

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 743 /1996

Date of Decision: 10/9/96

R.P.SINGH

Petitioner/s

Shri M.S.Ramamurthy

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for the
Respondent/s

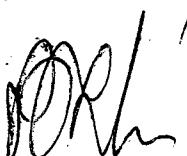
R-4 in person

CORAM:

Hon'ble Shri P.P.Srivastava, 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 ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 743/96

this the 10th day of SEPTEMBER 1996

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

R.P.Singh
residing at 36,
Dhanraj Mahal,
Apollo Bunder, CSM Marg,
Mumbai

By Advocate Mr. M. S. Ramamurthy ... Applicant
V/S.

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General, Directorate General of Defence Estate, Ministry of Defence, Govt. of India, West Block No. 4, R.K.Puram, Sector I, New Delhi.
3. Director, Defence Estate, Southern Command, Pune.

By Advocate Shri R.K.Shetty
C.G.S.C. ... Respondents

4. Shri M.Guruswamy,
Defence Estate Officer,
Pune Circle, Pune Camp,
Pune.

Respondent No. 4 in person

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant is working as Defence Estate Officer and he was posted in Mumbai on 14.1.1994. The applicant has been transferred as Defence Estate Officer, Agra vide the administration's order dated 21.6.1996 (Exhibit 'A'). The applicant has approached the Tribunal for quashing the transfer order.

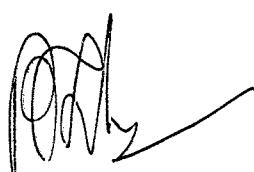


.. 2/-

2. The counsel for the applicant has argued that the applicant has been transferred before the completion of tenure which is $2\frac{1}{2}$ years to 3 years. This has been brought out in 'Exhibit-'C' which is a broad guideline issued by the administration vide Govt. of India, Ministry of Defence letter dated 5.9.1983. The tenure shown for Military Estates Officer etc. is $2\frac{1}{2}$ years to 3 years. The counsel for the applicant has argued that the applicant would have completed the $2\frac{1}{2}$ years on 16.8.1996 as he had taken over at Bombay on 16.2.1994. Since the order of his transfer has been ordered on 21.6.1996, it is short of $2\frac{1}{2}$ years and is therefore against the guidelines of the administration.

3. Counsel for the respondents on this point has argued that the guidelines cannot be followed absolutely counting the days and submits that in this case the order of the transfer has been issued only about $1\frac{1}{2}$ months before the period of $2\frac{1}{2}$ years, therefore, this order cannot be termed as against the guidelines issued on the subject.

4. Counsel for the respondents has also argued that even though the administration has followed the guidelines, the applicant has no legal right on the basis of the guidelines which has been held in various judgements of the Apex Court.



5. The Learned counsel for the applicant has cited the Apex Court judgements in *Shilpi Boase vs. State of Bihar* (1991-II-LLJ-591) *Union of India vs. H.N.Kirtania* (1989) 3 SCC 455 and *Gujarat Electricity Board vs. Atmaram* (1989-2 SCC 602) which have been referred to in the judgement of High Court of Andhra Pradesh in *D.Suryanarayana Murty vs. State Bank of Hyderabad & Ors.*, W.P.No.20306/1994, dated June 29, 1995.

6. The Learned counsel for the applicant has also cited the judgement in *Abbas's case* delivered by the Hon'ble Supreme Court reported in 1996 LSG 784 to 786, wherein also the same point has been reiterated by the Hon'ble Supreme Court on the issue of transfer. I am inclined to accept the argument of 1d. counsel for the respondents that as the transfer has been issued only $1\frac{1}{2}$ month before the $2\frac{1}{2}$ years tenure and it cannot be said to be against the spirit of guidelines of the Government. Also I am of the view that the various judgements of the Apex Court leave no doubt in mind that breach of guidelines would not give any legal rights to the applicant as guidelines are only administrative instructions.

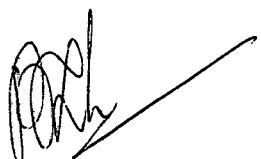
7. The Learned counsel for the applicant has also assailed the transfer order on the ground that the respondents have transferred the applicant to favour Respondent No. 4 one Shri M.Guruswamy who is working as Defence Estate Officer at Pune. Mr.Guruswamy has been posted to Mumbai before completion of his tenure at Pune and the respondent administration is favouring Shri Guruswamy and therefore the order is not in the interest of



administration but as a measure of favouritism shown to Shri Guruswamy.

