

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 944 of 1999.

Dated this Wednesday, the 8th day of December, 1999.

S. B. Patkar. Applicant.

Shri D. V. Gangal, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for
Respondents.

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

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?

(iii) Library.

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

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Shri S. B. Patkar,
Assistant Foreman in CQAE
(Ammunition), Kirkee.

Residing at -
65/2, Animish Apartments,
Shiv Prasad Society,
Pan Mala,
Pune - 411 030.

... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

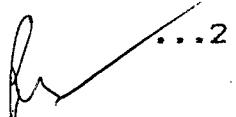
1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi.

2. The Director General of
Quality Assurance,
Ministry of Defence,
Department of Defence
Production, South Block,
New Delhi.

3. The Controller,
Controller of Quality Assurance
(Ammunition), Kirkee,
Pune - 411 003.

... Respondents.

(By Advocate Shri R. K. Shetty).

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OPEN COURT ORDER

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

This is an application filed by the applicant challenging the order of transfer on promotion from Kirkee, Pune to Ambazari, Nagpur. Mr. R. K. Shetty, the Learned Counsel for the respondents orally opposes the application. We have heard both counsel regarding admission.

2. The applicant who is working as an Assistant Foreman in the Ammunition Factory, Kirkee, has now been promoted as Foreman and posted to Ambazari, Nagpur. The applicant is challenging the order of transfer on promotion. Many grounds are taken in the application and few were pressed at the time of arguments.

The first contention of the Learned Counsel for the applicant is that there is a policy decision of the Government that officers who are in the fag end of last three years of service should not be transferred out of their home town.

Reliance was placed on a decision of Calcutta Bench of this Tribunal reported in 1987 (2) ATR 565 (Shanti Kumar Ghosh V/s. Union of India). It is well settled by number of decisions of the Apex Court that transfer guidelines are not statutory orders and if they are not complied with by the department, no Court or Tribunal can interfere with the same. Reference in this case may be made in the case of Union of India V/s. S.L. Abbas (AIR 1993 SC 2444) where reliance was placed on transfer guidelines which

mentions that husband and wife should be kept in the same place and Supreme Court ruled that transfer guidelines are not meant to be enforced by the Court or Tribunal but they are meant to be obeyed by the administration. Similarly, we have come across many decisions of the Apex Cour which say that Courts and Tribunals should not interfere with the routine order of transfer or order of transfer on promotion, unless the order is contrary to any statutory rules or suffers from malafides.

In this case, there is no allegation of malafide against administration. But there is an allegation that the department has discriminated in retaining certain officers previously and now transferring the applicant. As rightly pointed out by the Learned Counsel for the respondents, there may be stray cases where the administration may be able to accomodate an officer but certainly that cannot be a discrimination to the applicant. By the impugned order number of officials have been transferred and none of them have been retained on the grounds alleged by the applicant. It is for the administration to decide in a given given case, having regard to the administrative exigencies, whether the applicant can be accomodated in the same place or not. It is not a matter for direction by the Court or Tribunal. The administration cannot be run from the office of a Court or Tribunal and this Tribunal cannot decide as to who should be posted where. This is purely a function of the administration and, therefore, we should not interfere with the routine order of transfer, much more so in the case of a transfer on promotion.

3. Then it was argued that it is a mid-term transfer and therefore it should be stopped and reliance was placed on a decision of the Supreme Court reported in 1994 (28) ATC 99 (Director of School Education, Madras and others V/s. O. Karuppa Thevan & Another). That was a case where the Tribunal had quashed the order of transfer but the Supreme Court quashed the order of the Tribunal and said that Tribunal should not have interferred with the order of transfer. It may be seen that the order of the Supreme Court was passed on 31.01.1994 and the academic session would be for another one or two months ahead. Therefore, the Supreme Court while setting aside the order of the Tribunal, gave a direction that order of transfer should not be given effect to till the end of the current academic session. The Supreme Court itself has made clear that mid-term order of transfer is neither invalid nor illegal. It may be on humanitarian grounds the administration must apply its mind before effecting transfer to avoid litigations. However, if transfer is necessary in public interest, there is no legal obstacles for transfer during academic year.

We have come across many decisions of the Apex Court where it has been really held that Courts and Tribunals should not interfere with the administrative orders unless ofcourse the order is malafide or it is contrary to any statutory order. In the case of State of Madhya Pradesh & Another V/s. S. S. Kaurav & Others) the Supreme Court has ruled that Courts and Tribunals

are not appellate forums to decide the validity of order of transfer. The Courts and Tribunals are also not expected to decide the justification of the order of transfer. The Supreme Court cautioned that wheels of administration should be allowed to run smoothly and Courts and Tribunals are not expected to interdict the working of administrative system by interfering in the order of transfer. Even on the ground of hardship and difficulties of an officer, it is not for the Court or Tribunal to interfere with the order of transfer, as pointed out by the Apex Court in the case of Rajendra Roy V/s. Union of India (AIR 1993 SC 1236). In Itawmi Narain Mehar V/s. Union of India (1997 SCC L&S 643) the transfer was challenged on the ground that it violates the transfer guidelines regarding SC/ST candidates. Even then, the Supreme Court held that it is not a matter for the intervention of the Court but representation should be given to the competent authority.

Even in the present case it is open to the applicant to make a representation to the competent authority stating his difficulties, hardship, etc. and it is for the competent authority to consider this things but certainly it is not a matter for consideration by this Tribunal.

Therefore, we find that none of the grounds made out by the applicant's counsel merit acceptance. Hence, there is no necessity to admit the application.

4. In the result, the application is rejected at the admission stage. No order as to costs.

B.N.Bahadur
(B.N. BAHADUR)

MEMBER (A)

R.G.Vaidyanatha
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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