

Oct. 1998 U3/1/98
CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 431/98 & 454/98.

Dated the 11th day of February, 1999.

CORAM : HON'BLE SHRI D.S. BAWEJA, MEMBER (A).

V. Arunachalam,
S/o. Veerapathiran,
Superintendent,
Regional Stamp Depot,
Parel,
Mumbai - 400 012.

... Applicant in
O.A. No. 431/98.

1. T. Ganesan,
S/o. Thangavelasari,
Officer on Special Duty,
O/o. C.P.M.G.,
Maharashtra Circle,
Mumbai - 400 001.

2. G. Kailasanathan,
S/o. Shri V. Gopalakrishnan,
Asstt. Director,
O/o. P.M.G. (BD&FM),
Mumbai - 400 001.

3. D. Paramanandam,
S/o. Shri P. Duraiswamy,
Asstt. Director,
O/o. PMG (BD & FM),
Mumbai - 400 001.

(By Advocate Shri S.P. Kulkarni
alongwith Shri B. Dattamoorthy).

... Applicants in
O.A. No. 454/98.

VERSUS

1. Union Of India represented by
Director General,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. The Chief Postmaster General,
Maharashtra Circle,
G.P.O. Building,
Mumbai - 400 001.
3. Chief Postmaster General,
Tamilnadu Circle, Anna Salai,
Chennai - 600 002.
4. Shri N. Narayanan,
Postal Service Group 'B' Officer.
5. Shri A. Thomas Lourdaraj,
Postal Service Group 'B' Officer.

6. Shri N. Inbalagan,
Postal Service Group 'B' Officer.
7. Shri V. Santhanaraman,
Postal Service Group 'B' Officer
(Officers at Sl. No. 4 to 7
working under the control of
Chief Postmaster General,
Karnataka Circle, Bangalore-
500 001).
8. Shri S. Ramamurthy,
Asstt. Director of Postal
Services,
O/o. The Postmaster General,
Nagpur Region, Nagpur 440 001.
9. Shri R. Balu,
Suptdt. Postal Stores Depot,
Dadar H.P.O. Building,
Mumbai - 400 014.
10. Shri R. Venkatraman,
Dy. Suptdt. of Post Offices,
Ghaziabad, U.P.
11. Shri S. Kandaswamy,
Postal Service Group 'B' Officer.
12. Shri S. Sunderarajan,
Postal Service Group 'B' Officer.
13. Shri M. Palaniswamy,
Postal Service Group 'B' Officer.

(Officers at Sl. Nos. 11 to 13 are
working under the control of Chief
Postmaster General, West Bengal Circle,
Calcutta - 700 012.)
14. Shri T. Veluchamy,
Postal Service Group 'B' Officer,
Working under Chief Postmaster
General, Bihar Circle,
Patna - 800 001.
15. Smt. Kalaiyarasi Ramaswamy,
Postal Service Group 'B' Officer
working under Chief Postmaster
General, Karnataka Circle,
Bangalore - 500 001.

(By Advocate Shri P.M. Pradhan for
Respondent Nos. 1, 2 and 3.
By Advocate Shri B. Ranganathan
for Respondent Nos. 8

.. Respondents in
both the O.As.

ORDER

PER.: SHRI D. S. BAWEJA, MEMBER (A)

These two O.As. have been heard together and are being disposed of by a common order as the same order has been impugned and the same question of law is involved in both these O.As.

2. O.A. No. 431/98 has been filed by one applicant while O.A. No. 454/98 has been filed by three applicants jointly. The facts and grounds taken for claiming the relief are more or less the same in both the O.As. The applicants in both the O.As. were promoted to the Postal Service Group 'B' post in 1997 and were allotted to Maharashtra Circle as per Department of Posts order dated 10.03.1997. The applicants in both the O.As. joined on two dates, namely - 24.04.1997 and 25.04.1997. Immediately on joining at Mumbai, the applicants made a request for re-allotment to the Tamil Nadu Circle, where they had been working before promotion. As per order dated 12.05.1998, posting and transfer of 35 officers have been issued, of which 12 officers have been re-allotted to Tamil Nadu Circle. The main case of the applicants is, that they have registered their names for transfer back to Tamil Nadu Circle earlier than the 12 officers included in the order dated 12.05.1998, who have registered their names for transfer subsequently to them. Feeling aggrieved by this, O.A. No. 431/98 has been filed

