

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 503/89

198

~~XXXXXX~~DATE OF DECISION 11.10.1989Shri A.K.Wagh

Petitioner

Shri S. Paul Sundararajan

Advocate for the Petitioner(s)

Versus

Union of India and others.

Respondents

Shri V.S.Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr.

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

(8)

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

OA.NO. 503/89

Shri A.K.Wagh,
748/A, Tambat Lane,
OZHAR - 422 206,
Dist. Nashik.

... Applicant

V/S.

1. Union of India,
through the Secretary,
Ministry of Science & Technology,
Govt. of India, New Delhi.
2. The Director General of
Observatories, New Delhi.
3. The Regional Director,
Regional Meteorological Centre,
Colaba, Bombay 400 005.
4. Meteorologist Incharge
Ozhar HAL Aerodrome, Ozhar,
Dist. Nashik.

... Respondents

CORAM: Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.S.Paul Sundararajan
Advocate
for the Applicant

Mr.V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 11.10.1989

(PER: P.S.Chaudhuri, Member (A))

This application was filed on 10.7.1989 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that the order posting him from Ozhar to Bombay be set aside on extreme humanitarian grounds based on the medical certificate issued by the Civil Surgeon, Nashik.

2. Thus, in terms of the Hon'ble Chairman, Central Administrative Tribunal's order dated 21.3.1988, the application comes within the jurisdiction of a Bench consisting of a Single Member and I have, accordingly, ~~pro~~ceeded to hear and dispose of the application.

2/-

3. The facts may be briefly stated. On 5.11.1974 the applicant was appointed as Senior Observer in the Regional Meteorological Centre at Bombay. On 3.12.1975 he was transferred to Nashik and has been serving there since then. On 5.11.1984 orders were issued transferring him to New Delhi on promotion but he refused that promotion and transfer on personal grounds. On 25.2.1986 orders were again issued for his promotion and transfer to New Delhi but he again declined the promotion and transfer on personal grounds. On 15.8.1987 he met with a motorcycle accident at Ozhar and was hospitalised. He resumed his duties on 25.9.1987. On 25.9.1987 for the third time orders were issued for his promotion and transfer to New Delhi. The place of posting was subsequently changed to Goa. He refused this promotion and transfer also due to his accident and some other personal problems and his retention at Nashik was agreed to. On 6.1.1989 orders were issued for his promotion and transfer to Ahmedabad but he refused this on health grounds. On 14.4.1989 he proceeded on leave on medical grounds and has not rejoined his duties till today. On 28.4.1989 orders were issued for his transfer from Nashik to Bombay. On 13.5.1989 he represented against this order. With this representation he enclosed a certificate from the Civil Surgeon, Nashik dated 12.5.1989. This representation was rejected by office memorandum dated 16.5.1989 in which he was informed that he would be relieved on 17.5.1989. Being aggrieved at this, on 18.5.1989 he filed Regular Civil Suit No. 348/89 in the court of the Civil Judge Senior Division at Nashik. On 6.7.1989 the applicant made a request before the Civil Judge Senior Division stating that he did not want to continue the case and that therefore he had no objection for its cancellation. On this, an order was passed that the Suit was dismissed. Thereafter, he filed the present application.

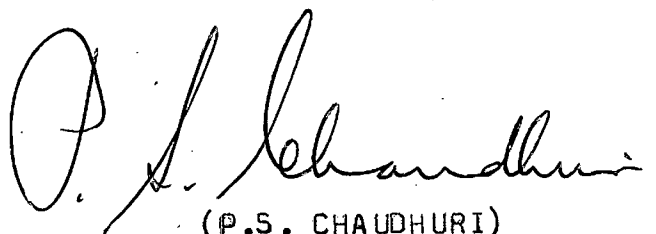
4. The respondents have opposed the application by filing the written reply of Shri Prabal Kumar Misra, Regional Director, Regional Meteorological Centre, Bombay. I have also heard the oral arguments of Mr.S.Paul Sundararajan, learned advocate for the applicant and Mr.V.S.Masurkar, learned advocate for the respondents.

5. At the outset, it is evident that the application deserves to have been rejected in limine as ⁱⁿ the Regular Civil Suit permission was neither asked for nor given to file a fresh application for the same cause of action. This view finds support in R.C.Alandkar v. Union of India and others, ATR 1989 (1) CAT 165, with which I am in respectful agreement, in which it has been held that the juristic principle of res judicata is applicable to the proceedings under the Administrative Tribunals Act, 1985. Be that as it may, the filing of this application was not objected to and no such contention has been made out by the respondents. It is because of this that I have proceeded to hear this application and decide it on merits also.

6. During the course of oral arguments the point raised by Mr. Sundararajan was that the applicant should be allowed to continue at Nashik for a few months on compassionate grounds. I do not see any merit whatsoever in this submission. The medical certificate merely says that the applicant is advised to avoid travelling and also advised to use continuous collar traction. No case has been made out that the position in respect of either of these two requirements would be in any way different to what is the position at Nashik. It is not disputed by anyone that the applicant does have all India transfer liability. It is now well settled law that "The Court can only interfere if the transfer is violative of any

legal provisions or otherwise malafide. Except in such a limited contingency, the order of transfer is neither open to judicial review nor justiciable." — see Lachman Dass v. Shiveshwarkar and others AIR 1967 Punjab 76, para 10 at page 79. It is also been held that "Transfer of a Government servant may be due to exigencies of service or due to administrative reasons. The courts cannot interfere in such matters." — see Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division and others AIR 1981 SC 1577. It is also been held that "Stay of transfer of an employee is likely to have a chain reaction ... Therefore, maximum possible restraint is called for, lest irreparable harm and damage may not be caused to the larger interest of public administration while attempting to redress certain supposed or blown up hardships of an individual employee." — see J.K.Dave v. State of Gujarat and others, 1989 (3) SLR 593 (Gujarat). In this view of the matter, I do not see any merit in the application.

7. The application is accordingly dismissed. In the circumstances of the case, I award costs which I quantify at Rs.300/- (Rupees three hundred only) payable by the applicant to Respondent No. 3.



(P.S. CHAUDHURI)

MEMBER (A)