

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 551 /1996

Date of Decision: 13<sup>th</sup> Nov. 96

Mrs. Noorunnisa A. Kazi

Petitioner/s

Mr. S.P. Kulkarni

Advocate for the  
Petitioner/s

V/s.

UOI & Ors.

Respondent/s

Mr. P.M. Pradhan

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

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?

M.R. Kolhatkar

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

O.A.No.551 OF 1996

DATED: 13-11-1996

CORAM: M.R. Kolhatkar, Member(A)

Mrs. Noorunnisa w/o.Abdulla Kazi,  
Maratha Hospital,  
Municipal Staff Colony,  
Building no.1, Room No.11,  
E.S.Patanwalla Marg,  
Byculla, Mumbai 400027  
(By Adv. S.P.Kulkarni)

..Applicant

V/s.

Union of India through

1. Regional Pass Port Officer,  
Ministry of External Affairs,  
Government of India,  
Manish Commercial Centre,  
Dr. Anne-Beasant Road,  
Prabhadevi (Worli),  
Mumbai 400025.
2. Chief Port Officer,  
Ministry of External Affairs,  
Government of India,  
North Block, Parliament Street,  
New Delhi 110001.
3. The Secretary,  
Ministry of External Affairs,  
Government of India, North Block,  
Parliament Street,  
New Delhi 110001

..Respondents

(By Mr. P.M. Pradhan, Central  
Govt. standing counsel)

ORDER  
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1. In this O.A. the applicant who works as an Assistant in the Regional Pass Port Office, Mumbai, challenges the circular dated 05.02.1996 annexed as R-1 to the written statement of the

respondents and the relieving order dated 4.6.96 which has the effect of transferring the applicant from Mumbai to Panaji and directing her to report at Panaji on 6.2.96. She has also challenged the rejection by competent authority of her representation dated 12.6.96 by the letter dated 25.6.96, Annexed at Annexure A-11 to the application. In this annexure the representation has been rejected on the following grounds:

- a) The guidelines for posting husband and wife are not mandatory.
- b) The health ground can not be a ground because adequate medical facilities exist at Panaji.
- c) There are many lady officials in Mumbai who have complied with the transfer order and the applicant alone cannot be given different treatment.
- d) Last year extension was given to all including applicant owing to the delayed issue of transfer Memo. The applicant had sufficient time to prepare herself.

2. The applicant seeks quashing of the order or atleast deferment of the implementation of the order till 31st March, 1997 on the ground that she has been diagnosed to suffer from a very painful orthopedic condition known as 'Prolapsed Intervertebral Disc (PID-L-L5) which requires that some one has to assist her during night to add weight of about 5 to 6 kg to the waist and

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during the day to wear belts and that this care and assistance can be given to her only by her husband and child at Mumbai. Regarding the medical facilities being available at Panaji, the applicant contends that she is at present taking treatment at J.J.Hospital and change of orthopedic surgeon/expert at this stage would be disastrous. She has contended that her husband is working in the Brihan Mumbai Municipal Corporation and the guidelines relating to keeping the husband and wife together apply to a Class III employee like her with greater force than in the case of Class-I officers. In this connection the well known judgment of the Supreme Court in S.L.ABBAS was relied upon. The Applicant further states that there is no evidence that the respondents have considered her medical condition and her request for considering her posting on the ground of couple concession ~~to~~ ~~be posted~~ at Mumbai. It is submitted by Counsel that her representation was not at all considered on humanitarian grounds and the same was dealt with in a mechanical fashion. The applicant further states that the main order by which a large number of Assistants were transferred out of Mumbai has atleast in some cases been departed

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from inasmuch as one Mr. Rokade though transferred was <sup>n</sup>detained at Mumbai and thus there is a discrimination.

3. Respondents have contended that the applicant has not come to the Tribunal with clean hands. Initially a transfer order was issued in the month of August, 1995 in which the applicant's name figures along with others and on receipt of a representation from some of the affected employees including applicant that the said order of transfer affects the academic career of their wards, the same was withdrawn by the respondents and a fresh order was issued on 5.2.96 intimating that the employees whose transfer was effected earlier but withdrawn would be <sup>transferr</sup>~~effected~~ at the end of May 1996 and that the Applicant's signature was obtained in token of her being aware of this situation and that just when the relief order dated 4.6.96 was issued to the applicant, she managed to fall ill and got herself admitted to the hospital. Secondly the Respondents have contended that her representation has been considered by the competent authority and it was only after considering all aspects of the matter that it was rejected and that the transfer is in public inte-

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rest. So for as the case of Rokade is concerned it is stated that his wife met with a major railway accident in the year 1993 and died leaving behind two minor children and therefore on the basis of a representation of Shri Rokade, the matter was considered on humanitarian grounds and Shri Rokade was retained at Mumbai. It is further pointed out that after the applicant got the interim relief from the Tribunal staying her transfer, the applicant obtained fitness certificate and reported for duty on 16.8.96 and the contention of respondents is that when she can report for duty at Mumbai, she could as well report for duty at Panaji.

4. Both the Ld. Counsel have relied on case law on the point. However I am not required to go into the question of application of the case law as I am of the view that the position in law is well settled that transfer is an incident of service especially in a department of which the employees have All India Transfer liability and that the Regional Pass Port Office is one such office, and that this Tribunal cannot interfere with the transfer order unless ~~there~~<sup>there</sup> mala-fides are established or there is violation of

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statutory guidelines. In the present case no such consideration arises.

5. However, in the instant case, the peculiar orthopedic condition of the applicant which requires help and attention from near relatives during the day and night cannot be overlooked. This does not appear to have been given due weight by the respondents. I am also inclined to accept the contention of the applicant that her failure to give effect to the relieving order on 4/5th June 1996 was due to the fact that accidentally she got disc attack at that particular juncture. I am of the view that the ends of justice in this case would be met by directing the Respondents to defer the order of transfer till 31.12.1996. The O.A. is disposed of in these terms. The Respondents are at liberty to issue a movement order to take effect any time after 31.12.1996. There would be no order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar)

Member(A)