

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 666/2017

Dated this Friday, the 9th day of February, 2018.

**CORAM:- HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

1) Shri Babasaheb kisan Bhosale,
Aged: 58 years,
Working as Head TTE, Pune
Residing at Flat No. 201, Prathmesh Exotica
S. B. Patil, School Road Ravit, Dist. Pune - 412101

...Applicant

(By Advocate Shri V. A. Nagrani)

Versus

1) Union of India,
through The General Manager
Central Railway, CSTM, Mumbai - 400001.

2) The Divisional Railway Manager (P)
Central Railway, Pune Division, Pune.

...Respondents

(By Advocate M/s M.V. Kini & Company)

Reserved on :- 10.11.2017.

Pronounced on:- _____.

O R D E R

Per:- R. Vijaykumar, Member (A)

This applicant was appointed by the respondents as Khalasi on 19.12.1980 and was promoted thereafter in stages as a Jr. TTE at Dehu Road, Pune District in 2005, was transferred to Pune as Jr. TTE

in 2008, got promoted as Sr. Examiner TTE in 2012 and then as Head TTE in 2014 and has been working in Pune and Pune Region effectively from 2005. In impugned order No. 636/2017 dated 01.09.2017, he was transferred on the advice of vigilance which also mentioned that he should not be posted in open detail for a period of one year and was ordered to be relocated at Miraj(Amenity) in the same post and pay. Against this, he made a representation on 12.09.2017 and 03.10.2017 and upon not getting a reply, obtained directions of this Tribunal in O.A. 622/2017 dated 13.10.2017 directing the respondents to pass a reasoned and speaking order which was then passed in R No. PA/C/TC/Staff/Transfer/2017 dated 27.10.2017. This order mentions that he had been transferred on vigilance advice from Pune to Miraj(Amenity) on 02.06.2015 by Office Order No. 438/2015 dated 02.06.2015 but since by Corrigendum dated 19.06.2015, it was considered that since he was an Assistant Secretary of the Pune Main Line Branch(NRMU), Railway Board guidelines required approval to be obtained from the General Manager and after this was done, transfer was ordered in Office Order no. 636/2017 dated 01.09.2017. Previous to this, a reference proposing rotational transfer of staff working on sensitive post

was issued in R No. PA/P/Commit/60/ Sensitive Post/2015 dated 30.05.2017 identifying employees working in sensitive posts who had completed 4 years on 31.03.2017 on the same seat/station/depot and directing preparation of an action plan for their transfer and the annexed list includes the present applicant. Based on the rejection of his representation, the applicant has filed this OA on 03.11.2017 seeking the following reliefs:

“a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned order dated 01.09.2017 and 27.10.2017 the applicant with all consequential benefits.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to allow the Application to work as Head TTE, Pune with all consequential benefits.

c. Costs of the application be provided for.

d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

2. The applicant has contested the transfer order as violative of the transfer guidelines on the grounds that although he was in a sensitive post, he had served for less than the minimum tenure of four years. Further, he had nearly 27 months left from retirement and since he was on the verge of retirement, the transfer orders were illegal. The applicant refers to the transfer order in office order issued on 02.06.2015 but which was kept in abeyance by order dated 19.06.2015 and has now been issued after 2 years and four months, which is an extremely long

delay that makes the order itself illegal. He urges that since he is an office bearer of the recognized NRM Union(NRMU), he should not have been disturbed as this is in violation of the rules. In his application, he also mentions that he had been chargesheeted on 13.04.2015 for alleged misbehavior with a complainant and had suffered a minor penalty and had completed the period of effect of minor penalty and that no vigilance case of any kind was pending against him. He also refers to the transfer list and argues that three employees at Sr. Examiner no. 49, 51 and 55 who are above the applicant in the transfer list and are due for transfer before the applicant and against whom vigilance cases are pending are being retained at Pune, while the applicant, against whom no vigilance case is pending, is illegally being transferred on vigilance advice. On his behalf, the applicant argues that he had worked with great enthusiasm and has received awards. He has also referred to his-on going medical treatment for cardiac problems for which he needs continuing medical attention.

3. Respondents mention that although the prescribed tenure is four years, a person can always be transferred prior to completion of the tenure on

administrative grounds or vigilance grounds and that this includes ticket checking staff who have been punished on disciplinary matters. In particular, they mentioned that as already admitted by the applicant, he was in a sensitive post and as per rules in RBE no.158/2015 dated 17.12.2015, employees in sensitive posts are required to be transferred every four years. They also mention that the applicant has been working in a sensitive post for more than four years and therefore, the orders are in conformity with the guidelines. They explain that the original order of 2015 had to be kept in abeyance because it was realized that since the applicant was a member of a recognized union, his transfer had to be seen by the General Manager. Once the General Manager had approved, the transfer orders were issued. With regard to the applicant's claims that Scheduled Caste and Scheduled Tribe staff should be transferred very rarely, they refer to vigilance advice which was a basis for his transfer.

