

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1104/96
~~Transfer Application No.~~

Date of Decision : 24/12/96

Shri Vijay B. Halpati

Petitioner

Shri M.S. Ramamurthy alongwith
Shri I.J. Naik

Advocate for the
Petitioners

Versus

Union of India & Anr.

Respondents

Shri V.S. Masurkar, CGSC.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

(1) To be referred to the Reporter or not ? *X*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *f*

B.S. Hegde
(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, MUMBAI 400001.

O.A. 1104/96

Dated this 24th day of December 1996.

CORAM : Hon'ble Shri B.S. Hegde, Member (J).

Shri Vijay B. Halpati
Excise Inspector
Fort Area
P.O. Moti Daman

(By advocate Shri M.S.
Ramamurthy alongwith
Shri I.J. Naik)

... Applicant

v/s

1) Union of India, through
The Secretary, Ministry
of Home Affairs, Central
Secretariat, North Block
New Delhi.

2) The Administrator of U.T.
of Daman and Diu
Administrator's
Secretariat
P.O. Moti Daman 396 220.

(By advocate Shri V.S.
Masurkar, C.G.S.C.)

... Respondents

O R D E R

I Per: Shri B.S. Hegde, Member (J) I

Heard Shri M.S. Ramamurthy alongwith Shri I.J.
Naik for the applicant and Shri V.S. Masurkar for the
Respondents. In this O.A., the applicant is challenging
the transfer order issued by the Respondents vide dated
25-10-1996 transferring the applicant from Daman to Diu

stating that the applicant shall move first and join at Diu and the employee at serial no. 1 Shri R.R. Mahyavanshi who is working at Diu will be transferred back to Daman. The only prayer made by the applicant is that the order issued by the Respondents is in the middle of the academic year and he may be permitted to remain at Daman till the end of the current academic year. In this connection, the learned counsel for the applicant relies upon the decision of the Supreme Court in Director of School Education v/s O. Karuppa Thevan & Anr. (1994) 28 ATC 99, wherein the Apex Court has held that 'No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view, that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. " He also cited two decisions of the Tribunal one in O.A. 676/96 C.A. Somani

The Administrator, Union Territory of Daman and Diu vide dated 6th September 1996, wherein the Tribunal after considering the rival contention of the parties directed the Respondents not to give effect to the transfer order dated 12-7-1996 in so far as the applicant is concerned, till May 1997. Similar is the case in O.A. No. 743/96 R.P. Singh v/s Union of India - decision dated 10th September 1996.

2. The learned counsel for the Respondents Shri Masurkar vehemently urged that since the applicant has already been relieved on 25-10-1996, the status-quo order passed on 28-10-1996 would not come in the way of the Respondents in implementing the order. When I asked the learned counsel for the Respondents to produce a copy of the relieving order, he was good enough to furnish a copy of the same; however, on perusal of the same, it is seen that though the order was passed on 25-10-1996 relieving the applicant asking him to join at Diu, however, the said order was despatched by the Respondent department at Daman only on 30-10-1996; therefore, the contention of the counsel for the Respondents that the applicant was relieved on 25th October 1996 itself would not come in the way of the Respondents till the interim order was conveyed to the Respondents inasmuch as the said relieving order has not been received by the applicant certainly till 30th October 1996, thereby the interim

order passed by the Tribunal will hold good and the relieving order passed by the Respondents cannot be given effect to. The learned counsel for the Respondents Shri Masurkar urged that the applicant is liable to be posted and work in any part under the Administration of Daman and Diu and the transfer of the applicant from one station to another is a routine function on administrative grounds. The main plea of the applicant is that the transfer ordered is in contravention of the guidelines for transfer of employees and is in the middle of the academic year and affecting the studies of his children. It is, however, submitted that the guidelines are not mandatory in nature and the administrative rights of the Respondents to transfer the applicant from one office to another branch office under the Administration is absolute. However, the learned counsel for the applicant draws my attention to the guidelines issued by the Respondents vide dated 26-6-1996 regarding transfer policy which specifically states that the Government servants who have completed three years in one place may ordinarily transferred and normally, the transfer orders are to be issued in April/May every year. However, it is not mandatory. In the absence of any rule or the urgency of administrative exigencies shown by the Respondents, the circular issued by the Respondents would be binding on them.

BK

In the instant case, the applicant is praying for stay at Daman till the academic year is over. He has also stated in his petition that his four children are studying at Daman, all in different classes and it would cause considerable monetary loss and on account of illness of his parents he would not be able to move out of Daman till the academic year is over. In the circumstances, I am of the view, that the prayer made by the applicant is just and fair and the observations made by the Apex Court in Director of School Education v/s Karuppa Thevan would squarely apply to the facts of this case which has been supported by two decisions of this Bench as cited above. It is true that the principle laid down by Apex Court's judgements cited by the learned counsel for the Respondents are not in dispute, but the ratio will have to be applied to the facts in each case. Admittedly, the Respondents have passed the impugned order at the end of October 1996 and by that time academic session has already started i.e. it is issued in the mid-academic year. Besides that, the Respondents have not adduced any documentary proof in support of Administrative exigencies. Therefore, considering that aspect, the Apex Court has observed that it is not proper to effect the transfer in the middle of academic year and they should be allowed to continue till the academic year is over.

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3. There is nothing illegal in the transfer order issued by the Respondents vide dated 25-10-1996, though belated and in the midst of academic year, however, in the facts and circumstances of the case, I direct the Respondents not to give effect to the impugned order dated 25-10-1996 till the academic year, upto the end of April 1997. The O.A. is disposed of with the above directions. There will be no order as to costs.


(B.S. Hegde)
Member (J)

ssp.