on 26.05.1998 and O.A. No. 454/98 has been filed on 04.06.1998 seeking the relief of quashing the order dated 12.05.1998 and to direct the respondents to regulate the transfer of the applicants strictly in conformity with the policy guidelines on transfers issued as per order dated 23.02.1998. The 12 officers included in the order of transfer dated 12.05.1998 have been made as respondent Nos. 4 to 15.

3. The main ground advanced by the applicants is that the transfer of respondent nos. 4 to 15 is in violation of the policy guidelines as laid down by the letter dated 23.02.1998, as they had registered their names for transfer earlier and, therefore, action of the respondents is arbitrary and illegal. The applicants also contend that the impugned order is not only administratively malafide and issued by resorting to colourable exercise of power but also goes against the well established principles of fairness and impartiality of treatment as laid down in Articles 14 and 16 of the Constitution of India.

4. The official respondents have contested both the O.As. by filing the written statement. The official respondents have indicated that Respondent Nos. 4 to 15 had been placed in the panel of Postal Service Group 'B' against the examination held in December, 1995. However, their promotion was delayed on account of litigation. Some of the affected persons apprehending affect on their seniority on account of delay in appointment, filed O.A. No. 576/96 before the Ahmedabad Bench of the Tribunal.

The Ahmedabad Bench, as per order dated 22.04.1997 decided the matter in their favour and directed that be promoted immediately and they are to be allowed seniority above those who are promoted subsequently. Accordingly, their promotion orders are issued with a stipulation that they would rank senior to those promoted earlier in the year as a result of D.P.C. In view of this, though the Respondent Nos. 4 to 15 had joined at Mumbai subsequent to the applicants in both the O.As. by virtue of the seniority allotted to them, their case has been considered for transfer back to Tamil Nadu Circle in preference to the applicants. In view of this, the respondents contend that there is no violation of the rules and the transfer of the Respondent Nos. 4 to 15 is just and proper.

5. Out of the private respondents, Respondent No. 6, 8, and 11 to 15 have filed written statement contesting the claim of the applicants. Respondent No. 15 was represented through a Counsel but subsequently, the counsel for the applicants made a statement that they have no case against Respondent No. 15 and, therefore, they are ready to drop Respondent No. 15 from the applications. Respondent No. 8 is represented through Shri B. Ranganathan as the Counsel. The Private respondents in their affidavit have reiterated the averments made by the official respondents in their written statement.

6. The applicants have filed rejoinder reply for the written statement of Respondent Nos. 1 to 3, 6, 8 and 11 to 15, reiterating their stand taken

in the O.As. while controverting the contentions of the respondents.

7. The official respondents have filed separate supplementary written statement for the rejoinder of the applicants in both the O.As.

8. As per order dated 11.06.1998, it was provided that the implementation of the transfer order dated 12.05.1998 will be subject to the final orders to be passed in respect of O.A. No. 431/98. Similar order was passed on 11.06.1998 in respect of O.A. No. 454/98 laying down that any officer taking charge in the new post in pursuance of the order dated 12.05.1998 will take it on his own risk and cost and subject to the final outcome of the O.A.

9. Heard the arguments of Shri B. Dattamoorthy alongwith Shri S. P. Kulkarni for the applicant in O.A. No. 431/98 and Shri S. P. Kulkarni for the applicants in O.A. no. 454/98. The official respondents in both the O.As. argued through Shri P.M. Pradhan, Shri B. Ranganathan argued on behalf of Respondent No. 8.

