

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 13 DEC 1994

APPLICATION NO: 1325 of 94

APPLICANTS:- Smt. Reesa Radhakrishnan
V/S.

RESPONDENTS:- Secretary, Deptt of Women & Child Welfare,
New Delhi and others.

To

1. Dr. M.S. Nagaraja
Advocate, No. 11,
2nd Floor, 1st Cross,
Sujatha Complex,
Gandhinagar
BANGALORE-9.
2. Sri. M. Vasudeva Rao,
Addl. Central Govt Stg. Counsel,
High Court Bldg, BANGALORE-1.

Subject:- Forwarding of copies of the Order- passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 06.12.94

Copy to (S) No. 1

PS

13/12/94
Advocate

Yours
O/C for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.1325/94

TUESDAY THIS THE SIXTH DAY OF DECEMBER 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N.Vujjanaradhya ... Member [J]

Smt. Rema Radhakrishnan,
Aged 47 years,
W/o Sri G. Radhakrishnan,
1769, 22nd Cross, M.R.C.R. Layout,
Govindarajanagar,
Bangalore-40.

... Applicant

[By Advocate Dr. M.S. Nagaraja]

v.

1. Union of India
represented by
Secretary to Government,
Ministry of Human Resources
Development, Department of Women
and Child Welfare, Shastri Bhavan,
New Delhi.
2. The Technical Adviser,
Food & Nutrition Division,
Krishi Bhavan,
New Delhi.
3. The Dy. Technical Adviser,
Food & Nutrition Division,
Haddows Road, Shastry Bhavan,
Madras-6.
4. Sri S. Prasad,
Demonstration Officer,
Community Food & Nutrition
Extn. Unit,
216,ardarpur, Udaipur.

... Respondents

[By Advocate Shri M. Vasudeva Rao ...
for Respondents 1 to 3]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the order of transfer dated 21.4.1994 [Annexure A-3] and the rejection of her representation as in Annexure A-6 dated 18.8.1994.



2. The applicant was working at Bangalore as Demonstration Officer from 1989. The applicant, among others, was transferred to Udaipur and in her place Respondent ['R' for short] No.4 Shri S. Prasad was transferred from Udaipur to Bangalore as per Annexure A-3. Aggrieved by the said order of transfer, the applicant had approached this tribunal in O.A. No.801/94 which came to be disposed of by order dated 19.5.1994 directing R-1 to dispose of the representation of the applicant as objectively as possible reserving liberty to the applicant to approach this Tribunal again, if necessary. Thereafter the applicant made a representation vide Annexure A-5 and the same came to be rejected by order dated 18.8.1994 as in Annexure A-6. The applicant seeks to challenge the order of transfer as arbitrary and the rejection of her representation as illegal. It is also her contention that the transfer was not in public interest but at the instance of the Minister of State Smt. Rasavarajeswari in the Human Resources and Development Ministry. It is the contention of the applicant that she had refused ad hoc promotion twice, once during 1991 and again in 1992 because of her family difficulties and the transfer has been effected contrary to the guidelines in the middle of the academic year particularly when her aged mother is ailing and she has young children attending school, besides her husband is permanently employed at Bangalore. The applicant, therefore, prays for quashing the order dated 18.8.1994 Annexure A-6 rejecting her representation and the transfer order dated 21.4.1994 as in Annexure A-3 as illegal

and unjust.

3. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Additional Standing Counsel for R-1 to 3. Notice to R-4 was dispensed with.

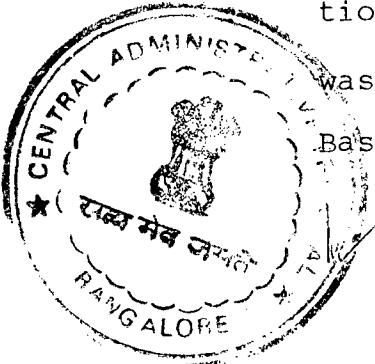
4. Immediately after her transfer, the applicant had approached this tribunal seeking to quash the order of transfer in O.A. No.801/94 which came to be disposed of observing that the representation of the applicant should be disposed of by R-1 as objectively as possible. Accordingly the Secretary, Ministry of Human Resources Development had disposed of the representation as in Annexure A-6 dated 18.8.1994.

