

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 15 NOV 1994

APPLICATION NO:

1701 of 1994

APPLICANTS:-

J. Gopal

v/s.

RESPONDENTS:-

D.G., ESIC, N. Delhi & another

To

1. Shri. S.M. Babu  
Advocate

242, V Main,  
Gandhinagar

Bangalore - 560009,

2. Shri M. Pappanna, Advocate,  
99, Magedi Choud Road,  
Vijayanagar,  
Bangalore - 560040

Subject:- Forwarding of copies of the Orders 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 9th - November 1994

Issued on

16/11/94

[Signature]

[Signature]

DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

9/c for

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NO. 1701/94

DATED THIS THE NINETH DAY OF NOVEMBER, 1994

Mr. T.V. Ramanan, Member (A)

Mr. J. Gopal  
S/o. late M. Jayaram  
R/o 29-6, Standard Road  
Frazer Town, Bangalore-9.

.... Applicant

(By Shri S.M. Babu, Advocate)

Vs.

1. The Director General  
E.S.I. Corporation  
SIC Building, Kotla Road  
New Delhi - 110 002.

2. Deputy Regional Director  
Establishment Branch-I  
Regional Office Karnataka  
Employees State Insurance Corpn.,  
No.10, Binny Fields, Binnypet  
Bangalore-23

.... Respondents

(By Mr. M. Pappanna, Advocate)

O R D E R

(Mr. T.V. Ramanan, Member(A))

Admit.

2. The applicant, who is presently working as LDC in the local office of the Employees State Insurance Corporation (ESIC for short), Bangalore, under the control of Respondent (R for short) no.2 was transferred by an order dated 30.9.1993 from Bangalore to the local office of the ESIC, Shahabad. As the applicant's mother was a heart patient, on his request, he was granted three months for time to report/duty at Shahabad. This was further extended



upto 11.1.1994 on applicant's request on a representation again made by him on 11.1.1994 that his mother had expired and that he be retained at Bangalore. The matter was considered and his request for retention at Bangalore was not accepted. However, he was allowed time till the afternoon of 31.3.1994 for being relieved from Bangalore. On 2.2.1994 the applicant made a request (Annexure-R1) to the Regional Director, ESIC, Bangalore, to the effect that due to the expiry of his mother he had to perform customary rites and that he has to look after the family including his children and so he be given atleast 6 months time to report for duty at the Local Office of ESIC at Shahabad. To this a reply was sent on 4.2.1994 (Annexure-R2) stating that extension of the date of relief had already been given to him upto 31.3.1994 as a special case and no further extension of time was possible. It appears from the record produced in the Court that on 16.3.1994, the applicant had made a representation to the Regional Director, ESIC, Bangalore, referring to his earlier representation in November, 1993 seeking cancellation of his transfer to Shahabad and praying to enlighten him the basis on which he had been transferred to Shahabad. Additionally, he also made a request to the Regional Director to permit him to file a case in the Central Administrative Tribunal seeking justice. By a letter dated 23-3-1994, the Deputy Regional Director, ESIC (R-2), sent a reply stating that no further extension of time or cancellation of orders was possible due to exigencies of service and that the applicant would be relieved of his duties on the 31-3-1994 (a.n.) and thereafter he should proceed to report for duty at Shahabad after availing joining time etc. It was also stated in this letter that it was not necessary that permission need be

granted for him to put forth his grievances before the Central Administrative Tribunal. It is, however, seen that instead of approaching this Tribunal, which alone has jurisdiction over any grievance of his, the applicant filed a writ petition no.9283/94 in the High Court of Karnataka and obtained on 31.3.1994 an interim order of stay of his transfer for a period of 8 weeks. It is also seen that on the respondents allegedly not complying with the direction of the High Court, the applicant<sup>had</sup> filed a contempt petition. Later, on 26.5.1994, an office order was issued by R-2 by which the applicant, who was under orders of transfer to the Local Office, ESIC, Shahabad, was posted at the Regional Office, Bangalore, with immediate effect and until further orders. What the applicant has now challenged is the office order dated 20.10.1994 (Annexure-F) issued by R-2 by which the applicant has once again been transferred to the Local Office of the ESIC, Shahabad.