10. The Hon'ble Supreme Court through catena of judgements has laid down the scope of judicial review when a transfer order is challenged by a government employee. It will be appropriate to re-produce para 4 of one such judgement of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose & Others V/s. State of Bihar & Others [AIR 1991 SC 532] as under :

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

In the case of Union Of India V/s. S. L.

Abbas [1993(2) ATJ 147] the Hon'ble Supreme Court has held that executive instructions issued with regard to transfer of the government employees are in the nature of guidelines and they do not have any statutory force.

11. Keeping in view the scope of judicial review laid down by the Hon'ble Supreme Court, the matter will be deliberated to find out whether the impugned order is vitiated by any of the parameters where judicial interference in the transfer order is called for.

12. The first ground of challenge taken by the applicants in both the O.As. is that the impugned transfer order is administratively malafide and has been passed by resorting to colourable exercise of power.

The applicants in both the O.As., except making a bald statement, have not laid down any foundation to substantiate this allegation. As held by the Hon'ble Supreme Court in the case of S. Nagraj & Others v/s. State of Andhra Pradesh [AIR 1985 SC 551], the burden to establish malafide is/heavy burden to be discharged by the party who alleges the same. Vague and casual allegations that the certain act was done with an ulterior motive cannot be accepted without proper and adequate proof. The averments with regard to the allegations of malafide are conspicuously absent in the present O.As. Further, the applicants have not brought out the names of the officers against whom the malafide is alleged. It is not brought out as to how the authority competent to transfer the applicants was ill-disposed towards them. In the absence of allegation of malafide and colourable exercise of power against any particular officer and in the absence of impleading of such a person by name so as to enable him to answer the allegation, the charge of malafide and colourable exercise of power cannot be sustained. Keeping these observations in focus, I am unable to find any merit in this ground of challenging the transfer order.

13. The second ground advanced by the applicants is that the transfer of the Respondent Nos. 4 to 15 as per the impugned transfer order is in violation of the guidelines issued by the Department as per order dated 23.02.1998. The applicants' case is that, they had been transferred on promotion on regular basis. as per order dated 10.03.1997 and reported on promotion

to Maharashtra Circle in the end of April, 1998 while Respondent Nos. 4 to 15 were promoted by a subsequent order dated 24.07.1997 and they joined the Maharashtra Circle in August, 1998. The applicants contend that since they had registered their names for transfer back to Tamil Nadu circle earlier than the Respondent Nos. 4 to 15, they were entitled to be transferred back to Tamil Nadu Circle as per the guidelines issued under order dated 26.03.1998. As seen from the material brought on record, it is an admitted fact that the Respondent Nos. 4 to 15 have registered their names later than the applicants in both the O.As. On the face of it, the applicants should have been transferred to Tamil Nadu Circle when the vacancies arose and covered by the impugned order dated 12.05.1998. However, in their place, Respondent Nos. 4 to 15 have been transferred. The respondents have indicated the reasons based on which the transfer of Respondent Nos. 4 to 15 has been ordered, even though they have joined later than the applicants in Maharashtra Circle. As indicated earlier, the executive instructions with regard to regulation of transfers are guidelines and they have no statutory force. In view of this, the applicants cannot claim any vested right for transfer in terms of the guidelines. However, it is conceded that the administration is expected to follow the guidelines in a fair and just manner, so that there is no discrimination. The reasons advanced by the respondents for transferring Respondent Nos. 4 to 15 therefore have to be looked at fairly and just in following the guidelines for transfer. The official respondents have brought out that Respondent Nos. 4 to 15 had been selected in the earlier panel than the applicants but

