

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 66/2018

Date of Decision: 28th February, 2018

CORAM: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A)

Shri Prafulla Bhanudas Bharne,
Son of Shri Bhanudas Bharne
Working as Accountant (Trading),
IN Khadi and Village Industries Commission,
Resident of JK 5/85 JuhuKutir,
Juhu-Versova Link Road, New DN Nagar,
Andheri (West), Mumbai-400 053.

...Applicant.

(Applicant by Advocate: Shri. Anupam Chattopadhyay)

Versus.

1. Union of India, through Secretary,
Ministry of Micro, Small and Medium Industries,
Udyog Bhavan, Rafi Marg, New Delhi-110001.

2. Chairman,
Khadi Village Industries Commission,
Gramodaya, 3 IRLA Road,
Vile Parle (West), Mumbai 400056.

3. Chief Executive Officer,
Khadi Village Industries Commission,
Gramodaya, 3 IRLA Road,
Vile Parle (West), Mumbai 400056.

... Respondents

(Respondents by Advocate Shri R.R. Shetty).

Reserved on : 15.02.2018.

Pronounced on : 28.02.2018.

ORDER

Per:- R. Vijaykumar, MEMBER (A)

The applicant who is currently employed as Accountant (Trading/Marketing) at State Office, KVIC, Mumbai, has filed this application against the order of transfer No. Adm-I/TNT/TFR/Sr.Ex.-FBAA/69/2017-18 dated 15.01.2018 issued by the competent authority of the (Khadi and Village Industries Commission (KVIC), Mumbai. He seeks the following reliefs:-

"(a). The Application may please be allowed.

(b). Direction may be issued to the Respondents to cancel the impugned posting order dated 15 January 2018, or the posting order be quashed and set aside by an order of the Lordships.

(d). Cost of this Application may be allowed.

(e). Any other relief that the Lordship consider appropriate in the interest of justice may please be granted."

2. The applicant has explained the details of his postings from the date of joining on 31.05.1991 as Accountant (Trading) at Khadi Gramodyog Bhavan, Patna to New Delhi and then to Mumbai. He states that while holding charge of Khadi Gramodyog Bhavan, Mumbai office, he detected some serious irregularities for which an

anonymous complaint was filed against him and to which he replied but no action was taken thereafter. Thereafter, he was posted to the Directorate of Marketing, Mumbai but this order was cancelled and later, on 16.10.2017, he was transferred to KVIC office, Churchgate, Mumbai. The impugned posting orders have been issued within three months thereafter and he alleges that this has been done so that the serious irregularities that he detected cannot be pursued by him. He also states that the posting policy of KVIC which is a published document of 2007 is never followed and there are many officers, working at Mumbai, who have completed long tenure of even 20 years and who have not been transferred out of Mumbai. He claims that he and his wife were suffering from diabetes and high blood pressure and his daughter, who is studying in Pune, is not in good health.

3. The respondents have replied denying that the applicant has been victimized but have underlined the fact that the applicant is an Accountant who is concerned with trading activities and marketing work and therefore, he was now posted in the Khadi Gramodoyog Bhavan. They also mention that since 2005, the applicant

has been posted in Mumbai and was handling marketing. He was temporarily posted in Khadi Gramodoyog Bhavan, Erla, Vile Parle, Mumbai which required an officer of the rank of Assistant Director Grade-I and since such an officer was not available, the applicant was posted and as and when an officer of that rank became available, he was posted at Vile Parle. It was on such circumstances that the applicant was redeployed as an Accountant to the State Office of KVIC, Mumbai. They state that the applicant made a representation on 29.11.2017 (R-1) indicating his serious discomfort in the assigned job and claimed that he was not familiar with the conduct of Internal Audit. On this basis, they state that the applicant was posted to Khadi Gramodoyog Bhavan, Ernakulam which is one of the largest Bhavans of KVIC. With reference to the irregularities detected by the applicant, they state that the complaint has been handed over to the Chief Vigilance Office for investigation and enclosed his report which states that preliminary investigation has been conducted and further action is being taken on the basis of the fact finding report. With reference to the transfer policy, they state that it is only a general

guideline and that since the applicant was in a transferable post on an all India basis and his services were needed at Ernakulam, he was duly posted after having spent 12 years in Mumbai. They state that the excuses given by the applicant are routine ones as furnished by all employees upon transfer and objected to any dependence upon them.

4. In the letter protesting work allocation given by the applicant on 29.11.2017 to the respondents, he has stated that he has all along been working for 26 years in trading units and has no experience nor has he attended any workshop relating to Audit matters. He has therefore claimed that it is not possible for him to attend to the work of utilization certificate and internal audit at State office which is actually the work of the regular internal audit of KVIC and who came under direct control of Director (Audit) whereas his non Administrative Authority was Director (Marketing). He has also objected to the requirement that he should submit papers relating to non-plan funds through the Senior Executive/Superintendent (ADM/HR) whereas it should be the other way around and he should be putting up papers to the Deputy Director. He

has also objected to the assignment of activities for obtaining ISO: 9001-2015 certificate since his computer is not working properly.