4. During arguments, learned counsel for applicant explained that the applicant was a Union member and therefore, got into clashes with vigilance officers on day-to-day basis and this resulted in the disciplinary action. There was a big gap between the

date of vigilance advice and transfer which suggested that transfer orders were being issued without proper consideration. Learned counsel argues bias on the part of the respondents in ordering this transfer. In this connection, he quotes a case of Sumesh Tiwari where it was held that punitive transfers are illegal.

5. Learned counsel for respondents refers to the transfer policy where it is mentioned that:

“Ticket Checking Staff indulging in malpractices is sent on Inter Railway/ Inter Divisional Transfer as a matter of policy. General Manager will review DAR cases of those staff let off on “Censure” on merit of each case and decide if transfer ordered be cancelled or not”

In the present case, the individual has only been sent to a different station within the same division of the Zonal Railway. All necessary provisions, including the approval of General Manager have been followed. The applicant compares himself with three other persons who are yet to be punished and therefore, it was not considered appropriate to transfer them. However, in this case, appropriate punishment has been imposed and the transfer policy allows such transfer. They also refer to the fact that the individual has been posted in Pune right from 2005 at Dehu Road and then from 2008 at Pune itself. Therefore, he had definitely completed his tenure period and is now due for transfer.

6. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

7. It is apparent from the above narration that the applicant was working in a sensitive post and was due for transfer well before the transfer was proposed in 2015 and before the orders were actually issued in 2017. Reference to the rotational transfer list dated 30.05.2017 shows several sensitive categories which include HTTE as in the case of applicant and Sr. TTE. The applicant has admittedly been working as Jr. TTE from 2008 and as Sr. TTE from 2012. Since all these posts are sensitive, he was due for transfer in 2012 itself when he got promoted but managed to stay in the same location from that point of time. On this aspect, therefore, there is no violation of the transfer policy. There is no special exemption given to SC/ST persons working in sensitive posts. Perhaps, on this ground and on the ground that he was a member of a Union, he had been allowed to remain but that cannot become an excuse for violating the transfer policy in his favour to an extent that would amount to an illegal and arbitrary act of favouring the applicant versus many others who were transferred.

Discretion and soft handling cannot be pursued at the cost of throwing all rules and regulations to the winds as the applicant would desire. Both in his initial representation dated 12.09.2017 and in the present application, he had mentioned his medical condition but that is a matter which needs to be considered by the respondents keeping in view his designation and competence. This was perhaps the reason for retaining him within the State despite the fact that his transfer has been ordered on vigilance grounds. The applicant has argued that he has only 27 months of service left before retirement but has not referred to any rules which bar the transfer at that point of time and therefore, there is clearly no violation of the transfer policy guidelines. Although the applicant has not alleged any mala fide by the respondents or lack of competence in issue of orders or violation of statutory provisions, he has alleged that there is a bias by which three other Sr. TTEs have been retained at Pune despite disciplinary action being pursued against them. Respondents have explained that their case are different because the disciplinary action is in progress whereas the applicant had already been punished and his orders of transfer were proposed two years back in 2015.

Therefore, the applicant who bears the burden of providing sufficient information of bias and mala fide against the respondents has failed to do so.

8. The scope for judicial review by Courts and Tribunals of transfer effected by administrative departments is very limited and has been settled.

9. The law on judicial intervention into matters of transfer is well settled through a catena of decisions by the Apex Court in, **B. Varadha Rao v. State of Karnataka**, AIR 1986 SC 1955, **Shilpi Bose v. State of Bihar**, AIR 1991 SC 532, **Union of India v. S.L. Abbas**, AIR 1993 SC 2444, **Union of India Vs. N.P. Thomas**, AIR 1993 SC 1605; **Rajender Roy Vs. Union of India**, AIR 1993 SC 1236; **Ramadhar Pandey Vs. State of U.P. & Ors.**, 1993 Supp (3) SCC 35; **N.K. Singh Vs. Union of India & ors.**, (1994) 6 SCC 98 & AIR (1995) SC 423; **Chief General Manager (Tel.) N.E. Telecom Circle Vs. Rajendra Ch. Bhattacharjee**, AIR 1995 SC 813; **State of U.P. Vs. Dr. R.N. Prasad**, 1995 (Supp) 2 SCC 151; **Union of India & Ors. Vs. Ganesh Dass Singh**, 1995 (Supp) 3 SCC 214; **Abani Kante Ray Vs. State of Orissa**, 1995 (Supp) 4 SCC 169; **Laxmi Narain Mehar Vs. Union of India**, AIR 1997 SC 1347; **State of U.P. Vs. Ashok Kumar Saxena**, AIR 1998 SC 925; **Mysore Paper Mills Ltd., Bangalore v. Mysore Paper Mills Officer Association**,

