

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 137/98

Date of Decision: 25-3-98

Raghvan Mani

.. Applicant

Shri Jadhav Rao

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty.

.. 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. 137/1998.

Promised, this the 25th day of March 1998.

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

Raghvan Mani,
5/9, DAD Complex,
Chitragupta Apartments,
Pune - 411 042.

... Applicant.

(By Advocate Shri Jadhav Rao)

V/s.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. Controller General of
Defence Accounts,
West Block V,
R.K.Puram,
New Delhi - 110 066.
3. Controller of Defence
Accounts, Southern Command,
No.1 Finance Road,
Pune - 411 001.

... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

who

In this O.A., the applicant/is a Senior Auditor working with R-3 has challenged the order of transfer dt. 1.12.1997 (at Annexure A-1) transferring him from Pay SN MO Pune to L.A.O (A) Ahmednagar with a direction to report at Ahmednagar on or before 15.12.97 (FN). It appears from the written statement of the respondents that this order was subsequently amended on 5.12.1997 (vide Annexure R-5 to the ~~written~~ statement) in which there is a change in the date of reporting at Ahmednagar viz. 2.1.1998 in place of 15.12.1997. The contention of the applicant is that the amended transfer order was not received by him in the normal

course and it came to his notice for the first time when received the written statement. All the same the applicant is considered to have challenged this transfer order also. The interim relief by way of stay on transfer was granted in favour of the applicant by this Tribunal's order dt. 13.2.1998.

2. The main ground for challenging the order is that the order of transfer is in violation of para 376 which of Office Manual, Part-I is as follows :

"The President and the General Secretary of the Head Quarters Associations will be exempted from transfer for so long as they hold these offices. In the case of Branch Associations at the Head Quarters Office of Controllers, the President and General Secretary will be exempted from transfer during the first year of their appointment to that office. Of other office bearers of Associations (including the President and the General Secretary of Branch Association, except as stated above) and staff side members of Office Councils are liable for transfer, in their turn."

According to the applicant, there is an All India Defence Accounts Association, Pune with 6 Branch Associations in Pune and 115 Associations all over India. According to the applicant he was elected Organising Secretary of the All India Defence Accounts, CDA SC Branch Pune on 24.2.1997 and the Executive Committee Members of the Central Body of the said association nominated the present applicant as Secretary General on 14.5.1997. In this connection, he relies on Annexure A-2 to the O.A. and the respondents were informed about the same (vide Annexure A-3). The applicant has stated that there is a dispute within the Association and the Central Body of All India Defence Association have filed Suit viz. R.C.S. No.946/97 in the Court of Civil Judge Junior Division Pune at Pune, a copy of the plaint is annexed at (Annexure A-4). The suit is for

a declaration that the Plaintiff Nos.1 to 3 (applicant is Plaintiff No.2) are the Members of the Plaintiff Association and that the resolution passed by the Plaintiff Association on 14.5.1997 expelling the defendants from the posts in Plaintiff Association should be declared as legal and valid. It is an admitted position that interim injunction sought in the said suit has not been granted by the Civil Judge, Junior Division, Pune. The essential contention of the applicant is that respondents No.2 and 3 are in league with the defendants in the Civil Suit and that the transfer of the applicant who is an office bearer of the Association which has filed the Civil Suit has been transferred mala fide by R-3. Therefore, the transfer is illegal, ~~mischiefous~~ and is liable to be quashed and set aside. It is further contended that transfer order was passed intentionally to ~~harass~~ the applicant although the respondents were aware that he was required to appear for the departmental examination and the date of examination was 15.12.1997, ~~on the same day the~~ respondents had directed the applicant to report at Ahmednagar and on this ground also the transfer is clearly mala fide. It is noted that the applicant had made a representation on 26.12.1997 for cancellation and deferment of transfer at least for one year, but there has been no reply.

