

**CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI**

ORIGINAL APPLICATION NO. 1068/98.

Date of Decision: 4/2/99

Narayan Ramchandra Wadbonkar Petitioner/s

Shri M. K. Deshpande Advocate for the
Petitioner/s.

v/s.

Union of India & Anr. Respondent/s

Shri V. S. Masurkar Advocate for the
Respondent/s

CORAM:

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

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*

abp.

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULE STAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NO:1068/98.

DATED THE 4TH DAY OF FEBRUARY, 1999.

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

Narayan Ramchandra Madhonkar,
Divisional Accountant,
Purna Irrigation Division,
Basmathnagar, Tq. Basmathnagar,
Dist: Parbhani,

... Applicant.

By Advocate Shri M.K.Deshpande.

v/s.

1. The Union of India through
Controller and Auditor General of India,
New Delhi-110 002.

2. The Accountant General(A&E)-II,
Maharashtra,
Nagpur.

... Respondents.

By Advocate Shri V.S.Masurkar.

I O R D E R }

I Per Shri R.G.Vaidyanatha, V.C.)

This is an application challenging the order of transfer, dt. 28/30.10.98. Respondents have filed reply opposing the application. I have heard both the counsels regarding admission.

The applicant who was working as Divisional Accountant, Purna Irrigation Division, Basmathnagar in Parbhani District stands transferred to Vishnupuri Pump House Division, Nanded.

2. Being aggrieved by this order of transfer the applicant has approached this Tribunal challenging the same. According to him, he had a very good record of service and there was no complaint against him and hence there was no necessity for his transfer. It is also alleged by him that some people ^{did} not like his work and made some complaints to the Hon'ble Minister for Cooperation and Textile, Maharashtra and they also gave threats to the

applicant. According to the applicant, the Hon'ble Minister recommended transfer of the applicant to the 2nd respondent who in turn has passed the order of transfer. He also says in the application that even Executive Engineer had made complaint against the applicant in respect of writing cheques and signing the same without knowledge of the Executive Engineer. The applicant stated that this is also a false allegation against him. Now, though he has not received the order of transfer, he has received a telegram from Executive Engineer asking him to hand over charge immediately. It is alleged that the transfer is malafide and politically motivated. Now there is no administrative exigency or public interest in ordering transfer. Therefore, the applicant has prayed that the order of transfer dated 30/10/98 be quashed.

3. In the reply the respondents have justified the order of transfer being in Public interest. It is stated that the applicant has put in more than 5years in one district and therefore as per practice (practice in the department is that officials in the department who have completed ~~five~~ years are liable to be transferred.) he was due for transfer. The allegation of malafides is denied. It is also stated in the reply that there were conflicting reports about the work of the applicant and further applicant himself had complained about threats received by him in the present post. Taking all the points into consideration, the administration passed the order in public interest and also in the interest of applicant himself. The allegation of political interference is denied. It is also stated that applicant came to be relieved on 5/11/98, and one Mr. Kulkarni has taken charge of the post of applicant. The respondents have also relied on number of decisions of Apex Court in the reply to show that Courts or Tribunals cannot interfere

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with the order of transfer made due to administrative reasons or in public interest.

4. The learned counsel for applicant argued that the impugned order of transfer is malafide and politically motivated and there were no administrative exigencies or public interest involved in transferring the applicant. On the other hand, the learned counsel for respondents while asserting that Courts or Tribunals should not interfere with the order of transfer, supported the order of transfer being in Public interest and due to exigency of administration.

