceed to the new place so that ~~—~~ there will be a change in his attitude and working condition. I would go one more step further and say that in the interest of the applicant himself he should have asked for transfer if he finds that his colleagues and Head of the Administration are not on good terms with him. The applicant should have a peaceful atmosphere where he could work better. Therefore, the applicant in his own interest should move to Alwaye, where he has been transferred. If he has personal difficulties in

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working at Alwaye after joining there, he can make a representation to the administration. The Learned Counsel for the respondents clearly submitted that if any such representation is received, the administration shall consider the same and pass appropriate orders according to law.

We may also note that the applicant came to be relieved on 29.07.1998. Now we are in June, 1999. Nearly eleven months are over. The applicant has not joined his post and he is now without job and without pay for the last 11 months. Therefore, in his own interest, the applicant should move to Alwaye, to the place where he has been transferred. He also made a grievance that he was not granted the T.A./D.A. for proceeding to Alwaye, the place of transfer. The Learned Counsel for the respondents submitted that the applicant did not apply for grant of T.A./D.A. advance and if such a request had been given as per rules, the amount would have been sanctioned. Even today, the Learned Counsel for the respondents made a submission that as and when the applicant makes such an application for grant of any T.A/D.A. advance, it will be granted without/delay.

10. In the result, the application is dismissed.
No order as to costs.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.