

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 779 /1996

Date of Decision: 29.8.96

Shri R. S. Ajwani,

Petitioner/

Shri S. S. Karkera

Advocate for the  
Petitioner/

V/s.

Union Of India & Others

Respondent/s

Shri R. K. Shetty,

Advocate for the  
Respondent/s

CORAM:

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

~~XXXXXX~~ B. S. HEGDE

- (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.: 779 OF 1996.

Dated, this 29/8 the    day of August, 1996.

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

Shri R. S. Ajwani,  
C/24, 3rd floor,  
Dindayal Nagar,  
Navghar Road,  
Mulund (East),  
MUMBAI - 400 081.

... Applicant

(By Advocate Shri S.S. Karkera).

VERSUS

1. Union Of India,  
through the Secretary,  
Ministry of Defence,  
Parliament Street,  
NEW DELHI - 110 001.
2. Surendra Mohan,  
E.E. Officiating,  
501, Engrs Pers' E for  
Engineering-in-Chief,  
Coord. & Pers  
Directorate E 18, Army HQ,  
DHQ, P.O. New Delhi - 110 011
3. B. B. Dhamija,  
SE(SG) Commander Works,  
Engineer's (Naval Works),  
Navy Nagar, Dr. Homi Bhabha  
Road, Mumbai - 400 005.

(By Advocate Shri R. K. Shetty).

: ORDER :

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

Heard the arguments of the Learned Counsel for  
the applicant Shri S.S. Karkera and Shri R.K. Shetty for  
the respondents.

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2. In this O.A. the applicant is challenging the impugned orders dated 17.07.1996 by which the applicant has been transferred from Bombay to Deolali as Assistant Engineer (Planning) and also the movement order dated 30.07.1996 against which he filed this O.A. and obtained an ex-parte ad-interim order vide dated 08.08.1996. The Tribunal after considering the rival contentions of the parties, had observed that the balance of convenience lies in grant of interim relief for a period of two weeks. Accordingly, interim relief was granted for a period of two weeks pending hearing on admission and interim relief and the respondents were directed to file reply.

3. The respondents filed the reply and contended that a fresh application filed by the applicant is not sustainable for the reasons stated therein. It is true that this is the second round of litigation. The applicant had challenged the earlier order of transfer by filing O.A. No. 534/95 which has been disposed of by the Tribunal on 19.10.1995. Though the applicant has made representation on 30.04.1996 stating that he is due for superannuation on 31.05.1997 and secondly, that since he had undergone bypass surgery for which post operative treatment, periodical check-up is required to be done at CGHS and Bombay Hospital and his wife is also suffering from epileptic fits and his presence at Bombay is required in connection with the daughters of marriageable age, etc. The respondents did not deal with any of the contentions raised by the applicant in his representation. During the course of hearing, the Learned Counsel for the respondents submitted to the

Tribunal that they were ready to refer the matter to the Board of Doctors consisting of Cardiologists and other experts, so that the action of the respondents are not further challenged before the Tribunal. The applicant was inclined to go before the Board of Doctors consisting of Cardiologists as prayed by the respondents in the M.P. on 19.10.1995. Accordingly, while disposing the O.A. the Tribunal agreed to refer his case to the Board of Doctors with the following observation, which reads as follows :-

"The applicant to file with respondents all the medical papers in relation to his treatment both in CGHS as well as Bombay Hospital within 8 days and thereafter Respondents may constitute a Board of Doctors consisting of Cardiologists and relevant experts and to refer the matter to the same Board within a month. After obtaining the report of the Medical Board, copy of the opinion of the Medical should be made available to the applicant within 7 days and on receipt of the same, the Applicant, if he so desires, would be at liberty to apply for constitution of an Appellate Medical Board within a fortnight. If that contingency arises and after taking into account the opinion of the Appellate Medical Board, the respondents are free to take further action to transfer or not to transfer the applicant but also keeping in view the first prayer of the applicant that he is entitled to remain at Bombay as per the relevant guidelines, especially as he is likely to retire within two years. Final decision to be taken by the authorities after taking into account the opinion of the Medical Board/Appellate Medical Board and keeping in view the request for retention in Bombay on the basis of guidelines referred to above. The O.A. alongwith the M.P. is disposed of in terms of the above directions. If the

applicant is still transferred, the order of the transfer should not be implemented till 15 (fifteen) days when the applicant would be at liberty to file a fresh O.A. in case he is so advised."

4. Pursuant to the direction of the Tribunal the Medical Board submitted its report dated 25.03.1996 which reads as follows :

"This is to certify that Shri R.S. Ajwani, Assistant Engineer has been examined in Standing Medical Board. As per the cardiology opinion, Post CABG, Patient gets anginal pains controlled with medication. He needs regular follow up. He should be posted where proper cardiology treatment is available."

