

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.5820 OF 2023

- | | | |
|----|------------------------------------|------------------|
| 1. | Union of India |) |
| | Through |) |
| | the Director General Staff Duties, |) |
| | GS Branch, IHQ of Ministry of |) |
| | Defence (Army) |) |
| | Sena Bhavan, New Delhi-110011 |) |
| 2. | Dy. Chief of Army Staff (IS &C) |) |
| | IHQ of Ministry of Defence (Army) |) |
| | Sena Bhavan, New Delhi-110011 |) |
| 3. | General Office Commanding in Chief |) |
| | HQ Southern Command |) |
| | Pune-4110011 |)... Petitioners |

VERSUS

Vijay Walia	)
B-601, Paramount Madhuban Society	)
Sr No. 59/2, Lane No.1,	)
Near Mata Ramai Hospital,	)
Sai Nagar, Kondhwa (Bk),	)
Pune-411048.	)... Respondent

Appearances

Mr. R. R. Shetty, a/w. Mr. Ashutosh Mishra, Mr. Rishi Ashok for Petitioners.

Mr. Vicky Nagrani, for Respondent.

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

DATE : 26th April 2023

ORDER : (Per - Sandeep V. Marne, J.)

1. The Union of India has filed this petition assailing order dated 9th November 2022 passed by the Central Administrative Tribunal, Mumbai (**Tribunal**) in Original Application No.895 of 2022 by which the Tribunal has stayed the transfer order dated 20th May 2022 as well as speaking orders dated 26th September 2022 and 27th October 2022. Relief claimed by Respondent before the Tribunal in Original Application No.895 of 2022 relates to his transfer from Headquarters Southern Command, Pune to Headquarter Northern Command, Udhampur (Jammu).

2. Respondent came to be appointed as Stenographer Grade-II on 12th June 2000 at INHS Aswini, Mumbai. He was posted at various places such as HQ Western Naval Command, Naval Headquarters Delhi, INS Shivaji, Lonawala. Respondent's wife is working in Shikshan Prasarak Mandal's school in Pune. In 2008 he requested for transfer on spouse ground and accordingly in 2010, he was transferred from INS Shivaji, Lonawala to HQ Southern Command at Pune. The Respondent came to be promoted to the post of Steno Grade-I in the year 2014.

3. Petitioners have issued Rotational Transfer Policy for Def. Civ. Employees, under which Steno Grade-I is entitled to minimum tenure of 3 years and maximum tenure of 6 years. The maximum tenure for Group-B employees within a specific command cannot exceed 10 years. The Respondent had completed 10 years of tenure in Pune by the year 2020. By order dated 20th April 2022, Respondent was transferred on the post of Steno Grade-I from HQ Southern Command, Pune to HQ Northern Command, Udhampur (Jammu). Respondent represented against transfer. He filed Original Application No.327 of 2022 before the Tribunal challenging the transfer order dated 20th April 2022. Without issuing any notice to Petitioners and without hearing them, the Tribunal passed order dated 27th April 2022 disposing of the Original Application with the directions to the Respondents therein to decide pending representation. Till the decision of representation, interim protection was granted to the respondent.

4. In compliance with the order of the Tribunal dated 27th April 2022, petitioners decided representation of the respondent by passing order dated 10th May 2022 rejecting Respondent's representation. This triggered filing of second round of litigation by Respondent. It appears that since Members were not available at Mumbai Bench of the Tribunal, Respondent filed Original Application No.181 of 2022 before Ahmadabad Bench challenging the transfer order dated 20th April 2022 and speaking order dated 10th May 2022. The principal contention raised by Respondent was that though the speaking order dated 10th May 2022 was

shown to have been passed by the Director General-Staff Duties (DJSD), the same was signed by the Director. *Inter alia* on that count, the Tribunal granted interim relief by staying the speaking order dated 10th May 2022 as well as the movement order issued in pursuance thereof. The Original Application was later transferred to Mumbai Bench and numbered as Original Application No.457 of 2022. During pendency of that Original Application, petitioners passed order dated 22nd May 2022 promoting Respondent to the post of Personal Secretary (PS). The promotion was shown to have been granted from the post of Steno Grade-I at HQ NC to the post of PS with posting at HQ NC. The Tribunal proceeded to allow Original Application No.457 of 2022 by its order dated 9th September 2022. The Tribunal took adverse view of the conduct of the petitioners in not implementing interim order passed by the Ahmadabad Bench on 11th May 2022. The Tribunal also held that the speaking order did not refer to the DoPT OM dated 30th September 2009 providing for retention on spouse ground. The Tribunal therefore proceeded to set aside the speaking order dated 10th May 2022 with direction to reconsider the representation. The Tribunal further directed the petitioners to take the decision about payment of wages during intervening period, when he was protected under ad-interim orders of the Tribunal. The Respondent was granted protection till decision of the representation.