It reads thus --

"I am directed to say that representation of Smt. Rema Radhakrishnan, Demonstration Officer dated 2.5.94 regarding keeping in abeyance the transfer order has been examined in this department keeping in view the grounds submitted by her. As she is holding a transferable post and the fact that she has been in the Southern Region for the last 25 years, her representation is, therefore, rejected. Facilities like schooling and medical etc. it has been noted would also be available at Udaipur.

She may be informed accordingly and relieved immediately to report for duty at Udaipur."

The applicant does not dispute the fact that Shri Prasad who is transferred in her place from Udaipur to Bangalore also has family problems but her contention is that the transfer of the said Shri Prasad was at the intervention of the Minister of State Smt. Basavarajeshwari and the same has resulted in causing



injustice to her. The said Minister is not impleaded as a party respondent. The applicant has not been able to substantiate the allegation made against the Minister, except drawing our attention to Annexure A-7, dated 1.6.1994, in O.A. No.891/94 filed by Shri S. Prasad, which is a letter addressed by the wife of the said Prasad to the Minister. This, in no way substantiates the allegations of the applicant. It is also not in dispute that the applicant is holding a transferable post and she was accommodated in southern region all these years. As can be seen from the reply statement of the official respondents the applicant was transferred to places only in South India viz., Madras, Ernakulam, Madras, Madurai, Bangalore and Mangalore and again she was transferred to Bangalore where she had been staying since 16.8.1989. In the order rejecting the representation of the applicant, the applicant was informed clearly that she has been holding a transferable post and that she had been in southern region for the last 25 years and her representation was, therefore, rejected, besides stating that the facilities like schooling and medical aid would be available even at Udaipur. Though it is vehemently contended that the rejection of the representation is illegal and arbitrary besides it does not give out the reasons in detail, the fact remains that applicant is holding a transferable post and she has been in southern region for more than two decades. The department had been quite consi-

derate all these years and only because of the administrative reasons she was transferred. It is not as if the applicant was singled out for transfer but several other persons were also transferred from various places as can be seen from Annexure A-3. Under the above circumstances it cannot be said that the applicant was particularly picked up without any valid reason for transfer from Bangalore to Udaipur. No malice is alleged against the authority which effected her transfer from Bangalore to Udaipur. It is no doubt true that Annexure A-3 does not mention in so many words that said transfers were in public interest. But the fact remains that none of the officials transferred was denied TA and DA and it presupposes that the transfers are in public interest. When the applicant does not dispute the fact that Shri Prasad who was posted in her place also has family problems it cannot be said that she can attribute any motives for her transfer from Bangalore to Udaipur particularly when she was accommodated in the southern region all these years.

5. The fact that the applicant had refused adhoc promotions offered to her twice during the years 1991 and 1992 is not a relevant factor to hold that her problems were taken into consideration and she was not disturbed from Bangalore at that point of time.

If at all the applicant had not accepted the ad hoc promotion offered to her it must be only because the same was not advantageous to her and, therefore, we



are unabl to hold that on that ground the application shold succeed.

6. Referring to the guidelines dated 10.12.1982 at Annexure A-7, learned counsel for the applicant contended that the authority has not taken into consideration any problem that would be faced by her at Udaipur, that is the problems of school going children as also her husband having permanent employment in Bangalore which is said to be in the representation and, therefore, the transfer which is contrary to the guidelines cannot be allowed to stand. The relevant guideline relied on by the learned counsel for the applicant is the second guideline which reads as under:

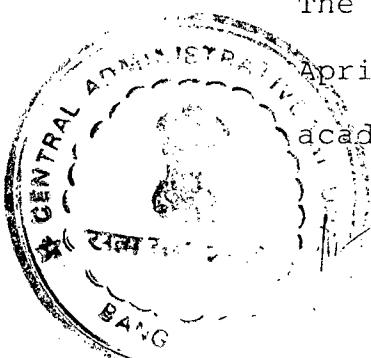
"[ii] A request for transfer will be entertained on medical grounds, genuine handicaps which militate against efficiency such as language problems, problems of school going children and cases where the husband and wife are both in official employment at different stations."