5. The applicant in his Rejoinder has questioned the reasons given for temporarily posting him at Vile Parle, Mumbai since his substitute was already available at the State Office even at that time. He has also mentioned that the changes in routing of the file that he sought in his letter dated 29.11.2017 have been subsequently changed and that in his application he never asked for any transfer outside the State. He again alleges that his transfer is only done with the mala fide intention to prevent him from pursuing the irregularities alleged by him and which were under investigation by vigilance.

6. During arguments the learned counsel for the applicant reiterated his brief as already submitted and that the transfers was in violation of the transfer policy. He also referred to the Vyapam case where a whistleblower was transferred upon intervention by the Hon'ble High Court, the transfer order was reversed. The learned counsel for the respondents reiterated the arguments made in his reply and affirmed that DoP&T policy for transfer is being followed. They assert that the

applicant has claimed that he does not know the work in his present position and has claimed that trading refers to sales which is why he has been adjusted in a suitable place based on his rank, status, and past experience.

7. In his reply, the learned counsel for the applicant argues that the transfer was in response to his objections to being made to file papers through the Senior Executive rather than the Deputy Director but which was subsequently modified. He claims that his letter was issued out of frustration and when queried, he has admitted that there are separate auditors for checking of vouchers etc. He claims that he was assigned the work of Budget reporting, trial balance, accounting and examination for issue of utilization certificates. The learned counsel again claims that it was a punitive transfer which deserves to be quashed.

8. We have gone through the O.A. alongwith Annexures A-1 to A-13. We have also gone through the Reply, its Annexure-R-1 to R-4, Rejoinder alongwith Annexure-A-14 and A-15 and have carefully examined the official policy documents annexed in the case.

9. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

10. 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.

11. 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."

12. 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."

13. 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 **Siyam 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 emphasized "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."

14. On the issue of mala fide or "*malus animus*" the Hon'ble Supreme Court held in **Tara Chand Khatri v. Municipal Corporation of Delhi and Ors.**, that :

"the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a *prima facie* case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish *malus animus*."

15. In **E.P.Royappa v. State of Tamil Nadu and Anr.**, the Hon'ble Apex Court also held :

"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it... The Court would therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status... but because otherwise, functioning effectively would become difficult in a democracy."

16. In **M.Sankaranarayanan, IAS v. State of Karnataka and Ors.**, the Hon'ble Apex Court observed:

"that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture."

17. However, in **N.K.Singh v. Union of India**, the Hon'ble Apex Court held that :

"the interference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances".

18. The Hon'ble Apex Court also examined the issue of bias and mala fide in **State of Punjab v. V.K.Khanna and Ors.** and observed that :

"One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purpose of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice... In almost all legal inquiries, 'intention as distinguished from motive is the all-important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse."

19. As also in the case of **Kiran Gupta and Ors. v. State of U.P. And Ors.; and Netai Bag and Ors.** **v. State of W.B. And Ors.**, it was held that :

"There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material."

20. 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."

21. When an allegation of mala fide is made, the applicant has a heavy burden to support it with evidence. This applicant has urged that the transfer was in response to detection of irregularities. As mentioned by the respondents,

the matter has reached the vigilance department and they have completed the preliminary investigation. The vigilance department has a parallel control and works under the office of the CVC. Once a complaint was made to vigilance, there is no scope for the applicant to intervene since the particular matter in which he found irregularities is based on documents and do not require any special expert advice from him. Therefore, his presence or absence from Mumbai cannot make any difference to the investigation.

22. The applicant has also urged that he was transferred when he raised objections on the job assigned to him. He has admitted that there are separate internal auditors in KVIC and there are auditors who carry out the duties of voucher checking etc. If the applicant had been really enthusiastic as he claimed and willing to work hard, he could have brought his vast experience in marketing and trading activities to bear on the job of internal audit by way of taking up performance audit which could improve productivity in the organization. The applicant seems to have taken umbrage at being asked to verify the utilization certificate that were probably received from various units of KVIC but

this is a supervisory task which he should have gladly performed knowing the nature of work in the field units. As regards trial balance and other accounting matters, it is observed that his initial appointment was itself as Accountant (Trading) and therefore, he has already got some exposure to journal entries, book keeping, Bank account management and trial balance. Instead of being enthusiastic and supporting the management, he seems to have taken a view that he has to go by his past experience and stop learning thereafter. No organization can survive if senior staff with wide experience behave in the manner the applicant has done and as he himself describes the process. He has, therefore, placed the management in a situation where his unwillingness and inability compel them to place him in circumstances most suited to his ability. They have done so in the impugned order without affecting his rank, status and relevance of experience.

23. The applicant has claimed that guidelines are not being followed in his transfer but as observed by the Hon'ble Apex Court in the case of **Union of India Vs. S.L. Abbas**, AIR 1993 SC 2444 the guidelines do not generate any fundamental

right and can be varied for good reasons which apply in the present case.

24. In the circumstances, this OA has no merits and is dismissed. The interim order passed earlier stands vacated. No order as to costs.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

Amit/-

