

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A. No. 592/87  
~~TAxxNx~~

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DATE OF DECISION 3.12.1987

Dr. Emerico De'Sousa \_\_\_\_\_ Petitioner

Smt. Pushpa Menon \_\_\_\_\_ Advocate for the Petitioner(s)  
(for Shri C U Singh) VersusGovernor of Goa and \_\_\_\_\_ Respondent  
Administrator of Daman & Diu

Shri S M Bhatt \_\_\_\_\_ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B C Gadgil, Vice Chairman

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? - 43
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? }
4. Whether it needs to be circulated to other Benches of the Tribunal? 176

Belh

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A.No.592/87

Dr. Emerico De'Sousa  
C/o. Directorate of Health Services  
Panaji

Applicant

V/s.

1. The Governor of Goa and  
The Administrator of Daman and Diu  
Secretariat  
Panaji
2. The Chief Secretary  
Government of Goa  
Secretariat  
Panaji  
Goa

Respondents

Coram : Hon'ble Vice Chairman B C Gadgil

Appearance:

Smt. Pushpa Menon  
(for Shri C U Singh)  
Advocate  
for the applicant

Shri S M Bhatt  
Advocate  
for the Respondents

ORAL JUDGMENT

(Per : B C Gadgil, Vice Chairman)

DATED : 3.12.1987

The applicant is a Health Officer. He was working at Daman. By an order dated 12 August 1987 he was transferred to Goa. It is this order that is challenged in the present proceeding. The applicant has raised a number of contentions in the application. The respondents have filed reply and denied those contentions. Hence it will be necessary to consider various contentions of the applicant.

*B C G*

2. It is alleged that the impugned transfer order is a malafide one on account of the pressure exerted by Dr. Prabhakar an MLA from Daman. The contention is that he insisted on the Government officials to transfer the applicant from Daman to Goa. In my opinion these averments of malafide are without substance. It is more so when Prabhakar is not made a party in this proceeding. Ordinarily a person against whom malafides are alleged should be a party. In view of these circumstances the allegations of malafides are not sustainable.

3. Another contention of the applicant is that the Government guidelines are that ordinarily transfer should be effected before 15th May and a breach of these guidelines is committed. In my opinion each and every guideline would not form a mandate which must be compulsorily followed. Much will depend on the nature of the guideline and the surrounding circumstance. I am told that the applicant has already taken charge at Goa. Not only that he has left his quarters at Daman but also he has secured admission for his son in an educational institute at Panaji. Nothing particular is alleged as to how the breach of the above mentioned guideline has prejudicially affected the applicant. Thus the applicant cannot claim quashing of the orders simply because the transfer is not effected before 15th May.

*Belh*

4. There are some averments based upon the provisions of Section 60 of the Goa, Daman and Diu Reorganisation Act. By this Act a separate state of Goa was formed. The Act provides allotment of Government servants to the State of Goa and also to the Union Territory of Diu and Daman. Smt. Menon submitted that the applicant has no objection if he is allotted permanently to the State of Goa. All this aspect however is not very much relevant for considering the validity or otherwise of the transfer. However, I must mention that Shri Bhatt for the respondents frankly stated that the respondents have no objection if the applicant is finally allotted to the State of Goa, but at the same time he told me that ultimately the matter will have to be decided by the Central Government and the respondents would have to abide that decision. Thus there is no substance in the application and is liable to be dismissed. I, therefore, pass the following order:

ORDER

The application is dismissed. There would however be no order as to costs.



( B C Gadgil )

Vice Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Misc.Petition No. 521/87 in  
Original Application No. 592/87

Dr.Emérico De'Sousa  
C/o, Directorate of Health Services  
Panaji

Applicant

v/s.

1. The Governor of Goa and  
The Administrator of Daman and Diu  
Secretariat  
Panaji
2. The Chief Secretary  
Government of Goa  
Secretariat  
Panaji  
Goa

Respondents

CORAM : Hon'ble Member (J) M.B.Mujumdar

ORAL JUDGMENT

Dated: 15.2.1988

(PER: M B Mujumdar, Member(J))

Applicant's OA.NO. 592/87 was for setting aside order of transfer dated 12.8.1987 from Daman to Goa was dismissed by the Vice Chairman on 3.12.1987 after hearing advocates for both the sides.

2. The applicant has sent by post an application (Misc.Petition No.521/87) for setting aside the order of dismissal of the application and for restoring the same to file. It was received in this office on 28.12.1987. On 1.1.1988 when the application was fixed for admission, I had directed that notices should be issued to the applicant and respondents regarding admissibility of the application.


3. Today none has appeared either for the applicant or for the respondents.

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4. Record shows that notices were sent to the applicant and her advocate informing that Misc. Petition No. 521/87 is fixed today for admission hearing. <sup>today.</sup> The notices were sent on the addresses given by them and hence it shall have to be presumed that they have received the notices. Still neither the applicant nor the respondent have appeared today.

5. Apart from this OA.NO. 592/87 was dismissed after hearing advocates for both the sides. To be more specific, the judgment says that the applicant's advocate Smt. Pushpa Menon for Shri C.U. Singh was heard on behalf of the applicant. Hence it is clear that the application was not dismissed ex-parte, but on merits after hearing advocates for both the sides. Such an order of dismissal cannot be legally set aside as prayed for by the applicant. If the applicant feels that she is aggrieved by the order, her remedy is to approach <sup>the</sup> Supreme Court by way of Special Leave to appeal.

6. Hence Misc. Petition No. 521/87 is rejected as it is not tenable according to law.

  
(H.B. Mujumdar)  
Member (J)