3. The respondents have contended that the transfer is an incident of service and so far as the applicant is concerned he has stayed in Pune for 32 years and therefore he was even otherwise due for transfer and the present transfer order is in public interest because there is a shortage of staff at L.A.O.(A) Ahmednagar and the applicant was transferred on

need basis. So far as the contention of the applicant regarding ban on transfer of office bearers of recognised Association is concerned, the respondents contend that the applicant no longer holds the post of Secretary of All India Defence Accounts/after 3.8.1997 because an ~~selection~~ was held on that day and new Office bearers were duly elected. The respondents have denied that the transfer order of the applicant has any connection with the affairs of the All India Defence Accounts Association, Central Body. So far as the pending litigation is concerned it is contended that that litigation does not warrant the retention of the applicant at Pune. The applicant has already engaged a Professional Lawyer for the Regular Civil Suit: Regarding the ~~clash~~ of the date on which the applicant was required to report at and Ahmednagar. The date of examination, the respondents have stated that the order of transfer was amended keeping in view the clash of the dates of examination and the applicant can have no grievance on that count. The respondents have therefore prayed for dismissing the O.A.

4. On a perusal of para 376 of the Office Manual reproduced above it is seen that it is/ President and General Secretary of the Headquarters Association who are exempted from transfers so long as they hold these offices. The contention of the respondents that the applicant no longer holds his office is plausible in view of (Annexure R-2) being the letter dt. 5.8.1997 from All India Defence Accounts Association addressed to the C.G.D.A. giving the list of Office bearers of the

of the Association elected on 3.8.1997. The name of the applicant does not figure in this list. No doubt there is a dispute (and) the applicant is among the plaintiffs who have sought a declaratory relief, inter alia that the plaintiffs are the real representatives of the Association and not the defendants. But the existence of the dispute does not give a right to the Secretary General of the rival faction ^{of} the association to claim exemption from transfer liability. Evidently, the rival organisation is a de facto recognised Association ^{de jure} and the (D) status is required to be determined by the Court of Law and under such circumstances the respondents ^{in practice} are entitled to proceed ^{on} the basis that the applicant is no longer the office bearer of the recognised Association. Regarding ^{the} difficulty about the clash of date of taking over with the date of examination that is really a matter of academic interest, because it is not disputed that the applicant has appeared for the examination and the transfer order did not stand in the way of his appearing for the examination. The learned counsel for the applicant has vehemently argued that there is a clear nexus between the rival faction and the respondents and in this connection he relies on the Judgment of the Kerala High Court in the case of (Pushpakaran V/s. Chairman Coir Board ^{reported at} 1978 KLT 539 FIR 90) and in particular the following observations therein :

"What is ostensible in a transfer order may not be real object. Behind the mask of innocence may hide sweet revenge a desire to get rid of an inconvenient employee or to keep at bay ~~un~~ activities of a stormy petrel".

5. The learned counsel also made available the concerned Judgment in full for my perusal. That was a

case in which the High Court interfered with the transfer order because the High Court found that the respondents have not disclosed all that was necessary for the Court to appreciate rationale for Ex. P-3 viz. transfer order. The High Court observed (p. 97) that the counter-affidavit does not indicate the availability or otherwise of UDCs in head office, as to how the petitioner was picked up from the remaining bachelor LDC's and how he was found more competent than others. Hence the High Court held that the transfer was not in the course of administrative routine or due to administrative necessity but for other reasons. In my view, the facts in the present case are quite different. A bare allegation has been made that the rival faction of the Association is in league with Official Respondents No.2 and 3. This allegation has not been substantiated. As is well settled, the allegations of mala fides are easily made than made out and in the present case the allegations of mala fides cannot be held to have been made out.

6. On a consideration of the material on record, I am of the view that the orders of transfer do not suffer from any infirmity on account of being in violation of statutory transfer guidelines or being mala fide. The O.A. therefore fails. The O.A. is dismissed at the admission stage with no orders as to costs.

M.R. Kolhatkar

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

B.

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