Now, it is fairly well settled that Courts or Tribunals should not interfere with orders of transfer unless the order of transfer is malafide or contrary to any statutory rule. It is also well settled that personal hardships or inconvenience are no grounds for interfering with order of transfer. The transfer guidelines are meant to be obeyed by the departmental officials and transfer guidelines cannot be a ground for a Court or Tribunal to interfere with the order of transfer. It is also well settled that Court or Tribunal cannot sit in appeal over administrative orders of transfers. In one of the cases (S.S.Kourav's case), the Supreme Court has even observed that the wheels of administration should be allowed to run smoothly and Courts or Tribunals are not expected to interdict the wheel of administration. It is also pointed out by Supreme Court that ^{an} order of transfer is an incident of service. It is the prerogative of the administration to decide as to who should be transferred or who should not be transferred. Court or Tribunal cannot go into the expediency of posting an officer at a particular place. It is pointed out by Supreme Court that ^{the} Court or Tribunal cannot substitute its own judgement in place of ~~the~~ decision of Competent Authority in ordering transfer(vide 1995(1)SC SLJ-350) State of M.P. v/s. S.S.Kourav & Ors and AIR 1993 SC 2444 Union of India v/s. S.L.Abbas).



5. In the light of the law declared by Supreme Court, let us look into the facts of the present case.

There is no allegation that the order of transfer is ~~contrary to~~ ^{Contrary to} the guidelines of transfer. The order of transfer is challenged only on the ground that it is malafide and politically motivated, and not due to any administrative exigency. This allegation has been denied by respondents.

It is very easy to make allegation of malafide or politically motivation but very difficult to sustain the same. The allegation made on the one side has been denied on the other. There is no other material on record to substantiate the allegation that the order of transfer was politically motivated.

The order of transfer is done by Committee and then the order is passed by High Dignitary, like Accountant General, who is a Central Government employee working ^{in the} State of Maharashtra. The respondents have clearly stated that the order of transfer was issued in administrative exigency and in Public interest. They have pointed out that though the Executive Engineer gave a good report about applicant, there was a contrary report by Superintending Engineer. Then the applicant himself had given a letter dated 4/9/98 stating that he has been receiving threats from some people. The administration thought that in the interest of both applicant and administration, it is desirable that the applicant should be transferred from that place. Further, it is pointed out that the applicant had already completed 5 years of routine stay in a District and in a sensitive post like the Divisional Accountant they are not allowed to continue for more than 5 years. After considering all the above circumstances, the administration has taken a decision to transfer the applicant; it cannot be said that it is malafide or it is politically motivated.

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6. On the available facts and circumstances of the case, I do not find that the order of transfer suffers from malafides.

At the time of arguments, the learned counsel for applicant also pressed into service that the Transfer order is a mid term transfer. It may be so. In the interest of administrative exigencies, sometimes, orders of transfer are issued during the academic year. Infact, the post at Nanded is a vacant post. The Administration must have felt it necessary to fill up the vacancy at Nanded, therefore, in the interest of administration, the applicant has been transferred to vacant post at Nanded.

Then a submission was made that the place Nanded is not suitable and is hardly about 20Kms from Parbhani and the applicant may still receive threats there also and therefore incase the applicant should be transferred from Parbhani then he should be transferred to some other place like Jalgaon or Latur. Infact, the applicant has given representation to that effect as per his letter dated 11/11/98.

7. Today the learned counsel for respondents on instruction submits that there are no vacancies at Jalgaon and Latur and therefore the applicant cannot be considered for the same. However, it is submitted that if the applicant after joining at Nanded sends a representation to the Competent Authority pointing out any other vacant post, ~~consider and~~ the administration may ~~pass~~ order as it deems fit. Therefore, I grant leave to the applicant to make representation after joining the post at Nanded, he may give representation about persoanl difficulties and places of choice. If such a representation is received, the administration may consider the same and pass appropriate orders according to rules.

We also notice another fact that the applicant was relieved on 5/11/98 and his successor has already taken

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charge. Now three months are over and the applicant is no longer working in the old post. Even now it is open to the applicant to immediately report to vacant post at Nanded.

In the circumstances of the case, I do not find any ground to interfere with the order of transfer.

8. In the result, the application is rejected at admission stage subject to above observations. No orders as to costs.



(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.