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

**ORIGINAL APPLICATION No.437/2017**

Dated this Monday the 4<sup>th</sup> day of January, 2019

**CORAM: R. VIJAYKUMAR, MEMBER (A)**  
**RAVINDER KAUR, MEMBER (J)**

Ketankumar Bhupatray Gandhi  
Working as Assistant Engineer (Civil)  
Directorate of Lighthouses and Lightships  
Ministry of Shipping, Deep Bhavan,  
MG Road, Ghatkopar (E),  
Mumbai - 400 077  
Residing at D-146, Jain Derasar Lane,  
Post Office Galli, Wadala (W)  
Mumbai - 400 031. ... **Applicant**

**(By Advocate Shri U.S. Shinde)**

**VERSUS**

1. The Union of India  
Through the Director General  
of Light house and light ships  
Deep Bhawan, A-13,  
Sector-24, Noida,  
U.P.(Uttar Pradesh)  
- 201 301.
2. The Director,  
Directorate of Lighthouses and Lightships,  
Ministry of Shipping, Deep Bhavan,  
MG Road, Ghatkopar (E),  
Mumbai - 400 077.
3. The Director,  
Directorate of Lighthouses and Lightships,  
Ministry of Shipping, Govt. of India,  
Vasco-D-Gama,  
Goa-403 803. ... **Respondents**

**(By Advocate Shri V.S. Masurkar)**

O R D E R

Per: Ravinder Kaur, MEMBER (J)

The Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*"8(a) The applicant therefore prays that this Hon'ble Tribunal be pleased to call for the records of the case and after examining the same quash and set aside the impugned order dated 13.06.2017, 20.06.2017 and 03.07.2017.*

*(b) that this Hon'ble Tribunal will be pleased to issue order or direction directing the respondents not to transfer the applicant from Mumbai and continued him work at Mumbai only on medical grounds.*

*(c) Any other and further orders as this Hon'ble Court may deem fit, proper and necessary in the facts and circumstances of the case.*

*(d) Cost of the application may be provided for."*

2. The undisputed facts are that the applicant was appointed as Junior Engineer on 13.04.1992 at Jamnagar. He was transferred to Mumbai in 2001. Thereafter he was transferred to Andaman Nicobar Islands (Port Blair) on 08.12.2010 as Assistant Engineer (Civil) on promotion. On 13.11.2014, he was transferred to Gandhidham (Kandla). During the period from 13.11.2014 to 26.03.2015, the applicant was medically unfit to resume the duties. Later on, the place of transfer was modified to Mumbai vide order dated 26.03.2015 on medical grounds.

He is now transferred to Goa vide impugned order dated 13.06.2017 (Annexure A-1(ii)).

**2.1** The contention of the applicant is that he is suffering from "Multifocal Peripheral Neuropathy in the lower limbs" and he is under treatment from Mumbai Hospital vide documents Annexure A-3. The CGHS, Mumbai recommended for his medical leave from time to time vide Annexure A-4. That he is under going treatment from CGHS, Mumbai from November, 2014 till the date of the filing of the present application on 11.07.2017. He is also undergoing treatment of Chemo-therapy at Sir H.N. Reliance Hospital, Mumbai under the advise of CGHS, Mumbai. He was operated for sural nerve Biopcy in leg in Sushrusha Hospital, Mumbai and Biopcyhistopath Neuropath report was examined by the F.M.R., Mumbai and finally by National Institute of Mental Health and Neuro Sciences. The relevant medical record is annexed as Annexure A-6. Further that he is also suffering from lumbar puncture and needs continuous treatment as he is also suffering from mild 10% locomotor disability. The treatment certificate is enclosed as Annexure A-10. Further that his son

who is pursuing 2<sup>nd</sup> year Electronics Engineering at Mumbai is also suffering from TB. The relevant documents to this effect are Annexure A-7 (i) (ii) and (iii). It is stated that his mother is also suffering from paralysis and that he has to take care of her on daily basis. He has tried to explain his hardship in shifting his mother and family to Goa.

**2.2** The applicant made representation dated 21.06.2017 to the respondents for cancellation of transfer order from Mumbai to Goa on the medical grounds of self, his son and his mother. Thereafter, he sent reminder dated 23.06.2017 (Annexure A-12) but without any response from the respondents.

**2.3** Earlier also the applicant filed OA No.397/2017 on 28.06.2017, which was disposed of by this Tribunal vide order dated 30.06.2017, whereby respondent No.2 was directed to consider his representation within a period of two weeks and to maintain the status quo till the disposal of the representation. He has placed on record the copy of this order as Annexure A-13. Vide order dated 03.07.2017 (Annexure A-14), his representation was rejected and he was relieved

in pursuance to the transfer order dated 13.06.2017.

