

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 834/99

(6th April)
DATE OF DECISION: 1/2000

_____Shri E.M.Kolekar _____Applicant.

_____Shri G.S.Walia _____Advocate for
_____Applicant.

Versus

Union of India & Anr. _____Respondents.

_____Shri V.D.Vadhavkar for
_____Shri M.I.Sethna _____Advocate for
_____Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member(J).

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *Yes*

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.834/99.
DATED THE 10th DAY OF APRIL, 2000

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)

E.M.Kolekar,
working as Skipper,
Ratnagiri Customs Division,
Ratnagiri - 415 612. ... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
Commissioner of Customs,
Ice House,
41-A Sassoon Road,
Pune - 411 001.
2. Asst. Commissioner,
Customs Division,
Kendriya Rajaswa Bhawan,
Jail Road,
Ratnagiri-415 612. ... Respondents.

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

(ORDER)

Per Shri S.L.Jain, Member (J)

This is an application under section 19 of the
Administrative Tribunals Act 1985² to quash and set aside the
transfer order No.II/3/Marine-1/99/2260 dated 25/8/99
transferring the applicant from Ratnagiri to Dapoli Division and
allow the applicant to work at Ratnagiri till 30/8/2000.

The applicant is working as Skipper under the
respondents, his date of birth is 16th August, 1940. He is due
to retire on superannuation on 31/8/2000.

The applicant has challenged the impugned transfer order
on the ground that vide letter dated 30/6/94-

...2.

" it is provided that Officers who are due to retire within two years or so may not be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. It further provides that those who are posted away from such a station may, if they so request be brought to the proximity of that station within last one year or so of their service. All this will, however, be subject to administrative requirements."

In addition to that he has also pleaded that he has undergone a by-pass surgery on 28/5/90 and is suffering from hypertension and arthritis. He has to take frequent treatment and he has to be under medical check-up and strict diet control as required. Such medical facilities are not available in a small village like Dabhol. He has intimated to the respondents vide his letter dated 13/8/99 that he intends to settle at Ratnagiri. There is a post at Ratnagiri and nobody has been posted against the applicant.

The claim of the applicant is resisted by the respondents on the ground that there are two Skippers at one station and none is available at the other. The department has no choice or alternative but to issue the impugned order for carrying on the administration. On account of one of the Customs Patrolling craft "Hazrat Mahal" was allotted to Dapoli Customs Division from Ratnagiri Customs Division in 1997 alongwith its crew vide Establishment order No.42/97 dated 17/4/97 in which the applicant's name appears as skipper. The said vessel arrived in Dabhol on 6/12/97. However, the applicant did not accompany the crew. Shri Ashok Sarang, Skipper Mate was asked to take the vessel to Dabhol alongwith ten other crew members. Subsequently, request was made by marine staff posted to CPC's that they should

be rotated on periodical basis, so that they do not face any hardship of vacating their houses at Ratnagiri while being posted to Dapoli Division. Therefore, considering their genuine difficulties it was decided to rotate the staff for the period from 1st February to on-set of monsoon and from end of monsoon to 31st January, every year. Thus, it is clear that periodical rotational transfer system was introduced on the request of Marine staff itself. Accordingly, vide establishment order No.38/98 dated 13/10/98, rotation of the staff was ordered and the applicant was also transferred to Dabhol as Skipper vide Shri Ashok Sarang, Skipper Mate. The Applicant remained at Dabhol from 1st November,98 to 31st January,99. On the similar lines, rotation of the staff was again made in August,99 vide order No.7/99 dated 22/8/99 and the applicant alongwith eight other staff members were asked to report at Dabhol.

On perusal of the reply of the respondents, it is clear that a rotational transfer, the said policy is being followed on the request of the marine staff. It is nowhere brought out that the said policy is sanctioned by authority concerned.

The applicant has relied on the letter dated 21/7/94, the relevant para of the said letter is reproduced below:-

" it is provided that Officers who are due to retire within two years or so may not be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. It further provides that those who are posted away from such a station may, if they so request be brought to the proximity of that station within last one year or so of their service. All this will, however, be subject to administrative requirements."

S/You // ...4.

On perusal of the same, it is clear that officers who are due to retire in two years cannot be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. As the facts stated by the applicant are not in dispute that the applicant is to retire on 31/8/2000 and he has also intimated his intention to settle down at Ratnagiri, thus, applicant's case is fully covered by the said proviso itself.

It is true that the said facility is being provided subject to Administrative requirements. It is not the administrative requirement, but it is a rotational transfer.

The learned counsel for the applicant relied on an order in OA-1187/98 in case of C.A.Cherian v/s. Union of India & Ors decided by the Central Administrative Tribunal, Hyderabad Bench which has followed the same instructions and quashed the transfer order. He has further relied on 1992(7)SLR - 414, S.K.Bechu v/s. Union of India and Others decided by Central Administrative Tribunal, Calcutta Bench, which lays down the proposition, if less than one year for retirement remains, Government servant should not be transferred further from the place where he is to finally settle down after retirement.

I am not inclined to agree with the defence of the respondents that the applicant's services are required at Dabhol for the reason that the applicant is the only person in Pune who is a confirmed skipper from marine department and other persons who are sought to be transferred in place of the applicant are junior. It is a case of rotational transfer.

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The hardships cannot be a criteria for cancellation of the transfer order. It is for the employer to consider the hardships and obtain the sanction from the competent authority. However, the rotational transfers cannot take precedence over the policy issued by Government of India dated 30/6/94 which was communicated by letter dated 31/7/94.

In the result, the OA deserves to be allowed and is allowed. The transfer order 7/99 dated 22/8/99 by which the applicant is transferred from Ratnagiri to Dabhol is hereby quashed and set aside. There will be no orders as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)