

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 602/99

DATE OF DECISION: 7.10.1999

Shri Prakash C.Velandikar Applicant.

Shri A.L.Kasturey. Advocate for
Applicant.

Versus

Union of India and others. Respondents.


Shri V.S.Masurkar. Advocate for
Respondent(s)

CORAM

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

Hon'ble Shri

- (1) To be referred to the Reporter or not? *NO*
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? *NO*
- (3) Library. *yes*


(R.G. Vaidyanatha)
Vice Chairman.

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO:602/99

THURSDAY the 7th day of KOCTOBER 1999.

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

Prakash C.Velandikar
Divisional Accounts Officer I
O/O the Executive Engineer,
Irrigation Project,
Strengthening Division-
OMERGA, Dist. Osmanabad. ...Applicant

By Advocate Shri A.L.Kasturey.

V/s

1. Union of India through
Accountant General (A&E) II
Maharashtra, Nagpur.
2. Dy.Accountant General/Works
Office of the Accountant
General (A & E) II
Maharashtra, Nagpur. ...Respondents

By Advocate Shri V.S.Masurkar.

ORDER (ORAL)

{Per Shri Justice R.G.Vaidyantha, Vice Chairman }

This is an application filed by the applicant challenging the order of transfer. The respondents have filed reply. I have heard Shri A.L.Kasturey counsel for the applicant and Shri V.S.Masurkar counsel for the respondents.

2. The applicant is working as Divisional Accounts Officer, in the office of the Exective Engineer, Irrigation Project, Strengthening Division, OMERGA, Dist. Osmanabad, Maharashtra. By the inpugned order of transfer dated 21.6.1999 the applicant has been transferred to Nandur Madhmeshwar Canal Division, Vaijapur,

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Distt. Aurangabad. The applicant is challenging the order of transfer on number of grounds.

The respondents have filed reply justifying the order of transfer on administrative ground and also on the ground that the order of transfer is in public interest. They have given number of reasons to justify the order of transfer in administrative interest.

3. At the time of argument the learned counsel for the applicant contended that the order of transfer is un-reasonable, arbitrary and un-fair. The main ground on which the applicant wants to continue in the same place is that his mother is not keeping well and therefore he has to look after her and hence he wants to continue there. In my view, on the face of this, the request of the applicant cannot be granted by a Court or Tribunal. Personal grounds or personal difficulties are not matters on which a Court or Tribunal can quash the order of transfer. That may be a ground which may be pressed before the Competent Authority praying for retention or transfer to a nearer place. It is also open to the applicant to make representation to the higher authorities, certainly not before a Court or Tribunal to ask for cancellation of the transfer order on personal ground or personal difficulties.

4.....As could be seen from the record, the mother is staying with her younger son and not with applicant, which is a distance of 40 km from applicant's place. Therefore mother can continue to stay there. It is not a case of mother staying with the

applicant and she will be put to difficulty. But here is a case about 40 km from OMERGA, with her younger son. OMERGA, with her younger son.


5. The argument that the respondents have not considered the request of the applicant and they have arbitrarily transferred the applicant has no merit. Here is a case where the respondent have shown very fair attitude, so far as the applicant is concerned. The applicant was transferred to OMERGA on his request on compassionate ground and he was allowed to continue there for more than three years. He was due for transfer in 1998. Then the applicant made a written request by letter dated 15.4.1998 which is at page 15 of the paper book. In his letter he has explained the personal difficulties and requested the administration to continue him in the present Division " for one more year". The administration was magnanimous enough in considering the request of the applicant and allowed him for one more year. Now the applicant urges that the transfer order is unreasonable and arbitrary and what not. The administration has considered his request and kept him near to his native place and allowed him for one more year. Still the applicant is not satisfied and wants to make allegation against the administration.

6. The applicant has alleged of discrimination against the administration as there are some officers who had completed more than 5 years and 10 years who have been accommodated in the same place and the applicant has been discriminated by transferring him after 3 years. The learned counsel for the respondents



pointed out that applicant had continued in the same district for more than 7 years. There is no rule as to when the officer should be transferred. A Court or Tribunal cannot sit in appeal over the administrative order of transfer and decide why one officer is transferred and why other is not transferred. A Court or Tribunal cannot go into that question in a matter like this.

7. The argument about the transfer of applicant's wife to Lathur has no merit. The applicant's wife has been recently transferred, two months back to SBI Lathur. The applicant is working at OMERGA. The applicant's wife was previously working in a different place. Therefore the question of continuing the applicant in the present place on that ground has no merit. Even if it is a case of both are Central Government servants there is no law that one of them cannot be transferred. There may be some guide lines, but they are not statutory Rules. In fact the learned counsel for the applicant himself relied on the case of Union of India V/s S.L.Abbas (AIR 1993 SC 2444). The Apex Court clearly stated that posting of both husband and wife in one place is only a guide line and not a statutory rule, and not a ground for interference by Court or Tribunal. In fact in para 7 of the judgement, the Supreme Court has observed that "who should be transferred and where" is a matter to be considered by the proper authority. The Supreme Court has clearly held that only when the order of transfer is vitiated by malafide or is made in violation of any statutory provisions, a Court can interfere with it. The Supreme Court held that it is open to the officer to make representation in that respect and it is for the competent authority to consider the same.



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8. In the present case the applicant made a representation in 1998 for retention for one more year and the request has been considered and granted by the competent authority. He gave one more representation in 1999 for extension of one more year and the respondents have clearly stated in the reply that representation has been considered sympathetically and in view of the reasoning given, his request either for retention in OMERGA or transfer to Latur was not considered.

9. The learned counsel for the applicant invited my attention to the decision of Punjab and Haryana High Court in the case of Tripta Malhotra V/s Stat of Punjab and others 1991 (1) SLR 220 where the High Court gave a direction that particular officer may be continued in the present post with certain direction.

.....In my view number of recent judgements of the Supreme Court are very clear that the Court or Tribunal cannot interfere in the matter unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions.

.....In the case of State of M.P. V/s S.S.Kaurav 1995 SCC(L&S) 666. The Apex Court has held that the Court or Tribunal are not the Appellate Forum to decide the matter of transfer. One of the ground urged in that case is that the transfer order was not justified. The Supreme Court has rejected that argument with the observation that " wheels of administration should be allowed to

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move smoothly and the Courts or Tribunal cannot interfere with the administrative order. As far as the applicant's grievance regarding the personal difficulties etc, it is for the administration to consider and pass appropriate order.

Similarly in the case of Rajendra Roy V/s Union of India, 1993 SCC (L&S) 138, The Apex Court observed that transfer order which is not malafide and not in violation of service rules and issued with proper jurisdiction cannot be quashed by the Court. The Supreme Court rejected the same since they are matters to be decided by the department and not by a Court or Tribunal.

10. In my view none of the grounds made by the applicant can be accepted. There are no bonafideness in the application. The OA deserves to be rejected.

11. In the result the OA is rejected at the admission stage. Interim Stay order dated 26.8.1999 and extended from time to time is hereby vacated. No order as to costs.


(R.G. VAIDYANATHA)
VICE CHAIRMAN