**2.4** It is stated by the applicant that Shri Amitva Roy, his senior is working in the Noida office continuously for more than 10 years but has not been transferred. He has alleged malafide against the respondents regarding his transfer to Goa. It is also stated that the impugned order dated 13.06.2017 has been passed by the respondents to accommodate Assistant Engineer (Civil) namely Shri P.S. Mahatre and have claimed that his another Senior Assistant Engineer (Civil) as per seniority list, who was posted at Mumbai for more than 4 years, could be transferred to Goa instead of him. That the case of the applicant has not been examined by any Committee nor referred to the Medical Board. The representation of the applicant was decided on 03.07.2017 without application of mind with intention to relieve him from Mumbai Office.

**2.5** The applicant has stated that he was transferred from Port Blair to Mumbai on medical grounds and now in view of his medical condition his transfer to Goa from Mumbai will deteriorate his health further as he has to obtain follow up

treatment only at Mumbai.

**2.6** The applicant has claimed that the impugned orders are bad in law and liable to be quashed and set aside. That the same have been passed for extraneous reasons and against the public interest and are violative of Articles 14, 16 and 21 of the Constitution of India.

**3.** The respondents in their affidavit in reply have denied the contentions of the applicant in the OA.

**4.** We have heard the arguments addressed by Shri Ulhas Shinde, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents at length and perused the case record carefully.

**5.** Learned counsel for the respondents has argued that the applicant has served in Mumbai Directorate for a period of 11<sup>1/2</sup> years. This fact has not been denied by the applicant. It is also brought to our notice by learned counsel for the respondents that the applicant has already joined his duty at Goa Directorate w.e.f. 12.07.2017 in pursuance to the impugned transfer order dated 13.06.2017. As per the respondents, the applicant was promoted to the

post of Assistant Engineer (Civil) w.e.f. 08.12.2010. The transfer of the applicant is strictly in the interest of administration and is neither malafide nor in violation of any statutory Rules. It is also stated that this transfer order in no manner is affecting the seniority, promotion or status of the applicant.

6. The respondents have explained that since a new Directorate has been formed at Goa and there is no officer in supervisory level to supervise the civil work and thus the transfer of the applicant has been done taking into consideration the operational requirement of the Directorate and in the public interest. Further that the applicant had joined the service on 13.04.1992 as Junior Engineer (Civil) and was transferred to Mumbai in 2001. He was promoted as Assistant Engineer (Civil) and was posted at Port Blair Lighthouse Directorate w.e.f. 08.12.2010 and therefore he served at Mumbai more than 9 years during these periods. The post of Assistant Engineer (Civil) is Non-Ministerial/Operational in nature and carries All India Transfer Liability. The duties of Assistant Engineer (Civil) are to assist

Director in erection, maintenance and improvement of Lighthouses. On completion of his tenure in Port Blair, the applicant vide his application dated 26.01.2013 submitted his three choices for posting and based on the same, he was transferred from Port Blair Directorate to Gandhidham Directorate vide office order dated 22.10.2014 but he did not join at Gandhidham. He submitted an application dated 09.02.2015 for transfer to Mumbai office on medical grounds due to his illness. The respondents while taking a sympathetic view of his medical condition, permitted him to join at Mumbai by transferring one post of Assistant Engineer (Civil) temporary from Gandhidham to Mumbai which was earmarked against Goa Directorate.

7. Thus, it is amply clear that the transfer of the applicant from Gandhidham to Mumbai was not a routine transfer but on account of his health reasons and it was only on temporary basis as the post of Assistant Engineer (civil) at Gandhidham which was earmarked for Goa Directorate was transferred to Mumbai only due to the health issues of the applicant.

8. The applicant has alleged malafide against the respondents in issuing of the impugned orders and have tried to sway the Tribunal against the respondents by alleging that his salary for the month of February, 2015 was also not given by the respondents just with a view to harass him. However, this allegation is found to be without any substance as the respondents have stated that the salary for this period was credited to the account on 27.02.2015 and this fact finds corroboration from Annexure R-1 i.e. the copy of statement issued by Director VTS and Annexure R-2 a certificate dated 23.08.2017 issued by the Chief Manager, Syndicate Bank Gandhidham Branch certifying that an amount of Rs.38,359/- was credited to the account of the applicant on 27.02.2015 in pursuance to the instructions received from VTS Director Lighthouse, Lightships.