5. Initially, the applicant had been transferred from Bombay to Ozar vide Posting Order dated 14.03.1995. However, the respondent's department at Nasik intimated the Bombay office vide its letter dated 04.04.1996 that Ozar is a small village and there are no facilities available for cardiology treatment. However, a Civil Hospital is located at Nasik, which is 35 Kms. away from Ozar Station. It was also stated that there are no transport facilities in case of emergent nature treatment. Considering the circumstances in which the applicant was situated, the Tribunal directed the respondents to refer the case to the Board of Doctors. The respondents in their reply submitted that as per the opinion of the Medical Board, the applicant should be posted to a place where proper cardiology treatment facility is available. Accordingly, the applicant has now been posted

to Deolali instead of Ozar. The respondents state that all medical facilities including Cardiology treatment is available at Civil Hospital at Nasik, which is about 16 Kms. from Deolali. Therefore, there is no problem about proper cardiology treatment for the applicant near Deolali, which is the new place of posting. It is further stated by the respondents that the applicant underwent Coronary Bypass Surgery in 1991 and he has been maintaining fairly good health. Since for all normal and extra-ordinary cardiological treatment facilities are available if necessary near Deolali, the present application challenging the posting of the applicant to Deolali is unjustified and deserves to be dismissed. It is also contended by the respondents that the present application of the applicant is barred by principles analogous to the principle of resjudicata and/or the present O.A. is barred by the principle of constructive resjudicata.

6. On perusal of the pleadings, I find that the respondents are determined to transfer the applicant, without considering the contentions raised in the representation and the observation made by the Tribunal while disposing of the earlier O.A. The certificate issued by the Medical Board is very clear that the applicant should be posted where proper cardiology treatment is available. It is an undisputed fact that the applicant cannot avail of the cardiology treatment in case of emergency at Deolali and if at all he has to avail the same, he may have to go to Nasik. It is clear from the above, that the respondents fail to take note of the applicant's illness and the request made by him for keeping him at Bombay till his retirement as per their own guidelines. They have

also forgotten that the Tribunal has clearly directed in its earlier order that inspite of the Medical Boards report, if the applicant is still transferred, the order of transfer should not be implemented till 15 days when the applicant would be at liberty to file a fresh O.A. in case he is so advised. He has been specifically permitted by the Tribunal to approach the Tribunal, thereby, the contention of the respondents that the present application is barred by the principle of constructive resjudicata is not sustainable. The respondents in their reply have relied upon the various decisions of the Apex Court on the subject of transfer in the case of Shilpi Bose [ 1991 II LLJ Pg. 590 ], S.S. Kourav V/s. Union Of India [1995 II AISLJ Pg. 109 SC ] and Tamil Nadu Electricity Board Engineers Sangam V/s. Tamil Nadu Electricity Board [1996 I LLJ Pg. 1071] and thereby they urge that the Tribunal is precluded from interfering with transfer orders except in the case of malafides, etc. We are well aware of the ratio laid down in these cases by the Apex Court. Normally, we are not inclined to interfere in the transfer order but in this case, considering the facts and circumstances of the case and the approach adopted by the respondents in transferring the applicant to a place where there is no access to medical facilities, shows the attitude of the respondents and it was apparent they did not apply their mind to the fact that he has been availing the treatment at Bombay Hospital regularly. He is seeking relief not on compassionate ground but on medical grounds, since there is no medical facility at

Deolali where he is now posted. It is not denied that his wife is also ill and he is to superannuate within a period of another eight months i.e. 31.05.1997. In this connection, the Learned Counsel for the applicant draws my attention to para 26.28 of the Fourth Pay Commission Recommendations, which reads as follows :

"A suggestion has been received that central government employees having all India transfer liabilities should not be transferred away from their home towns during the last 3 years of their service to enable them to settle their affairs satisfactorily before retirement. Such a policy has already been followed by some State Governments. Government may consider the advisability of transferring a central government employee with all India transfer liability to his home state during the last 3 years of his service.

In this case, the applicant has got hardly 8 months to go for superannuation and he is seeking stay-over at Bombay on medical grounds and not on any other grounds. It is not the contention of the respondents that the medical facilities are available at Deolali. It is not a case of malaria/fever like ordinary illness but he has already undergone a Coronary Bypass Surgery and he requires regular follow up action in a well established hospital. The Medical Board has also clearly stated that he should be posted where proper Cardiology treatment is available. Admittedly, such a thing is absent at Deolali. He has already made a representation on 30.04.1996 but no reply has been given by the respondents so far. Though the Tribunal had directed the respondents vide its order dated 29.05.1995 to dispose

of the representation made by the applicant on 07.04.1995 by passing a speaking order within a period of six weeks, the same appears to have not been carried out by the respondents till date. In the circumstances, it is observed that further transfer to Deolali is not in accordance with the report of the Medical Board. Admittedly, there is no proper cardiology treatment at Deolali.

7. The Apex Court in Pt. Parmanand Katra V/s. Union Of India [ AIR 1989 SC 2039 ] has held - "there can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or he a criminal liable for punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment."

8. In the light of the above, merely stating necessary facilities are available at Nasik would not meet the ends of justice. Considering the type of illness in which the applicant is suffering, in my view, in order to meet the ends of justice, public interest will not suffer if he is not transferred because his presence and life is more important to his family than his services at Deolali.

9. In the result, I hereby quash and set aside the transfer order dated 17.07.1996 in so far as the applicant is concerned and also the Movement Order dated 30.07.1996. The guidelines of the Government of India regarding transfer is equally binding on the department. In the instant case, since the applicant is retiring within 8 months, nothing is being lost if he is placed at Bombay, especially on medical grounds. It is true that in transfer matters, the Tribunal is reluctant to interfere with the administrative decisions regarding transfers, but in this case,  the facts and circumstances are such, the Tribunal is left with no alternative but to quash the transfer/movement order purely on administrative and medical grounds. Accordingly, I allow the O.A. and set aside the impugned orders dated 17.07.1996 and 30.07.1996. The parties are directed to bear their own costs.

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

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