

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 15/92

199

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DATE OF DECISION 15.7.1992

Shri N.L. Vaidya

Petitioner

Applicant in person.

Advocate for the Petitioners

Versus

Union of India & Others

Respondent

Shri M.I. Sethna

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C. REDDY, MEMBER (J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

T. C. Reddy
Member (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.15/92

Shri N.L. Vaidya

... Applicant.

V/s.

Union of India and three others

... Respondents.

Appearance:

Applicant in person.

Mr. A.I.Bhatkar for
Mr. M.I. Sethna for the
respondents.

ORAL JUDGEMENT

Dated: 15.7.92

¶ Per Shri T.C. Reddy, Member (J) ¶

This is an application filed under Section 19 of the Administrative Tribunal's Act by the applicant to treat the movement of the applicant as per order No.A/98969/RTS/90/SSO II and DGQA/Adm-6A dated 30.4.90 and 27.6.90 as movement at public expense and direct the respondents to grant TA/DA and other related benefits.

The facts giving rise to this OA are as follows:

The applicant at present is working as Senior Scientific Officer Grade I in Ordnance Factory Ambernath. Prior to this the applicant was working in Ordnance Factory, Katni (M.P.) with effect from 28.1.87, as Quality Assurance Officer. While working in Katni, the applicant had put in applications on medical grounds for his transfer from Katni to Ambernath. The applicant was transferred as per order dated 30.4.90 by the competent authority. In the transfer order dated 30.4.90, it had been observed that the posting of the other officers except that of the applicant had been ordered in exigencies of service. The applicant

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after having received transfer order had drawn advance towards TA/DA for the purpose of journey from Katni to Ambernath. The advance amount which the applicant had drawn had been ordered to refund on the ground that the transfer of the applicant was not in exigencies of service. After refund of the said Advance amount, the applicant had put in to the competent authority representation/representations to permit him to draw the TA/DA for which he was entitled for performing his journey on transfer from Katni to Ambernath. The respondents did not accede to the request of the Applicant. So the applicant had approached this Tribunal for the relief/reliefs as indicated above.

Counter is filed by the respondents opposing the O.A.

In the counter filed by the respondents it is maintained, in the transfer order dated 30.4.1990 it had been made clear to the applicant, that his transfer was not in exigencies of service and so the applicant was not entitled to any TA/DA and other allowances for his transfer as claimed by the applicant. It is also further maintained that the said transfer was to the advantage of the applicant and the applicant cannot be permitted to draw TA/DA as per the orders on the subject. Reliance is also placed on Rule SR 140 and Article 190 CSR Vol. I and is contended by the respondents that the applicant's transfer is not in public interest and the applicant has to move at his own expenses.

We have heard applicant in person and Mr. A.I. Bhatkar for Mr.M.I. Sethna, Standing Counsel for the respondents. Admittedly the applicant had worked at Katni

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continuously nearly for a period of 3½ years and it is only after the said period of 3½ years that the applicant had been transferred. This is not a case soon after the applicant took charge at Katni, where the applicant had been transferred as per the request of the applicant. As the applicant had worked for considerably good period at Katni, Even though his request for transfer from Katni to Ambernath might have been pending with the competent authority, in view of the circumstances of the case we are of the opinion that the denial of TA/DA and other allowances with regard to transfer of the applicant is not valid.

The learned Counsel appearing for the respondents had taken us through SR 114 which reads as follows.

"S.R. 114. Travelling allowance may not be drawn under this section by a Government servant on transfer from one station to another unless he is transferred for the public convenience and is entitled to pay during the period occupied by the journey. A transfer at his own request should not be treated as a transfer for the public convenience unless the authority sanctioning the transfer, for special reasons which should be recorded, otherwise directs."

We are also taken through Article 190 CSR Vol. I. SR 114 and said Article 190 are similar in many respects. Note(1) to Article 190 of C.S.R. (Civil Services Regulation) says.