9. Learned counsel for the applicant has argued that he was not served with the copy of relieving order dated 03.07.2017 despite he being present in the office and that he received this order on 06.07.2017 by post. However, this contention has been categorically rebutted by

the respondents. Learned counsel for the respondents has submitted that respondents tried to hand over to the applicant the copy of relieving order through peon (Field Attendant) but he refused to acknowledge the receipt and this fact is found recorded in the office copy of the relieving order certified by Shri Raja Ram, Assistant Executive Engineer (E), a Group 'A' Gazetted Officer. The said document has been placed on record as Annex R-3. The Annex R-3 clearly shows that the copy of the relieving order was received by the applicant on 03.07.2017 in the afternoon. However he refused to sign the office copy of the same, acknowledging the receipt. In the rejoinder the applicant has admitted that he was given the copy of the impugned speaking order dated 03.07.2017 whereby his representation dated 21.06.2017 in terms of direction of this Tribunal in OA No.397/2017 vide order dated 30.06.2017 was disposed of, but he was not given the relieving order of the same date. This contention of the applicant does not inspire any credence as there was no reason for the respondents not to hand him over the relieving

order when they had handed over the copy of the impugned order dated 03.07.2017.

**10.** So far the allegations levelled by the applicant that Shri Amitva Roy, the senior of the applicant is working continuously for more than 10 years in Noida office but has not been transferred, is concerned, the respondents have categorically stated that it is due to administrative reasons, he is not transferred as he is looking after a project of tourism which is directly reported by the DGLL to the Ministry of Shipping. This contention of the respondents has not been refuted in the rejoinder. There is no reason to disbelieve the respondents to this effect.

**11.** With regard to the allegations levelled by the applicant against the respondents that he was transferred to Goa only to accommodate Shri P.S. Mahatre, Assistant Engineer (Civil), the respondents have denied this allegation and have categorically stated that the applicant was transferred due to operational requirement and that he was transferred to Mumbai against the post earmarked for Goa Directorate, temporarily at Mumbai. They have also explained that the Goa

is a newly created Directorate and facing acute shortage of staff. It is observed as per record that the Assistant Engineer (Civil) was required to be posted at Goa to supervise the civil works and execution of works and to assist the Director in other maintenance works of the lighthouses in the Goa Directorate to prepare the estimates and help the Director in other works. In the circumstances referred above the applicant has failed to show any malafide on the part of the respondents in issuing the impugned orders.

**12.** The applicant has claimed that since he is suffering from various ailments and he is getting continuous treatment at Mumbai, therefore the impugned transfer order may be withdrawn. It is observed that the respondents in their reply have admitted that when the applicant was transferred to Gandhidham from Port Blair, the applicant had moved an application dated 09.02.2015 and considering his medical condition, he was permitted to join at Mumbai by transferring one post of Assistant Engineer (Civil) temporarily from Gandhidham to Mumbai earmarked against Goa Directorate. The

respondents have drawn our attention to the fact that the applicant was transferred from Port Blair to Gandhidham vide order dated 13.11.2014 but he did not join his new place of posting and made representation for transfer to Mumbai on medical ground. The respondents sympathetically considered the case of the applicant and permitted him to join at Mumbai vide order dated 26.03.2015. He worked at Mumbai continuously thereafter till he was transferred to Goa vide order dated 13.06.2017.

**13.** Now it is to be seen as to what medical record the applicant has placed on record to claim that he is continuously under treatment at Mumbai. The learned counsel for the respondents has drawn our attention to the Medical record of the applicant Annexure A-4 and A-5 which pertains upto the period of March, 2015. Apart from this, the applicant has placed on record the diagnosis and treatment certificate dated 20.06.2017 issued by Dr. S.N. Amin, Rheumatologist. As per this certificate the applicant is suffering from Microscopic Polyangiitis since June, 2015 and he was examined by the Doctor on that day itself for

his 4<sup>th</sup> follow up review. It is noted that in the certificate the Doctor has mentioned that the same was issued upon the request of the patient to convey that the disease duration is long term and is controlled with Azathioprine, as the immunomodulatory drug and he has mild 10% locomotor disability - forefeet has sensori-motor deficit. Alongwith this certificate the applicant has also placed on record the medical prescription dated 20.06.2017 issued by the Doctor referred above and he has been prescribed medicine for a period of one year. Apart from that, he has been given the following advice:-

*"2. Any form of physical exercise, that induces sweating, for at least 30 minutes (ayurvedic, homeopathic, unani, herbal etc.) with the above prescribed medicines."*

Besides above, he is also given the following advice.