As can be seen from the above guideline, the request for transfer can be entertained on the ground stated therein which would indicte that it is open to the applicant to make a representation on those grounds after she assumes charge at Udaipur. Of course the authority has to take into consideration those guidelines while effecting transfers. These guidelines as rightly contended by the learned counsel for the respondents, is directory and not mandatory. The guidelines will have to be adhered to as far as possible

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without causing hindrance to administration. Having regard to the guidelines only the applicant was accommodated in southern region all these years. Only when it has become inevitable to transfer her because she had completed more than four years in Bangalore, she has been transferred. Even the guideline does not confer any right on the government servant to seek transfer or retention in a particular place if his or her children are studying in school, his or her spouse is employed permanently in a particular place or on any medical ground. Unless the order of transfer is shown to be for mala fide reasons it is repeatedly observed by Supreme Court that such transfer should not be lightly interfered with. In the absence of any allegation of mala fides on the part of the authority in transferring the applicant, this ground taken by the applicant cannot be accepted as sufficient to hold that her transfer and the rejection of her representation are illegal or arbitrary.

7. The contention of the learned counsel for the applicant that the applicant was transferred at the middle of the academic year is also not correct. She was served with the order of transfer in the month of May 1994 as stated by her in her application. The order of transfer was effected in the month of April 1994 and the same is not in the middle of the academic year.



8. At the time of arguments learned counsel for the applicant produced a statement showing that some persons who are in the same region/station for long duration like 23 to 28 years and they were not transferred at all thereby suggesting that the department has taken favourable view in respect of those persons. But there is no plea to this effect in the application and the respondents had no opportunity to meet this contention. Anyhow what were the exigencies in respect of those officials is not quite clear and, therefore, on the basis of this statement it is not possible to conclude that the transfer of the applicant is arbitrary.

9. Learned counsel for the applicant has also produced another statement showing that out of several persons that were transferred as per Annexure A-3, the order in respect of certain individuals have been modified or interfered with by the Tribunals or otherwise dealt with and, therefore, the order in Annexure A-3 has not come into effect in full. Except producing a copy of the order relating to one Cherian Jacob and another G. Narayanan who had approached the Tribunal at Ernakulam Bench in O.A. No.665/94 and 657/94 which came to be disposed of by a common order dated 4.11.1994 the applicant has not produced any other order referred to in her statement. Even in respect of the said Cherian Jacob and G. Narayanan what the order says is that the respondent-Government had not

filed any reply statement despite several adjournments and refusing to grant further time requested on behalf of the Government, observing further that the respondents did not respond about the availability of stations nearer, proceeded to pass the order directing that the order of transfer should not be implemented till the end of April 1995. The facts in the present case are quite different. The representation of the applicant has been considered by the department and rejected the same for reasons stated therein.

10. The applicant has all the while been accommodated in Southern Region for the last 25 years. The allegations made against the Minister who is not a party before us are not substantiated. Therefore, the applicant cannot seek much support from the order in O.A. No.665 and 657/94 on the file of the Ernakulam Bench of this Tribunal.

11. Dr. Nagaraja referred to several decisions in support of his various contentions. Relying on the decision in RAJENDRA ROY V. UNION OF INDIA AND ANOTHER reported in [1993]23 ATC 426, Dr. Nagaraja contended that in case of violation of guidelines it is open to the Tribunal to interfere with the order of transfer. In particular he drew our attention to the observation of the Supreme Court at page 430--



"In it true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala-fide or in violation of the rules

of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

The above observation would indicate that transfer being a normal consequence and personal difficulties are matters for consideration of the department and the same cannot be agitated as of right to seek retention or cancellation of the transfer. This decision does not in so many words state that in case of violation of guidelines, the order of transfer is liable for interference by the Tribunal, unless of course such transfer is shown to be actuated by mala fides.

~~RAMA GANGI REDDY V. GOVERNMENT OF A.P.~~
AND OTHERS reported in 1992 LAB I.C. 1113, the High Court of Andhra Pradesh observing that in that case it was not so much as public interest but perhaps the weight of the person that determined the fate of the parties and interfered with the order of transfer. In the present case the allegation that the Minister of Human Resource Development was responsible for the transfer of the applicant, the same has remained an allegation and is not substantiated or at least no material to come to such a conclusion is brought about.

Support was sought from DIRECTOR OF SCHOOL EDUCATION, MADRAS AND OTHERS V. O.KARIUPPA THEVAN AND ANOTHER

reported in 1994 SCC [I&S] 1180 to the contention that transfer of employee during mid-term in the absence of urgency should be restrained from being effected till the academic year. It is not possible to comprehend how this decision will help the applicant inasmuch as the applicant was transferred in the month of April 1994 and not during the middle of the academic year. As a matter of fact the applicant has already been relieved and her successor has come and assumed charge in Bangalore.

