

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.70/2019

This the 14th day of February, 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)

R.N.SINGH, MEMBER (J)

D.M.Shukl, Offcl. Address: PS.Gr.B/Sr.PM, Mumbai Region, Chembur H00499971. Residential Add: B1-4, P&T Colony, Vakola, Santacruz East, mumbai-400029.

(In person) ...Applicant

v.

1. The Union of India, through its Secretary (Posts) Department of Posts, Dak Bhawan, New Delhi-110001.
2. Secretary, Department of Expenditure, Ministry of Finance, New Delhi-110001 (India)
3. Chief PMG, Maharashtra Circle, Mumbai-400001.

...Respondents

Reserved on :- 23.01.2019

Pronounced on:- 14.02.2019

ORDER

R. Vijaykumar, Member (A)

This application was filed on 16.1.2013 under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"(a) That Hon'ble Tribunal be pleased to set aside the discriminatory posting order dated 6.9.2018 (Anx.A-2) and order dated 9.1.2019 (Ex.A-I) issued by the respondent No.1 by which Applicant is denied posting in Home State of Maharashtra and posted in distant place viz. Delhi Circle and order the Respondent to post Applicant at a vacant

post in Mumbai based on earlier posting policy which was governing the posting/promotional conditions of Promotee officers before 18.5.2018 in accordance directions given in the Memo No.7-3(E)-Coord./2006 dated 22.6.2006 (Anx.A-10) issued by the Respondent No.2 viz. Ministry of Expenditure, Ministry of Finance and Memo No.141-141/2013-SPB-II dated 31.1.2014 (Anx.A-11) issued by the Postal Directorate.

OR

(b) Direct the Respondent No.1 to retain Applicant at Mumbai in any vacant post of PS-Gr.B till completion of academic session of his studying Children's which is likely to be completed in April-May-2020. The Applicant gives UNDERTAKING) here that he would join his posting in June-2020 in other State after completion of academic session of his Children's.

(c) Such any other orders as may be deemed necessary and expedient in the facts and circumstances of the matter".

2. The applicant was selected as Inspector (1997 batch) and has worked with the respondents at several places in Maharashtra during which he secured promotions and was last promoted on ad hoc basis as Assistant Director(Legal and Vigilance), Mumbai in 2013 and then transferred to Chembur Head Office as Senior Postmaster (PS Gr.B) on 5.2.2018. He passed a Departmental Competitive Examination conducted by R-1 on 10.4.2018 and when he appeared for his exam on 18.12.2016, he was depending on the provisions of posting and transfer policy in Memo No.141-141/2013-SPB-II dated 31.1.2014 and that PS

Gr.B officers used to be posted in their home Circle of choice, especially since 28 posts were vacant at Mumbai City. He admits that the Hon'ble Apex Court in **Smt. Gayatri Devi v. State of U.P.**, 1997(2) UPLBEC 925, ruled that transfers can be set aside only on three grounds namely:

- a) Violation of a statutory rule,
- b) Mala fide
- c) infraction of any professed norm or principle governing transfers".

3. He states that the respondents have violated Article 16 of the Constitution of India, instructions and orders relating to financial and fiscal management and denied natural justice to promotee officers like the applicant etc. Primarily, he argues that there is discrimination as contained in the posting orders. He also states that because of belated promotion, the average age of such officers is over 50 years. By not posting officers in their own home state, the respondents were creating room for officiating arrangements. He alleges misuse of the transfer policy because the result is that non-qualified officials were working in posts such as of the applicant in officiating capacity.

4. At the time of admission, the applicant

appeared in person and argued his case. He was heard at length and inquired as to the basis of this request in Rules especially since he had obtained a promotion and would then require to undergo a transfer. In reply, he referred to the Dept of Expenditure O.M. No.7(3)E.Coord./2006 dt. 22.7.2006 on Economy Measures where it was advised to review transfer policies since frequent transfers cause avoidable instability, resulting in inadequate development of expertise and avoidable expenditure. He argues that his tenure in the post at Chembur has not been completed as required under the transfer policy guidelines at para 4.2 (I) which reads as below:

"4.2 Employees of all other cadres including Private Secretaries, Stenographers and Mail Motor Service in the Department of Posts, completing prescribed post tenure and station tenure, read in conjunction with the provisions in the Postal Manual, unless otherwise specially specified, may be rotated as detailed below subject to the following broad principles of rotational transfers:

- a) Matching of human resources with requirements of posts and placing officials in the choice stations may be considered in the overall context of administrative requirements and austerity measures.
- b) Inter-station transfers should be restricted to minimum in view of the austerity measures".

5. The applicant had also filed a representation on 18.6.2018, in which he had argued that he was already in a Group 'B' post from the year 2013-2014 and that he had now secured only a confirmation in the post and not a promotion since he had already obtained the benefit of upgradation under the third MACP in the post. Therefore, he may not get any financial upgradation as a result of the transfer. He had also submitted in his representation that he had only six years of service left and his children were studying in College at Mumbai for which he had paid considerable sums of money and that he has also submitted in this OA that he has no owned house in Mumbai and therefore, he cannot afford to keep a double establishment. In the representation, he has also expressed his second option for Gujarat circle.

6. The respondents have replied stating that the guidelines have been framed to meet the needs for striking a balance between the requirement of the organisation and the personal aspirations of the officers. The officers of Postal Service Group 'B' cadre are expected to get exposure by working in different Circles and Units. The applicant had been declared successful in LDCE held on 18.12.2016 for

the vacancy year 2013-2014 and allocated Delhi circle on this basis.

7. The matter has been carefully considered based on the submissions of the applicant and the papers on record including the rules contained in the transfer policy, applicant's representation and the reply of respondents. It is clear from his presentation and from the OA that the applicant is building his case based on personal hardship. Considering the short residual service, the fact of no owned residence at Mumbai and the fact that his children are studying in various colleges in Mumbai for which circumstances, he has understandably paid considerable sums of money for gaining admission. None of these reasons meet the requirements of law that can justify any interference by this Tribunal in the transfers which are entirely within the province of the respondents and there is no reason why it could be considered that they have not been issued with all propriety. Therefore, the challenge to the transfer is devoid of any legal merits. However, it is apparent that at this late stage of his career, the applicant is afflicted with his family problems and would especially be impacted very severely by maintaining separate establishments

at Mumbai and at Delhi given the circumstances of his family. Therefore, while dismissing the OA for the aforesaid reasons, it is also appropriate that the respondents may consider the representation of the applicant based on personal hardship experienced by the applicant and to extend relief as far as it is feasible in terms of provision of quarters and posted station, in the interest of morale and efficiency. There shall be no order as to costs.

(R.N.SINGH)
MEMBER (J)

(R.VIJAYKUMAR)
MEMBER (A)

B.

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