

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 676/1996

Date of Decision: 6.9.96

C. A. Somani,

Petitioner/s

Shri G. S. Walia,

Advocate for the
Petitioner/s

V/s.

Union of India & Others,

Respondent/s

Shri V. S. Masurkar,

Advocate for the
Respondent/s


CORAM:

Hon'ble Shri B. S. HEGDE, MEMBER (J).

~~Hon'ble Shri~~

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

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


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 676/96.

Dated this 6th the _____ day of September, 1996,

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

C. A. Somani,
Assistant Engineer,
Sub-Division No. 1,
P.W.D.,
Diu - 362 520.

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Applicant

(By Advocate Shri G.S. Walia)

VERSUS

1. The Administrator,
Union Territory of Daman and
Diu,
Administrator's Secretariate,
Moti Daman - 396 220.

2. Development Commissioner
Secretary -- P.W.D.,
Union Territory of Daman and
Diu,
Moti Daman - 396 220.

3. Superintending Engineer,
P.W.D.,
Moti Daman - 396 220.

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Respondents.

(By Advocate Shri V.S. Masurkar).

: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J) !

The applicant in this O.A. is challenging the Transfer order issued by the respondents vide date 12.07.1996 wherein the applicant alongwith four others have been transferred, out of which, three have been transferred in the same place and Shri J.R. Dadrewala at sl. no. 4 has been transferred from Daman to Diu. The applicant has been transferred from Diu to Daman. The main contention of the applicant is that the respondents did not issue any transfer order till the end of

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May 1996 and accordingly, he got his three school going children admitted in the next higher classes. He states that his two sons are studying in Std. 10th and 9th respectively and a daughter is studying in 1st standard. His second son has not been keeping well and was admitted in the hospital in the month of May and had to undergo a major surgical operation for intestinal disease and was quite serious. The applicant further contends that the said son requires constant medical check-up and thereby, the presence of the applicant is not only required but necessary at his home as there is no other major male member to look after the family at Diu. Accordingly, the applicant filed this O.A. challenging the impugned order of transfer dated 12.07.1996. The Tribunal after considering the submissions of the learned counsel for the applicant, had passed an interim order in terms of para 9(a) of the O.A. on 15.07.1996 for a period of fourteen days, which is continued till now.

2. The respondents filed their reply contending that the averments made by the applicant is not ~~technical~~ technical and the O.A. is required to be dismissed. It is further submitted, that the transfer of the applicant is not on administrative grounds but since the applicant has completed more than seven years in Diu, it is therefore necessary to transfer him because no Government employee can create vested interest and right in continuing in the same place. Apart from this, the respondents have not issued transfer order earlier in view of the parliament elections in April/May, 1996. The applicant carries transfer liability to serve anywhere within the Union Territory of Daman and Diu.

The transfer order dated 12.07.1996 deals with five Assistant Engineers and hence the applicant's contention that it is mid-academic or is malicious and suffers legal malafides is not maintainable in law. In the connection, the respondents rely on the Supreme Court decision in the case of Union Of India V/s. S.L. Abbas reported in AIR 1993 SC 2444 wherein it is held that judicial review of transfer - Court or Tribunal cannot interfere unless order is malafide or is made in violation of statutory provisions, etc. Therefore, the allegation of the applicant that the transfer order is ⁱⁿ violation of guidelines is not tenable in law because he has completed more than 7 years at one place and infact the policy provides that an employee should be transferred after three years, etc. The further contention of the respondents is that, taking ground of education of children is incorrect because the medium of school in Diu as well as in Daman is same and plenty schools are available in Daman. They further contend that good medical facilities are available and in case of emergency, Mumbai is very nearer to Daman. The Learned Counsel for the respondents Shri V.S. Masurkar draws my attention to the latest decision of the Supreme Court in State of Madhya Pradesh & Others V/s. Shri S.S. Kourav & Others 1 JT 1995 (2) S.C. 498 wherein the Apex Court has held that the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation, etc.

3. In so far as the decisions and the ratio laid down in those cases, there is no dispute that normally Courts or Tribunals are not supposed to interfere in the administrative decisions of the respondents department in transfer and other matters, unless the applicant has made out a special case in this respect. In this O.A., the applicant is only stating that he should be allowed to continue till 30.05.1997. In the connection, the Learned Counsel for the applicant drew my attention to the decision of the Supreme Court in the Director of School Education, Madras and Others V/s. O. Karuppa Thevan & Another | 1994 SCC (L & S) 1180 | wherein the Apex Court after considering the submissions of the parties came to the conclusion that "since the respondents' children are studying in school, the transfer should not have been effected during the 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 accomodated till the end of the current academic year." Accordingly, the Apex Court directed the appellant not to effect the transfer order in so far as the applicant was concerned in that case. The Learned Counsel for the applicant, Shri Walia, further urged that nowhere in the transfer order it is mentioned that transfer was made in public interest. It is incorrect to state that it is a routine transfer. In the rejoinder,

the applicant contends that certain persons who have completed even more than seven years have still not been transferred. The transfer of the applicant is not based on public interest and no administrative exigencies have been made out. Normally, the transfer is being effected in the month of May. In this case, it is effected in the mid of July, whereby, the admissions of the children in school are completed. In this connection, the Learned Counsel for the applicant drew my attention to the Supreme Court decision in Ramadhar Pandey V/s. State of U.P. and others [1993 SCC (L & S) 918] wherein the Apex Court has held as follows :

"Clause 2(b) of the Fundamental Rules as amended by Uttar Pradesh Fundamental (Second Amendment) Rules, 1981 provides that notwithstanding anything to the contrary contained in these Rules, the Governor may in public interest transfer a government servant to a post in another cadre or to an ex-cadre post. The order dated 08.07.992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter-affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved. It cannot be gainsaid that transfer is necessary concomitance of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, 'the public interest' being absent, the impugned order of transfer cannot be supported."

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In this case also, nowhere it is mentioned in the transfer order that the transfer of the applicant is in public interest. Therefore, the counsel for the applicant submits that the observations made by the Apex Court have relevance to the facts of this case.

4. As stated earlier, the Tribunal is reluctant to interfere with the administrative matters such as transfer and other related matters but considering the facts of the case, since the applicant has already admitted his children in school for further education at Diu, which has not been denied by the respondents, except stating that the applicant can avail the same facilities at Daman. That is not the answer to the plea raised by the applicant. We do not find any administrative exigency in the transfer order issued by the respondents nor any public interest will be jeopardised if the applicant is allowed to remain at Diu till May 1997. It is made out that the applicant is not against the transfer but he is only requesting that he may be allowed to continue till May, 1997.

5. In the facts and circumstances of the case, I am of the view, that the ratio laid down by the Apex Court referred to above in so far as the education of the children and public interest is concerned in transfer matters would squarely apply to the facts of this case. In the result, I hereby direct the respondents not to give effect to the transfer order dt. 12.7.1996 in so far as the applicant is concerned, till May, 1997 for the reasons stated above.

Accordingly, the O.A. is allowed to the extent referred to above. After the academic year is over, it is open to the respondents to take appropriate steps as they deem fit.

6. The O.A. is disposed of with the above directions. No order as to costs.


(B.S. HEGDE)
MEMBER (J).