In support of his contention that the transfer of the applicant is not in the interest of public because it is not so stated in the order of transfer, learned counsel has relied on the decision in H.N. PATRO V. UNION OF INDIA AND OTHERS reported in 1991[21] SLT [CAT] 109. In this decision, the order of transfer was interfered with on the ground of non-production of file relating to the guidelines and the allegation of malice. We have already observed that even though the order does not specifically state that it is in public interest it can be presumed to have been so made since none of the officials was denied TA and DA.

Learned counsel has also referred us to two more decisions, one in MAHENDRA KISHORE SHARMA V. UNION OF INDIA AND OTHERS reported in [1992]20 ATC 66 and M.C. BARKE AND 4 OTHERS V. EMPLOYEES' STATE INSURANCE CORPORATION AND ANOTHER reported in [1992]20 ATC 803 to support the plea on the ground of mala fides, the



Tribunal can interfere with the order of transfer. We have to repeat that only ground of mala fide alleged is against the Minister who is not a party before us and in support of which there is no sufficient material placed on record.

Another decision on which learned counsel has relied to support the same contention is the one in H.V. AMBIJA V. THE ADDITIONAL DIRECTOR [FW&MCH], BANGALORE AND OTHERS reported in 1994[2] SLJ [CAT] 192 which mainly deals with delegation of power to transfer and that essential functions of the authority cannot be delegated.

~~Learned~~ counsel has also produced a decision of ~~the~~ Jabbalpur Bench of this Tribunal in O.A. No.244/94 SMT. GARTIMA VERMA V. UNION OF INDIA & 2 OTHERS wherein the order of transfer was interfered with on the ground that the order was effected without considering the compassionate grounds alleged by the applicant therein. Because the decision is on facts, it cannot be relied upon as precedent.

11. To sum up, we have to observe that rejection of the representation of the applicant is not shown to be illegal, that the transfer was effected in the interest of public, that the refusal of ad hoc promotion of the applicant is not a circumstance weighing in her favour, and that the allegation that the transfer was effected contrary to the guidelines is without

any substance as also the transfer alleged to have been effected in the middle of the academic year. In the result the application fails and we reject the same. No costs.

mu

Sd-

6/12/94

MEMBER [J]

Sd-

Wilk

MEMBER [A]

bsv



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Wilk
6/13/94

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

ORDER SHEET

Review Application No. 9 of 1995
in OA 1325/94

Applicant

Smt Rema Radhakrishnan
Advocate for Applicant
Dr MS Nagaraja

Respondent

UOI Secy, M/O Women & Child Welfare, N.Dli
& ors

Advocate for Respondent

Date	Office Notes	Orders of Tribunal
		<p>VRMA/ANV MJ 6.3.1995</p> <p><u>O R D E R</u></p> <p>1. The applicant in O.A. No.1325-94 has filed this Review Application seeking to review the order dated 6.12.1994 in the said OA on the ground that there are some errors apparent on the face of the record and the same will have to be considered after recalling the order dated 6.12.1994 and to grant the relief deemed fit to the review applicant.</p> <p>2. OA No.1325/94 was heard at length and we dismissed the same by means of a considered order on 6.12.1994. A perusal of the said order makes it abundantly clear that all the contentions raised by the review applicant have been considered and</p>

Date	Office Notes	Orders of Tribunal
		<p>decision rendered. What is sought to be agitated again in this review application is to reargue the matter over again and reagitate the same points that have been considered earlier on the ground that the approach and conclusions reached by us are erroneous. Though in the review application it is stated that there are some errors apparent on the face of the record, the reference made are only to the alleged errors of judgment and appreciation of the contentions of the review applicant in the OA. If at all the judgment or the reasoning on which it is based is erroneous, the review is not the remedy open to the review applicant. The remedy is elsewhere. No error apparent on the face of the record is brought out in this review application nor is there any mention of any fresh material that was not available to the review applicant at the time of hearing of the OA in spite of her best effort and the same having been traced subsequently or any other similar grounds.</p> <p>3. Consequently we do not consider there is any merit in this</p>

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

REVIEW Application No..... 9 of 1995

ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
		<p>review application. Many of the decisions to which our attention was drawn by the review applicant in the OA have been considered and a detailed reference is apparent in our order. Consequently we find no merit in this review application and therefore, we reject the same by circulation.</p> <p>Sd/- <i>[Signature]</i> MEMBER [J]</p> <p>Sd/- <i>[Signature]</i> MEMBER [A]</p> <p>TRUE COPY <i>[Signature]</i> Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p>