

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 615/96 /199

Date of Decision: 05-09-96

Smt. Sushilaben D. Garasia

Petitioner/s

By Shri I.J.Naik.

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

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 ? X

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.615/96.

Pronounced, this the 5th day of Sept 1996.

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

Smt. Sushilaben D.Garasia,
Tokarkhada,
P.O. : Silvassa,
Pin Code : 396 230.

... Applicant.

(By Advocate Shri I.J.Naik, counsel
for the 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
Dadra and Nagar Haveli,
Administrator's Secretariat,
P.O. : Moti Daman - 396 220.
3. The Assistant Secretary (P),
Administrator's Office,
Dadra and Nagar Haveli,
P.O. : Silvassa,
Pin Code : 396 230.
4. The Development Commissioner,
Daman and Diu and Dadra and
Nagar Haveli, Secretariat,
P.O. : Moti Daman - 396 220. ... Respondents.

(By Advocate Shri V.S.Masurkar, counsel
for respondents.).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged
the order dt. 28.6.1996 of Administrator of Dadra
and Nagar Haveli (at A-1) so far as it relates to the
transfer of the applicant from the post of Primary
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School Teacher C.P.S.Silvassa to the same post at C.P.S. Khanvel (Police Station Talavali). The applicant is challenging the transfer order on several grounds. It is contended firstly that the order of transfer is arbitrary and in violation of Article 14 of the Constitution. It is secondly contended that, it is mala fide because it has been passed at the behest of the Political Leader Shri Mohanbai Delkar, Member of Parliament who was annoyed with the applicant's husband Shri Kantibhai Patel who worked for the success of the B.J.P. candidate in the election. It is contended that the applicant has completed only four years of stay in Silvassa, but there are teachers serving in the same place for a longer period, that the relative of the M.P. referred to above has been serving in the said City of Silvassa as a Secondary School Teacher continuously for a period of 7 years, but she has not been transferred. Thirdly, it is contended that the transfer order is vindictive because it is designed to cause harassment to the applicant. The Village Talavali is in the interior part of Territory and there is no 'Bus Service' to reach Talavali from Silvassa; in the village Talavali there is no 'High School' and so the second daughter of the applicant who is studying in Standard IXth would suffer in her schooling; further the

place is inaccessible because there is a River across and there is no 'Ferry-Service' to reach the place and lastly the elder daughter of the applicant is studying in the 'Polytechnic' in Silvassa and her education also would be affected.

2. The applicant has relied on the ratio of R.Jayaraman V/s. Union of India (1991 Vol.17 1991 ATC 151) in which when the Tribunal found that the transfer was in colourable exercise of power because the building contractors were not happy with applicant, the Tribunal interfered with the transfer order. The counsel for the applicant also relies on the Supreme Court Judgment in Director of School Education, Madras and Others V/s. Karuppa Thevan and Another (1994) 28 ATC 99).

In this Judgment, the Hon'ble Supreme Court observed that "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." This Judgment was delivered especially in the context of the fact that the transfer order was passed in the mid academic term.

3. The Respondents have opposed the O.A. It is contended that the order dt. 28.6.1996 deals with the transfer of 146 Primary School Teachers/Head Masters on administrative grounds. It is stated that the School in which ^{she} is transferred has a sanctioned strength of only two teachers and sixty students and

if she does not join, the students will suffer. It is thus contended that the ratio of Director School Education, Madras and Others V/s. O.Karuppa Thevan & Another does not apply because there are exigencies of administration which do require that the transfer be given effect to. The respondents have denied that the transfer is actuated by mala fides. It is pointed out that the applicant is a Primary School and Teacher/she is comparing her case with teacher in the High School and therefore, the comparison is illogical. The respondents have denied that the transfer was effected at the instances of the Political Leader. Regarding the in-accessibility of the village it is stated that the River to which the applicant has referred is fordable since there is hardly any water there and the school is functioning there from 1962 and the contention of the applicant in regard to in-accessibility has no basis. So far as the difficulties relating to the education of children are concerned they are not a ground for interference of the Tribunal. It is also contended at the Bar that the transfers are not at all in the middle of the academic term. Earlier because of the Election process, the Transfers were held up, but the transfers have now been ordered at the end of June, 1996 which cannot be said to be in the middle of the Academic term, especially because a large number of teachers

have been transferred and they have not raised any such difficulty.

4. I have considered the matter. In my view, there is an allegation of mala fides, but the same has not been made out. Hence the ratio of R.Jayaraman does not apply. The ratio of Director of School Education, Madras and Others also does not apply because in this case the exigencies of service are urgent and if the applicant does not take over at the appointed place the education of a large number of school-going children is likely to suffer. On facts, it is also not possible to hold that the transfer is in the mid-academic term. It is well settled that the transfer is not a condition of service but is an incident of service and the scope for interference by the Tribunal in orders of transfer is very limited. In my view, this case does not merit the intervention of the Tribunal. The O.A. is therefore dismissed, with no order as to costs. The interim relief stands vacated.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A).

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO: 93/96 IN O.A. 615/96

Smt. Sushilaben D. Garasia

.. Review Petitioner

-versus-

Union of India & Ors.

.. Respondents

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

Tribunal's Order on Review Petition

by circulation :

(Per M.R. Kolhatkar, Member(A))

Date: 30-09-96

In this Review Petition, the review petitioner/original applicant has sought review of my order dt. 5-9-1996 by which her prayer for cancellation of the transfer order was rejected.

The grounds for review are as below :

2. Firstly it is stated that on 6th September '96 a judgment has been pronounced by the other Single Bench consisting of Member(Judicial) in O.A. 676/96 in which facts are identical and the Tribunal had granted the relief and therefore there is a conflict of judgment. In my view this cannot be a ground for review. In any given O.A. a judgment is delivered by the Judge keeping in view the facts and circumstances of the case. Therefore a different view is always possible. Secondly I have perused the judgment and the Tribunal has passed the order it did on the ground that the ratio laid down by the Apex Court referred in the judgment in so far as the education of the children and public interest is concerned in transfer matter would squarely apply to the facts of the case, Therefore, that ratio is not applicable.

3. It is next contended that the Asstt. Director of

Education has cancelled three transfers of S/Shri B.K.Dhodi, A.U.Rathod, and M.R.Patel by his order dt. 11-7-1996 but he did not grant a similar relief to her and the Asstt. Director of Education has committed a breach of the applicant's fundamental right of equality. This circumstance is entirely irrelevant as a ground for review of my order. It is of course open to applicant to make a fresh representation to the Asstt.Director and it is open to the Asstt.Director to consider the same as he is said to have considered the representation of three other people. But that is a matter between the applicant and the Asstt.Director and this Tribunal is neither required to review its judgment on this ground nor required to issue any directions.

4. I, therefore, do not find any substance in the review petition nor any circumstance relatable to rules under Order 47 of the CPC or Section 114 of the CPC. The R.P. has no merit and therefore is dismissed by circulation as permissible under the rules.

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M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)