"190. A ministerial officer transferred to service in another office is entitled to joining time under the rules in this Chapter and his service for leave and pension is not interrupted. But unless his transfer has been ordered for the public convenience he is not entitled to any allowances during Joining time and the Joining time does not count as service for leave or pension.

Note-1. A Transfer at the officer's request for his own advantage is not a transfer for the public convenience within the meaning of this Article."

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A close reading of SR 114 shows that competent authority is given full discretion in the matter of granting of TA/DA when the transfer is effected at the request of the Government servant. The power under SR 114 has to be exercised by the competent authority judiciously. In this case the applicant had put in various representations for his transfer ever since he had taken charge at Katni in the year 1987. The last representation of the applicant is of the date 5.4.1988 for his transfer from Katni to Ambernath. A copy of the said request for transfer is annexed by the respondents to their counter. In the representation dated 5.4.1988 for his transfer the applicant has stated that he is having heart problem and that he was admitted in Indian Naval Hospital, Colaba, Bombay and the specialist declared that the applicant is suffering from Antecoronary Myocardial infarction with Latent Ischemic. He also had stated in the said representation that the low blood supply to his heart due to Ischemic condition still persists and that he is under systematic treatment and that he has to be careful and to safe guard himself. He had also stated in the said representation, that Katni is a small Town which lacks medical facilities and that he is required to rush to Jabalpur for every problem and so to transfer the applicant to Ambernath, Bombay where the applicant can have better medical facilities, so the applicant's transfer to Ambernath is purely on medical grounds. We are unable to understand how the transfer that had been made from Katni to Ambernath could be to the advantage of the applicant. In this context we may point out that the applicant belongs to Gujarat. If any request to transfer him to Gujarat had been there then it might have been said that the said

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transfer to Gujarat was to his advantage as Gujarat happens to be the native state of the applicant. We do not find any material to show that the transfer of the Applicant to Ambernath is to his advantage except for the medical facility in Bombay where he can have proper treatment as the applicant is a heart patient. So in view of this position that the said request of the applicant for transfer from Katni to Ambernath is for his own advantage is not acceptable. As the said transfer does not appear to be to the advantage of the applicant, We see no valid reason for denying the said TA/DA and other transfer allowances to the applicant. As already pointed out the applicant had made repeated representations for his transfer from Katni to Ambernath ever since he had taken charge in the year 1987 and in none of his representations the applicant had stated that he was prepared to give up his TA/DA and other allowances on his transfer from Katni to Ambernath. In this context we may refer to the instructions dated 16.10.1989 that are issued by the Government of India, Ministry of Defence regarding the transfer on compassionate ground. The said instructions is at page 15 of the paper book (which is ~~a~~ Annexure II) and the relevant portion reads as follows.

"In respect of Technical/Scientific categories, the Technical Directors concerned are the Competent Authorities. To enable the Director (Administration) to exercise his powers judiciously, the instructions contained in the succeeding paragraphs will be scrupulously and meticulously followed by all concerned."

So the fact that the applicant is entitled to the benefit of the said instruction dated 16.10.1989 issued by the Government of India with regard to his transfer cannot be doubted. In this context it will be worth while

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to note the instruction in para 9 which relates to transfer on compassionate grounds.

"9 The individuals posted on compassionate grounds are normally required to move at their own expense and a certificate to this effect is required to be rendered at the time of submission of application as per Appendix 'C' attached. Instructions exist under AI 147/64 and SAO 8/S/76 that the Competent Authority, after examination of the case can order a person to travel on public expense.

In case an individual seeks transfer on public expense as per AI quoted above, he should clearly mention in his application, the reasons for seeking such transfer. However, it will be left to the discretion of the Competent Authority to accept or reject such requests. In case the individual is not willing to travel at his own expense, he should clearly mention the same in the application without leaving any ambiguity."