8. The counsel for the respondents has argued on this issue that the Respondent No. 4 has sought transfer to Bombay and since the applicant's tenure was over and he was to be transferred on completion of tenure, the Respondent No. 4 has been accommodated in Bombay. There is no favouritism shown in the order. As Respondent No. 4 has developed expertise in dealing with the court cases and there are number of court cases which the department is fighting in Bombay High Court and his presence is necessary in the administration's interest.

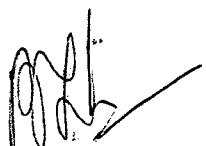
9. On the point of showing favouritism to Respondent No. 4, I do not see any evidence on record to come to the conclusion that there is favouritism being shown to Respondent No. 4 to the detriment to the administration's interest. The applicant's claim for retention in Bombay after 2½ years even on the basis of the guidelines is not available and the posting is a matter of administrative convenience and the posting of Respondent No. 4, who has sought transfer to Bombay, cannot be construed an act of favouritism on the part of the respondents which is detrimental to the administration's interest. I, therefore, do not accept the plea of the applicant that the transfer of the applicant is malafide in as much as the respondents have transferred him to favour the Respondent No. 4.



10. Ld.Counsel for the applicant has further argued that the applicant's daughter is studying in a prestigious school in Bombay and ~~it is~~ vital for her education to complete her academic session otherwise she will be losing one year of Ld. her education. The Counsel for the applicant has also argued that the son of the applicant who is 1½ years of age is suffering from recurrent allergic ^{Homeopathic} respiratory track infection and is undergoing treatment in ~~Mumbai~~ and for completing the treatment, he requires some time to remain in Bombay so that his treatment Ld. could be completed. Counsel for the applicant has also submitted that the wife of the applicant has joined one year fashion designing course and has spent a huge sum of money which is not refundable if the course is left midway.

11. Ld.Counsel for the applicant has further argued that respondent administration has not shown any ground which would need immediate transfer of the applicant from Bombay and therefore he has prayed that the applicant should be retained upto the end of this academic session, i.e. upto 30th April 1997 so that the education of the applicant's daughter ~~does~~ not suffer.

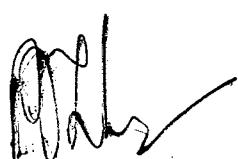
12. Ld.Counsel for the respondents has argued that the applicant is an officer of All India transfer liability and in the exigency of service he is required to undertake transfer and change in school etc. are part of the exigency of service and on these grounds, the transfer of the applicant cannot be considered illegal.



13. Respondent administration has not been able to bring out any material on record to show the urgency of the transfer. It is a fact that the transfer in mid-session would result into disturbance of education of the daughter of the applicant. In view of the fact that the administration has not been able to bring out any urgency for transferring the applicant out of Bombay, I am inclined to consider the request of the applicant for being retained in Bombay upto the end of academic session.

1d.
14. The counsel for the applicant, in this connection, has cited the Hon'ble Supreme Court's judgement in Director of School Education, Madras & Ors. vs. O. Karuppa Thevan & Anr. 1994 SCC (L&S) 1180, wherein the Hon'ble Supreme Court has considered the question of transfer during mid-academic term. In this judgement the Hon'ble Supreme Court has held as under :-

- "1. Leave granted. Heard both counsel.
- 2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities made 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. We, therefore, while setting



aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

Ld. Counsel for the applicant ^{has} argued that the case of the applicant should be considered for retaining him upto the current academic year.

15. After considering various arguments of both the counsels and Respondent No. 4 in person and the observations in the judgement of the Hon'ble Supreme Court cited by the applicant as enumerated above, I am of the view that there is nothing illegal in the transfer order dated 21.6.1996 (Exhibit 'A') and I am not inclined to interfere with this transfer order. ^{However,} In view of the circumstances of this case, I direct that the applicant should be retained in Mumbai either in the present post or any other equivalent post upto 30.4.1997. The OA. is disposed of with the above directions. There will be no orders as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)

mrj.