5. Petitioners passed speaking order dated 26th September 2022 once again rejecting the respondent's representation. This led to filing of third round of litigation in the form of filing Original Application No.797 of

2022 by the Respondent. This time, the Respondent slightly altered his stand, by attacking the transfer on the ground that he was promoted to the post of PS vide order dated 12th May 2022. He contended that he was willing to forgo the promotion to the post of PS and sought retention on the lower post of Steno Grade-I on spouse ground. The Tribunal once again interfered in the matter of transfer by passing ex parte order dated 30th September 2022 thereby dismissing Original Application by passing following order:

“7. As the applicant is bent upon refusing promotion to the post of PS, no purpose would be served if he is forced to join at the transferred place. In view of the above submissions and in the facts and circumstances of the case, it would be appropriate to dispose of this O.A. at the admission stage itself with liberty to the applicant to prefer a detailed and comprehensive representation for refusal of promotion to the post of PS, to the respondents, raising all the grounds, within one week from the date of receipt of a copy of this order. On receipt of such representation from the applicant, the same shall be decided by the respondents within three weeks from its receipt, by way of reasoned and speaking order and the order so passed be communicated to the applicant within a period of one week thereafter. In the meantime, no coercive action shall be taken against the applicant with regard to transfer and speaking orders dated 20.04.2022 and 26.09.2022 respectively.

8. With the aforesaid directions the OA stands disposed of. There shall be no order as to costs.”

6. Petitioners complied with the order of the Tribunal by deciding representation of the Respondent and passed speaking order dated 27th October 2022 rejecting representation. Respondent continued his litigation spree and instituted fourth Original Application No. 895 of 2022 challenging the speaking order dated 27th October 2022. By ex-parte order passed on 9th November 2022, the Tribunal has granted

interim protection to the Respondent.

7. It appears that though Respondent was granted protection against transfer from time to time by the Tribunal right since 27th April 2022, Petitioners did not permit him to join duties at Pune. This has led to filing of contempt proceedings by Respondent before the Tribunal. The Tribunal has taken cognizance of the contempt proceedings and has passed order dated 9th March 2023 holding that there has been a willful disobedience on the part of petitioners to the orders passed by the Tribunal. The officer occupying post of Director General Staff Duties, New Delhi has been directed to remain personally present before the Tribunal.

8. Petitioners have filed present petition challenging the ad-interim order granted by the Tribunal on 9th April 2022 in Original Application No.895 of 2022.

9. Appearing for petitioners, Mr. Shetty the learned counsel would submit that the Tribunal has repeatedly passed ex-parte ad-interim orders without issuing notices to petitioners and without hearing them. That though petitioner has completed tenure of 10 years at Pune, the Tribunal has erroneously stayed the transfer order from time to time. That despite rejecting representations of Respondent on three occasions, the Tribunal has routinely interfered in the matter of transfer. He would rely upon judgment of this court in **State of Maharashtra & Ors. Vs. Vinay Mohan Lal**, Writ Petition (Lodging) No.1636 of 2005 decided on 4th July 2005 in support of his contention that the Tribunal ought not to have

passed ex-parte ad-interim orders against in a transfer matter.

10. *Per contra* Mr. Nagrani the learned counsel appearing for Respondent would oppose the petition and support the order passed by the Tribunal. He would submit that the conduct of the petitioners has been such that this court would not entertain the petition filed by them. He would submit that Respondent has been kept away from duties by petitioners for over one year in violation of orders passed by the Tribunal. He would submit that petitioner is entitled to be retained at Pune as his wife is working as a Teacher in an government-aided school. That promotion cannot be foisted upon him when he is unwilling to accept the same and upon refusal of promotion, the transfer effected for promotion would automatically be rendered nugatory. He would therefore prayed for dismissal of the petition.

