

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 162/99.

Date of Decision: 18.03.1999.

C. Sasidharan,

Applicant.

Shri R. C. Ravlani,

Advocate for
Applicant.

Versus

Union Of India & 2 Others.

Respondent(s)

Shri R. R. Shetty for
Shri R. K. Shetty,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

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(1) To be referred to the Reporter or not? ✓ 74

(2) Whether it needs to be circulated to other Benches of the Tribunal? NO

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 162/99.

Dated this Thursday, the 18th day of March, 1999.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

C. Sasidharan,
JWM/QCP Section,
Ordnance Factory,
Dehu Road,
Pune - 412 113.

Residing at -

Flat No. 110, Anupam Nagar,
35, Bombay Pune Road,
Khadki, Pune - 411 003.

... Applicant

(By Advocate Shri R.C. Ravlani)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factories Board,
10-A, Shaheed Khudiram Road,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Dehu Road,
Pune - 412 113.

... Respondents.

(By Advocate Shri R.R. Shetty for
Shri R. K. Shetty).

OPEN COURT ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed by the applicant
challenging the order of transfer dated 17.12.1998 under

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which the applicant has been transferred from Ordnance Factory, Dehu Road to Ordnance Factory, Bhandara. The respondents' counsel orally opposes admission and grant of any interim relief. We have heard both counsels regarding admission and interim relief.

2. The applicant has challenged the order of transfer on many grounds. The Learned Counsel for the applicant submitted that since the applicant is at the fag end of his service, he should not be transferred as per the transfer guidelines of the Government. The other submission is, that the applicant is suffering from heart trouble and therefore, he should be retained in the present post. On the other hand, the Learned Counsel for the respondents submitted that due to exigencies of administration and particularly in view of enhancement of age for retirement, the administration has to take some decisions regarding postings and transfer and as a result, the applicant has been transferred to Bhandara and there is no reason to interfere with the order of transfer.

3. Nodoubt, the applicant is nearing the age of 58 years and in view of enhancement of retirement age, he will have two more years of service. The Learned Counsel for the applicant submits that one of the transfer guidelines is, that an official, in the last three years of service should not normally be transferred outside their home-town or home-station. He also relied upon two-three ^{earlier} decisions of Benches of the Tribunal where transfer orders were quashed on the ground of transfer guidelines of Government or on

health grounds. On the other hand, the Learned Counsel for the respondents relied on two decisions of the Apex Court in support of his contention that the Tribunal should not interfere with the order of transfer.

4. It is well settled by number of decisions of the Apex Court that Courts or Tribunals should not sit in appeal over the administrative orders of transfer and the transfer order can be interfered with only if it is proved to be malafide or if it is contrary to any statutory rules.

In this case, the applicant has nowhere alleged that the order of transfer is malafide or it is contrary to any statutory rules. Therefore, on this ground itself the application cannot be entertained.

5. ^{On} But the question of violation of transfer guidelines, on which the Learned Counsel for the applicant placed reliance on two three earlier decisions of Benches of the Tribunal, I only say that in view of the law declared by the Apex Court that transfer guidelines are not grounds meant for Tribunal or Courts to interfere with the orders of transfers, it is not necessary to refer to the judgements of the Tribunal.

In S.L. Abbas' Case [1993 (25) ATC 844], one of the grounds on which the transfer order was quashed by the Tribunal was violation of transfer guidelines, namely - husband and wife should be kept



in the same station and they should not be transferred. The Supreme Court said, on violation of transfer guidelines or transfer policies, Courts or Tribunals should not interfere with the order of transfer. Therefore, the argument of the Learned Counsel for the applicant that as per the normal policy or normal guidelines an official should not be transferred within the last three years of his service, is not a ground for a Court or Tribunal to interfere with that order. I do not say that the administration can violate transfer guidelines or policies. It is a matter for the administration to follow the transfer guidelines as far as possible. But paramount interest is public interest. If in public interest or in administrative exigencies a transfer is necessary and transfer is effected, inspite of the transfer guidelines, then a Court or Tribunal cannot sit in appeal over that decision of the administration and then examine whether the order of transfer is in violation of transfer policy.

6. The other ground on which the applicant's counsel sought interference is on the ground of health of the applicant. It is nodoubt true that the applicant is a cardiac patient and has been undergoing treatment. Whether in a given case such a person should be transferred or not is again to be left to the administration and not a matter for the Court or Tribunal to interfere. In S.S. Kaurav's case [1995 (29) ATC 553] the Supreme Court observed that the Court cannot go into the question of relative hardship and it is for the administration to consider the same and pass appropriate orders. Infact, in that case, it was pressed into



service before the Supreme Court that the official's wife had committed suicide and had left behind three children and he would suffer extreme hardship if he is transferred to a tribal area. The Supreme Court has observed that the question of relative hardship cannot be considered by a Court but it is for the administration to decide if any such representation is made by the official. Infact, in para 4 of the reported judgement, the Supreme Court has ruled that Courts or Tribunals are not appellate forums to decide the validity or correctness of orders of transfer on administrative grounds. What is more, the Supreme Court cautioned that the wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of administrative system by transferring the officers to appropriate places.

In view of the law declared by the Apex Court, the applicant has not made out any case for interfering with the order of transfer in the present case.

7. However, we cannot lose sight of the fact that the applicant is a cardiac patient and he is undergoing treatment at the ^{Hospital of} Ordnance Factory, Dehu Road. I am told that the applicant has already given a representation on medical grounds to the competent authority. As observed by the Supreme Court in S.S. Kaurav's case, it is for the administration to consider the question of hardship and take appropriate decision so as to mitigate the hardship as far as possible. Though the respondents' counsel now says

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that earlier representations of the applicant has been disposed of vide order dated 24.02.1999, the applicant's counsel now submits that his client has sent one more fresh representation dated 01.03.1999. If the representation dated 01.03.1999 is still pending, the competent authority may consider the same and take appropriate decision as per rules bearing in mind the grievance made by the applicant regarding health condition, etc. Having regard to the health condition of the applicant, I feel he should be given some reasonable time before he is ordered to be relieved from the present post in case the administration decides to relieve him. If the applicant's representation dated 01.03.1999 is favourably considered by the administration, then nothing more need to be done. If however, the administration decides not to grant the request of the applicant on the basis of the representation dated 01.03.1999, I feel that the applicant should be granted some reasonable time before he is relieved from the present post.

8. In the result, the O.A. is disposed of at the admission stage with the following two directions :

- (i) The competent authority may consider the representation of the applicant dated 01.03.1999 and pass appropriate orders according to law.
- (ii) The applicant shall not be relieved from his present post in pursuance of the impugned order of transfer dated 17.12.1998 till 30.04.1999. However, the administration may relieve the applicant at any time after

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30.04.1999 and then if he is relieved,
the applicant should join the new posting
availing permissible joining time as per
rules.

(iii) No order as to costs.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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