*"3. Repeat CBC, ESR, CRP (nephelometry) and urine routine every 6 months."*

And at the bottom of the prescription, it is mentioned:-

*"In June 2018 with prior appointment."*

**14.** The above observations made in the medical prescription of the applicant clearly shows that the applicant is under treatment

with the diagnosis Microscopic Polyangiitis (dominantly lower limbs) and has been put on medicine for a period of one year. He is required to visit the Doctor for follow up treatment in June, 2018 only i.e. after one year. The routine investigations are to be carried after every six months. The physical exercise recommended to the applicant as referred above clearly shows that he was fit to perform all those exercises and was not confined to bed. By no stretch of imagination, it can be said that the applicant has to consult his Doctor on and off at Mumbai due to which he would not be in a position to work at Goa. It is also observed that apart from the above referred Annexure A-5 dated 20.02.2015, there is no document on record regarding his treatment of any kind during the period from 20.06.2015 to May, 2017. This document Annexure A-10 is dated 20.06.2017 the diagnosis and treatment certificate referred above pertains to the same date when the impugned corrigendum Annexure A-1(iii) was issued whereby correction was made in the transfer order dated 19.06.2017 which reads as 'joining at Cochin Directorate'

and now it was to be read as 'joining at Goa Directorate.' A question arises to our mind as to whether it is a coincidence that corrigendum dated 20.06.2017 was issued with regard to the new place of posting of the applicant and on the same date he was issued the medical certificate Annexure A-10. It is further observed that the present OA has been filed on 11.07.2017 and now we are in the month of January, 2019. During the pendency of this proceedings, the applicant has not placed on record any document regarding his treatment at Mumbai. This leads to the inference that the applicant does not have any such medical grounds which are preventing him to work at his new place of posting.

**15.** He has already joined his duty at Goa on 12.07.2017 and till date nothing has been brought on record about his health issues. The claim of the applicant that his mother is suffering from paralysis, is also not supported by any cogent medical record. He has only placed on record Annexure A-7(iv), the prescription dated 01.07.2017 by Dr. S.V. Khadilkar, Consultant Neurologist whereby there

is no specific mention that she is suffering from paralysis though as per the history given to the Doctor she is unable to stand and walk well. It is categorically mentioned therein that the limbs get tired easily. This is a age related problem and by no stretch of imagination can be termed as paralysis. She was advised to take oral medicine and physiotherapy and to follow up after three months. Again it is noticed that prior to the date of transfer order there is no document placed on record regarding illness of his mother. The above referred is the only document placed on record by the applicant in support of his contention.

**16.** The applicant has also taken the plea that his son is suffering from TB and for this reason also he cannot join his duty at Goa. Even if it is a fact that his son is suffering from TB, it is observed that he is not confined to bed and as per his own admission in para 4.5 of OA, he is pursuing 2<sup>nd</sup> year Electronics Engineering Semester III exam from Somaiya Institute of Engineering of Information and Technology, Sion, Mumbai. The applicant does not have any serious medical grounds for self

or for his mother or son which could have qualified him for special sympathetic consideration of his case. In the light of above discussion, we are of the view that the applicant for one or the other reasons does not want to honour the order of the transfer.

**17.** It has already been discussed above, that the applicant has failed to bring any material on record that the order of transfer is malafide or discriminatory in any manner. As explained by the respondents, the order of transfer is made in the interest of Administration. This fact cannot lose sight that the post of Assistant Engineer (Civil) is Non-Ministerial and Operational in nature, which carries All India Transfer Liability and applicant is well aware of this fact. In his rejoinder, he has not denied averment made by the respondents to this effect in para 4 of the reply. It is also not disputed by the applicant that the impugned transfer order is neither affecting seniority nor prospect of his promotion.

**18.** It is settled principle of law as held by the Hon'ble Supreme Court in catena of

judgments that scope of judicial review in the cases relating to transfer is very limited. Judicial intervention is only required in cases of malafide or where the carrier prospects are affected or any prejudice is caused. In all other cases challenge to the transfer must be eschewed. It is held by the Hon'ble Apex Court in the case of Rajendra Singh Vs. State of UP reported in

2010 (1) SLR (SC) 632:-

"Articles 16 and 226 - Transfer - State Government emphatically refuted the allegation of malafide and denied that the order of transfer was stigmatic or punitive - A Government servant has no 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. He is liable to be transferred in the administrative exigencies from one place to the other - Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary - Transfer of writ petitioner, cannot be said to be stigmatic and any observation made in the transfer order about work and conduct of writ petitioner, shall not be read adversely by authorities against him."

19. In the facts and circumstances of the case, the OA is devoid of merits and is hereby dismissed with no order as to costs. f

(Ravinder Kaur)  
Member (J)

(R. Vijaykumar) ||  
Member (A)