11. We have heard the submissions canvassed by both the sides. We have observed that the Tribunal has repeatedly interfered in the matter of transfer of the Respondent by granting ad-interim orders in his favour from time to time.

12. The scope of interference by courts and tribunals in the matters of transfer is extremely limited. Normally the interference in orders of transfer is not permissible unless it is shown that transfer is in violation of rules or is issued by an incompetent authority or is actuated by malafides. Reference in this regard has been made to the judgments of the Apex Court in **Shilpi Bose & Ors. Vs. State of Bihar and Ors.**, (1991)

Spl. (2) SCC 659, **State of U. P. and Ors. Vs. Gobardhan Lal and Ors.**, (2004) 11 SCC 402 and **Union of India Vs. S. L. Das**, (1993) 4 SCC 357.

13. Petitioners have objected to passing of *ex parte* orders of stay to transfer by the Tribunal. In this regard Mr. Shetty has placed reliance on judgment of Division Bench this court in ***Vinay Mohan Lal*** (supra). This court held in paragraph No.9 and 10 of the judgment as under;

“9. The learned Advocate General submitted that the Tribunal gravely erred in passing the *ex parte* stay order in a matter of this nature. He submitted that the grant of interim order by the Tribunal is governed by Section 24 of the Administrative Tribunals Act 1985 (hereinafter referred to as “the Act”). Section 24 of the Act is reproduced as under:

“24. Conditions as to making of interim orders. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless –

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.”

10. It is the mandate of the statute that no interim order shall be made on, or in any proceedings relating to, an application unless copies of such application and of all documents in support of the plea for such interim order are furnished to the

party against whom such application is made or proposed to be made; and opportunity is given to such party to be heard in the matter. Admittedly, the order staying the transfer of respondent No. 1 is an *ex parte* order. The Tribunal, of course, in exceptional circumstances, may dispense with the requirement of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money.....

14. Though we do not propose to lay down an absolute proposition that the Tribunal cannot pass ad-interim *ex-parte* orders, considering the facts and circumstances of the present case, where representations of Respondent against transfer orders were rejected by passing speaking orders on 10th May 2022, 26th September 2022 and 27th October 2022, it would have been in the fitness of the things if the Tribunal had heard petitioners before passing ad-interim/final orders in Original Application Nos.181 of 2022 (Ahmadabad), 997 of 2022 and 895 of 2022.

15. The Tribunal has, on as many as three occasions, disposed of Original Applications of Respondent by directing decision of representation. This has led to multiplicity of litigations relating to same cause of action. Respondent has, by now, filed four Original Applications espousing same cause of action relating to his transfer. In this connection, a useful reference can be made to the observations made by the Apex court in **Union of India v. P. Venkatesh**, (2019) 15 SCC 613:

8. This “dispose of the representation” mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened

adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute.....

16. Be that as it may. Substantial period has elapsed since passing of the impugned stay order by the Tribunal on 9th November 2022. Petitioners have belatedly challenged that order by filing the present petition after 5 months of passing of the ad-interim order. Mr. Nagrani has invited our attention to various orders passed by the Tribunal after 9th November 2022 when no efforts were apparently made by petitioners for vacating ad-interim order. Pleadings in the Original Application are on the verge of completion as petitioners have filed their written statement opposing the Original Application. Respondent desires to file his rejoinder. He may do so within a period of one week from today. Considering the delay in filing the present petition and the fact that the pleadings in the Original Application are almost complete, we do not wish to go into merits of the Order under challenge and we deem it appropriate that the Original Application be taken up for expeditious disposal by the Tribunal. The Tribunal would consider whether Respondent's wife is indeed a Government servant and whether Respondent is entitled to retention on spouse ground. It would also decide whether he has a right to remain at Pune forever on spouse ground and whether his transfer is effected on promotion.

17. Accordingly, writ petition is disposed of by requesting the Tribunal

to decide Original Application No.895 of 2022 by 30th June 2023. All contentions of the parties on merits are kept open. The Tribunal shall proceed to decide the Original Application on its own merits. Writ Petition is accordingly disposed of. There shall be no order as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