

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 117/98

Date of Decision: 26-02-98

C.B.Damle

.. Applicant

Shri H.A.Sawant

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

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

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

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 117/1998.

..... this the 26<sup>th</sup> day of February 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

C.B.Damle,  
A/1 Abhinandan Apartments,  
Chhatrapati Shivaji Road,  
Dahisar (East),  
Mumbai - 400 068.

... Applicant.

(By Advocate Shri H.A.Sawant)

V/s.

1. Shri R.H.Khobragade,  
Senior Architect,  
Telephone Exchange,  
8th Floor,  
Bandra (E),  
Mumbai.

2. The Deputy Director General  
(Architecture),  
Department of Telecommunications  
Ministry of Telecommunications  
Sansad Marg  
New Delhi - 110 001.

3. Union of India through  
The Secretary,  
Ministry of Communications,  
Department of Telecommunications,  
Sansad Marg,  
New Delhi - 110 001. ... Respondents.

(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this case, the applicant who is working as Architectural Assistant Gr.II in the office of the Senior Architect, Mumbai is challenging the order transferring him in the same capacity to Ahmedabad

vide order dt. 13.1.1988 (at Annexure A-1). On 27.1.1998

when the matter came before this Tribunal status quo order was granted to the effect that if he has not been relieved, he should not be relieved for a period of 14 days. The counsel for the respondents states that

the status quo order has become infructuous because in fact the applicant stood relieved on 23.1.1998 vide page 12 of the written statement. According to the counsel for the respondents, the transfer order stipulated that the transferee ~~not~~ ought to be relieved before 25.1.1998 and since there was a bunch of holidays, action to relieve the applicant was taken on 23.1.1998 itself. It is noticed, however, that the applicant had made a representation requesting for retention at Mumbai by his letter dt. 19.1.1998 which had remained unattended till the date of relief. I am therefore, not inclined to dispose of the matter as being infructuous, ~~but~~ propose to consider the same on merits.

2. The contention of the applicant is that several junior employees in the same grade have not been transferred. The respondents, therefore, do not appear to have followed any Rule. Generally junior employees should be considered for transfer rather than senior employees. To this point the counsel for the respondents counters relying on the ratio in Srichand and Ors. V/s. Union of India & Ors.

¶(1992) 20 ATC 474¶ that "Transfers are not required to follow any seniority so that any person can claim that he cannot be transferred unless others junior or senior to him are transferred". I am not inclined to accept the contention of the ~~applicant~~ on this point.

3. The next contention of the counsel for the applicant is that there are vacancies in another office of the respondents available in Mumbai itself, ~~he~~ therefore should not have been singled out for transfer out of Mumbai

especially in view of his personal difficulties. In my view, the selection of a place for posting on transfer is a matter within the domain of the official respondents and it is not open to the applicant to pick and choose the place of transfer. The counsel for the respondents has pointed out that the order dt. 13.1.1998 deals with six employees who are transferred from one place ~~in~~ India to another place of India. The applicant has not been singled out for transfer and the respondents have considered that as the applicant had completed more than 18 years of service, he was to be transferred out of Mumbai and accordingly, he has been transferred in the normal course. I, therefore, hold that this contention of the applicant cannot be accepted.

4. The counsel for the applicant contends that his wife is serving in a Government of India Undertaking (Nationalised Bank) and in the given circumstances further that she may not be able to get a transfer at Ahmedabad, he should not have been transferred she is also suffering from low back pain and she needs bed rest ~~very~~ often and therefore, in terms of guidelines of the Government that as far as possible husband and wife who are both employed should be posted at the same station even if their employers are different. The counsel for the respondents argues that the guidelines of the Government do not have any force of statutory Rules whose violation would attract judicial review. In respect of this point ~~and on this point~~ he relies on the Judgment of the Supreme Court in Union of India V/s. S.L.Abbas (AIR 1993 S.C. 2444) wherein the Hon'ble Supreme Court has held that "the transfer

cannot be interfered with by the Court unless it is vitiated by mala fides or is made in violation of any statutory provisions. The matter is for the Government in each case to take a view in the matter and decide on transfer or otherwise." I am inclined to hold that the transfer of the applicant cannot be said to be vitiated on the ground of violation of the guidelines relating to posting of husband and wife together. 

The counsel for the applicant 5. has stated that his immediate superior R-1 whom he has joined as a party by name holds a grudge that he has been seeking to harrass him and against him and/as part of his harrassment, his leave case has not been decided. In this connection, in para 4.6 the counsel for the applicant has stated "(because of illness of his wife and parents and in order to take care his children) he was compelled by the circumstances to take leave from his office work, but the same is not sanctioned and payment was not made to the applicant. The following leave is at his credit in Balance.