their posting on promotion had been delayed on account of litigation, firstly before the Tribunal and subsequently before the Hon'ble Supreme Court. It is further stated that some of the selectees apprehending loss of seniority, agitated the matter before the Ahmedabad Bench and as per the order of the Ahmedabad Bench dated 17.04.1997 in O.A. No. 571/96, it was directed that the applicants should be promoted immediately and the panel will be treated as operated from the beginning. In pursuance of this, the respondents have issued the promotion order dated 24.07.1997 which covers respondent nos. 4 to 15 and posted to Maharashtra Circle. The applicants have relied upon the guidelines for transfers issued as per order dated 23.02.1998. On perusal of these guidelines it is noted that as per para 8, the applicants were eligible to be transferred back after the period of one year. However, Respondent No. 6 has brought on record a copy of subsequent letter dated 11.10.1993 according to which in/ ^{respect of} Postal Officers posted on promotion to outside Circle, their request for transfer to home circle could be considered when the next D.P.C. is held, provided there are vacancies and they have worked outside the Circle physically for six months excluding the period of leave. The applicants have not refuted this letter. As indicated earlier, the respondent Nos. 4 to 15 had joined the Maharashtra Circle in August 1998 and therefore had completed six months of service before the transfer order was issued in May, 1998. The respondents' main argument is that, Respondent Nos. 4 to 15 were transferred back in preference to the applicants in both the O.As. even though they have

registered their names earlier, on the consideration that Respondent No. 4 to 15 were senior to the applicants as provided in the order dated 24.07.1997. On careful consideration of the reasons advanced by the respondents for transferring Respondent Nos. 4 to 15 in preference, I am of the considered opinion that the action of the respondents is not arbitrary but their action is fair and just. The respondent nos. 4 to 15 should have been promoted and posted to Maharashtra Circle earlier than the applicants in case there was no hold up with regard to the operation of the panel due to litigation. The applicants got the advantage of earlier promotion on account of hold up of the panel of Respondent Nos. 4 to 15 and, therefore, were posted to Maharashtra Circle earlier. The Respondent Nos. 4 to 15 suffered due to delay in their promotion and, therefore, it is logical that when a chance came for transfer back to their home Circles against the vacancies arising, they should not be put to a further disadvantage as compared to the officers who have been promoted and posted to Maharashtra Circle earlier through a subsequent selection. As brought out above, the respondent Nos. 4 to 15 had also become due for transfer, as they had completed six months of service in Maharashtra Circle. Therefore, there was no violation of the guidelines for transfer with regard to requirement of service before they are entitled to transfer back to the home Circle. Keeping in view these facts, I am unable to accept the contention of the applicants that the transfer of Respondent Nos. 4 to 15 had been done in violation of the guidelines and the respondents have acted arbitrarily.

14. During hearing, the official respondents brought out that out of four applicants in both the O.As., three have been already

transferred back as per order dated 17.11.1998 to the adjoining Circles at Bangalore and Karnataka and all of them have joined. Only Applicant No. 2 in O.A. No. 454/98, Shri G. Kailasanathan, is still to be transferred back ^{and continuing} he is in Maharashtra Circle. At this stage, the Counsel for the applicants in both the O.As. made a plea that in case the relief is not allowed, the applicants should be allowed to retain their date of registration in Maharashtra Circle as a reference for transfer back to Tamil Nadu Circle, as they are still interested to go back to their home circle. The Learned Counsel for the respondents, on the other hand, pointed out that in the order dated 17.11.1998 it is specifically brought out that the request of the officers covered by the transfer order for transfer ^{out of} the Circle stands cancelled on their joining the Circle or place of posting as covered in the order and in case they want further transfer to some other Circle, they will be required to make a fresh registration. In view of this clear stipulation, the applicants have already joined the Circle to which they have been transferred and therefore, in case they still desire to go to their home circle i.e. Tamil Nadu Circle, they will have to register their names afresh for such a transfer. Considering the stipulation made in the order dated 17.11.1998 and the fact that the applicants have already joined as per this transfer order, I am unable to see any merit in the plea made by the Counsel for the applicants. If they were keen to go only to their

home circle, the applicants could have refused the transfer as per order dated 17.11.1998 and waited for their turn for transfer to Tamil Nadu Circle. The prayer made by the applicants, therefore, does not deserve consideration.

15. In the result, both the O.As. lack merit and deserve to be dismissed and are accordingly dismissed. The interim orders, as indicated earlier, in both the O.As. stand vacated. There will be no order as to costs.

(D. S. BAWJIA)
MEMBER (A).

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