Bhadravati and another, 1999 6 SLR 77, **National Hydroelectric Power Corporation Ltd. Vs Shri Bhagwan**, (2001) 8 SCC 574; **Public Services Tribunal Bar Association Vs. State of U.P. & Ors.**, AIR 2003 SC 1115; **State of U.P. Vs. Siya Ram**, AIR 2004 SC 4121; **State of U.P. v. Gobardhan Lal**, (2004) 11 SCC 405; **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey**, (2004) 12 SCC 299; **Union of India Vs. Janardhan Debanath**, (2004) 4 SCC 245, [Masood Ahmad v. State of U.P.](#), 2007(6)SLR 469 (SC), **Airport Authority of India v. Rajeev Ratan Pandey**, JT 2009 (10) SC 472 and **Rajendra Singh v. State of UP and others**, 2010 1 SLR 632.

10. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The scope of judicial review in these matters is very limited. The employee, "... a Government servant does not have any vested right to remain posted at a place of his choice, nor can he insist that he must be posted at one place or the other because no Government can function in such manner," as noted in **Rajendra Singh & Anr v. State of Uttar Pradesh & Ors** (2009) supra. As

was also held in **Shilpi Bose** (1991) supra,

"In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to 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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

11. The Hon'ble Apex Court in **Airports Authority of India v. Rajiv Ratan Pandey & Ors** (2009) supra held in para 10 that "... scope of judicial review is limited and High /court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

12. In **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, (2001) 8 SCC 574, it was held that: "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a

particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. "This aspect has been reiterated in the decisions of the Hon'ble Apex Court in **Siya Ram** (2004), **KVS v. Damodar Prasad Pandey** (2004) and **N.K. Singh** (2004) supra. In the decision on **Gobardhan Lal** (2004) supra, the Hon'ble Apex Court also emphasised "that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when an order of transfer is shown to be vitiated by mala fides, or is in violation of any statutory provision, or has been passed by an authority not competent to pass such an order.... No Government can function if the Government servant

insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires."

13. Certain additional exceptions may also apply as when a transfer is made as a punitive measure. The Hon'ble Apex Court has held in Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd, CA No. 6344/1998 (in SLP (C) No. 11422 of 1998) dt.15.12.1999 that transfer effected as a punitive measure is also not permissible. Whether a transfer is punitive or not is a question of fact, as held by the Hon'ble Supreme Court in this case. It was permissible for the Court to go behind the order and find out if it was punitive in nature. This aspect of the decision underlying the transfer was also alluded to in the decision of the Hon'ble Apex Court in **Registrar General, High Court of Madras v. R. Perachi & Ors** (2011) supra which held:-

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. The respondent no.1 had not disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the

13administrative grounds, and without attaching any stigma which was so done in the present case."

14. In this case, the employee had also argued that as a result of the inter-district transfer, his promotional prospects were affected by which the transfer orders became punitive in nature. This was because when the panel was drawn up for the district, he was not included since he was already transferred. The Hon'ble Apex Court held that the right to be considered for promotion was a fundamental right but not a right to promotion nor a mere chance of promotion. In the particular case, the employee had been transferred from the district on administrative grounds on the face of a complaint under inquiry and that transfer was not mala fide nor, it held, punitive in nature.

15. The Hon'ble High Court of Delhi in **Udai Vir Singh Rathi v. UOI (Delhi)** in 2013(1) SLR 8 (Delhi), appreciated at length, the observations of the Hon'ble Apex Court in **A.S. Poshani** (1989) supra which was followed in **Mithilesh Singh v. UOI**, (2003) 3 SCC 309 and in **Novartis India Ltd v, State of West Bengal & Ors** in CA No. 7011/2008 (in SLP(C) No. 21254/2007) reproduced below:-

"4. ...Transfer from one place to other is

necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

16. On the aspect of the application of transfer guidelines, the Hon'ble Apex Court considered the matter in the case of **UOI v. S.L. Abbas** (1993) supra and held (as in abstract): "An order of transfer is an incidence of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority

must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right. Executive instructions issued by the Government are in the nature of guidelines. They do not have statutory force. There is no dispute that the respondent is liable to transfer anywhere in India. It is not the case of the respondent that the order of his transfer was vitiated by mala fides on the part of the authority making the order, though the Tribunal says so, merely because certain guidelines issued by the Central Government were not followed."

17. The judgment does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

18. In the present case, we note that the transfer orders for the applicant are not punitive in nature, although, he may personally face hardship or

family dislocation but that does not amount to rendering the orders illegal. In the circumstances, we see no merits inviting the need for intervention by this Tribunal into the impugned orders which we hold are properly issued and are perfectly in order. In the result, this O.A. is dismissed without any order as to costs.

(R. Vijaykumar)
Member(A)

(A. J. Rohee)
Member(J)

gm.