(1) 184 days Earned Leave

(2) 45 days Medical Leave

In spite of this his leave forms are kept pending and payment is not drawn for the following days :

(1) Feb. : 11.2.1997 to 14.2.1997 = 4 days

(2) Apr. : 15.4.1997 to 17.4.1997 = 3 days

(3) June : 12.6.1997 to 11.7.1997 = 30 days

(4) Oct. : 20.10.1997 to 24.10.1997 = 4 days

 pay not drawn

(5) Oct. : 25.10.1997 to 31.10.1997 = the applicant was on duty but still the pay was not drawn

(6) Nov. : 3.11.1997 to 7.11.1997 = 4 days

(7) Dec. : 21.12.1997 to 02.01.1998 = 12 days

For the above periods leave pay was not drawn.

From the above it would be amply clear that the applicant is being systematically harrassed in his office by his superiors without taking into consideration the problems that are being faced by the applicant at his home."

The counsel for the respondents states that the transfer of the applicant was ordered not by R-1, but by the R-2 who is the authority competent to transfer the Officer. The question of malice therefore does not arise. On the specific point regarding the leave case of the applicant not having been settled, the written statement vide para 16 is silent except for making a ~~bare~~ denial. I would consider the question of any relief on this aspect separately. But so far as the malice is concerned it is well settled that there <sup>malice.</sup> is no such thing as transferred ~~to~~. Assuming for <sup>sake</sup> argument's ~~to~~ that R-1 has a grudge against him, that appears to have nothing to do with the transfer of the applicant which has been ordered by a <sup>higher</sup> Competent Authority. The applicant has not alleged any malice on the part of R-2 who has transferred him. I, therefore, do not ~~accept~~ that the transfer is vitiated by mala fides.

6. The applicant has then stated that in terms of Rule 37-A of the P & T Financial Handbook, Volume 1, Second Edition "Transfers should generally be made in April each year so that the education of school going children of the staff is not ~~dislocated~~. In emergent cases of promotion this restrictions will naturally not operate." The applicant has stated that his children are studying in VIIIth and 1st Standard in Marathi Medium and there would be a language problem

in case he is shifted to Ahmedabad and that his elder son is recipient of scholarship and the transfer would hamper his future. On this point the respondents in their written statement have relied on the case of State of M.P. and Another V/s. S.S.Kourav and Others decided by the Hon'ble Supreme Court 1995 SCC (L&S) 666 wherein it was held that

"The Court cannot go into the question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration".

The respondents, have however, not specifically dealt with the timing of the transfer and whether the question of deferring the transfer which has taken place in the middle of the academic session has been considered. There is also an authority of the Supreme Court for the proposition that unless there is an administrative exigency transfers during the middle of the academic session should be avoided 1994 (28) ATC 991.

Director of School Education, Madras & Others V/s. O.Karuppa Thevan And Anr.

7. The counsel for the respondents have generally opposed the O.A. on the ground that applicant has served for more than 18 years at Mumbai and he has been transferred to Ahmedabad where there is a clear vacancy and that the transfer is in public interest and the O.A. should be dismissed.

8. I have already discussed the merits of the contentions raised by the applicant in the above paragraphs. From this discussion it would be seen that there is no merit in those contentions except the contention related to transfer being in the middle of the academic session which would cause difficulty

to the applicant in getting admission for his children in the new place. I am of the view that there is substance in the grievance of the applicant that although this difficulty of transfer in the mid academic session was pointed out in his representation, the respondents have not dealt with the same with <sup>the</sup> seriousness which it deserves, keeping in view the provisions of Rule 37-A of the P & T Financial Handbook, Volume 1, second edition. I am therefore, of the view that the applicant deserves the limited relief of direction to defer the transfer till the end of April, 1998. The interim relief is made absolute till the end of April, 1998. The respondents are at liberty to transfer the applicant to Ahmedabad or to any other place, thereafter. I would also like to refer to the contentions raised by the applicant in para 4.6 regarding non-drawal of the leave pay for various spells indicated by the applicant. The respondents have not at all dealt with this grievance of the applicant on this point. The applicant therefore is given liberty to make a representation about non-drawal of the leave pay to the respondents within a fortnight of the communication of the order and the respondents are directed to dispose of the said representation within one month thereafter.

9.1 Except for this partial relief, the O.A. is dismissed with no order as to costs.

*M.R.Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A).

B.

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