No doubt the applicant seems not to have mentioned in his representation that he was not ready for transfer at his own expenses. Nevertheless he has not admitted anywhere that he was prepared to move from Katni to Ambernath at his own expenses. The applicant has placed during the course of hearing of this O.A. rotational transfer scheme dated 1.6.1989 issued by the Government of India, Ministry of Defence. Para 3 of the said scheme reads as follows:-

"3. Regarding compassionate postings after completion of minimum of 3 years tenure in the station all requests should accompany with complete bio-data including date of birth and year-wise earlier postings stations."

The said scheme enables a Government servant to apply for transfer after completion of 3 years tenure. No doubt the applicant had applied for his transfer even before completion of 3 years on medical grounds from Katni to Ambernath. As already pointed out the applicant is transferred after completion of nearly 3½ years service at Katni. The rotational transfer scheme dated 1.6.1989 issued by the Government of India does not say that officers that are transferred on request after completion

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of three years tenure at a particular station will not be entitled for T.A., D.A. and other transfer benefits. Having regard to the instruction referred to above issued by the Government of India dated 16.10.1989 with regard to transfer on compassionate grounds and para 3 of the rotational transfer scheme dated 1.6.1989 issued by the Government of India, Ministry of Defence, we are of the view that denial of TA/DA and other travelling allowance to the applicant with regard to transfer from Katni to Ambernath will be unfair and would cause injustice to the Applicant. It is contended by Mr. Bhatkar, Counsel for the respondents that the applicant has not attributed any malafides to the respondents, for having passed the said order, denying him TA/DA and other travelling allowance with regard to his transfer and so in view of this position that the competent authority had acted properly and judiciously has to be accepted. Even though the applicant has not attributed malafides or bias to any of the respondents, still it is open for the Tribunal to come from the facts and the circumstances of the case whether the action of the respondents is valid. We have already referred to para 3 of rotational transfer scheme dated 1.6.1990 issued by the Government of India, Ministry of Defence and also para 9 of the instructions of order dated 16.10.1989 issued by the Government of India, Ministry of Defence with regard to transfer on compassionate grounds. In view of the said rotational transfer scheme and said instructions with regard to transfer on compassionate ground the action of the respondents in denying the applicant's TA/DA and other travelling expenses as already ruled out is not valid. Hence the contention of the Learned Counsel in the absence of plea of malafides and

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~~was~~ by the applicant on the part of the respondents, that the applicant is not entitled to the relief prayed for by him cannot be accepted.

It is contended by Mr.A.I. Bhatkar on behalf of respondents that TA/DA is admissible in case of request transferees on the verge of retirement. ~~that~~ (2) that is who are to retire within two years provided they are posted to their Home Town and in this case the applicant has been posted to a place other than his home town on his own request, the said TA/DA is not admissible to the applicant. We are informed that at the home town of the applicant there is no D.G.Q.A. establishment and it is only due to that fact that the applicant had opted to come to Ambernath. The applicant is due to retire on 31.3.1993 on attaining the age of superannuation. There is no question of the applicant going to home town on transfer as ~~such~~ the said establishment is not there at his home town. By coming to Ambernath the applicant is near (halfway) to his home town. There is no reason why the applicant need not be paid TA/DA and other travelling allowance when ~~he is~~ ^{for the present transfer} transferred to a near place to his home town (if the applicant is transferred to his home town) two years before retirement if the said establishment is in existence at his home town and in which case ~~he~~ ^{the applicant} would have been entitled for T.A., D.A. and other transferring allowances as per rules. So on the said ground the applicant cannot be denied the relief he is seeking for. So for all these reasons we do not find any merit in the case of the respondents.

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Hence we direct the respondents to clear the claim of the applicant with regard to his TA/DA and other transferred^s benefits and to make necessary payment as admissible to him within 3 months from the date of communication of this order. Application is allowed accordingly, leaving the parties to bear their own costs.

T. Chandrasekhar
(T. Chandrasekhara Reddy)
Member (J).

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