3. Learned counsel for the applicant argued that R-2 had ordered the transfer with mala fide intention only to harass the applicant because he had gone to the High Court against the earlier order of transfer to Shahabad and later with a contempt petition. He further contended that while a direction was given in the transfer order at Annexure-F that the transfer of applicant ordered would take effect from the afternoon of the same day as the date of the order, no such direction stipulating urgency was made therein in respect of the 4 others who were also transferred from one place to another. Thus, singling out the applicant by giving such a direction only showed the mala fide intention of R-2. Learned



Standing Counsel refuted the allegations of mala fide intention on the part of R-2 and pointed out that the post of LDC in the Local Office at Shahabad had remained vacant for a long time and because of this, in the public interest, the applicant was transferred to Shahabad. A perusal of the aforesaid order at Annexure-F shows that in regard to the 4 others transferred, it was a question of mutual transfer - A going to the place of B and vice versa and C going to the place of D and vice versa. There was no extant vacancy which any one of them was supposed to fill up. On the contrary in the case of the post of LDC in the Local Office at Shahabad, the post is stated to be lying vacant for a long time. It is, therefore, <sup>not</sup> surprising that respondent no.2 should desire to fill that vacancy as quickly as possible and hence the direction as regards the applicant in the transfer order. Even, otherwise, the order only provided for the applicant to be relieved on 20.10.1994 (a.n.) at Bangalore. It did not deny him joining time permissible under the rules. In fact, the order clearly states the applicant could avail himself of joining time due. On the other hand, the order advised one Bheema Rao, also transferred, to curtail his joining time and join duty at the new place of posting on 3.11.1994. As such, no mala fide intention could be read into the direction given in the order referred to supra that the change in respect of the applicant would take effect from the afternoon of 20.10.1994 itself. I am also not convinced that the transfer of the applicant was motivated on account of the applicant going to the High Court. The argument of mala fide intention is, therefore, rejected.

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3. Another argument advanced by the learned counsel for the applicant is that the applicant having been served with a charge-sheet dated 9.5.1994 under the CCS(CC&A) Rules for

having allegedly tampered with the attendance register in the regional office by marking attendance in <sup>the</sup> register for the 1st, 3rd and 4th of April, 1994 over the remarks written against the relevant column and the applicant having replied to it as in Annexure-E, an enquiry was bound to be held at Bangalore over a period of time and the applicant would be required to participate in the same. Frequent visits to Bangalore may become necessary involving long journeys from Shahabad to Bangalore and back resulting <sup>in</sup> avoidable expenditure to the Government in the form of T.A. & D.A. Moreover, the applicant would have to take a couple of days of leave for stay in Bangalore every time he visited Bangalore to participate in the enquiry other than the day of the enquiry for preparing his defence effectively and his leave account would thus get depleted. All this could be avoided if the applicant is retained at Bangalore until the enquiry is over. In reply, the learned Standing counsel for the respondents stated, and it is so contended in the reply statement filed by him, that no such reply to the charge sheet issued by the Regional Director as at Annexure-E has been received by the respondents so far and that it is all a concocted story that any such reply has been sent to the respondents. Learned Standing Counsel also opposed the argument that the applicant should be kept at Bangalore until the enquiry is over for the reason that the vacancy in the post of LDC at Shahabad would then continue to remain vacant at the cost of public interest. It is not necessary for the disposal of this application to go into the question whether such a reply has been received or not in the office of the respondents. The argument advanced by the learned counsel for the applicant cannot be accepted. Merely because the venue of the enquiry may be Bangalore, if and when an oral enquiry is ordered, the applicant cannot be retained



at Bangalore at the cost of work to be performed at Shahabad.

The applicant should work out his defence in the enquiry in such a manner that he is not required to take leave at Bangalore but only attends the enquiry on the date fixed for which he will be paid T.A. & D.A. by the Government.

5. The next point on which learned counsel for the applicant laid stress was that this transfer has been ordered in the middle of the academic session and as the applicant's children are studying in Bangalore, the schooling of the children will be affected if he was required to leave Bangalore for Shahabad during the middle of the academic session. This argument is also not acceptable for the reason that when the applicant had filed a representation before the Regional Director on 2.2.1994 (Annexure-R1) he categorically requested therein that he should be given 6 months time to report for duty at the Local Office at Shahabad. The impugned order dated 20.10.1994 at Annexure-F has been issued after the passage of nearly 8 months since he made that request. I think this plea of disturbance during mid academic session is being taken only to delay the applicant's departure from Bangalore to Shahabad. The applicant by his own reckoning has committed himself to proceed to Shahabad. Therefore, this plea of the counsel also stands rejected.

6. In the light of the foregoing, there is no substance in the applicant's contentions and there is no case for striking down the impugned order of transfer dated 20.10.1994 (Annexure-F). The application is, therefore, dismissed.

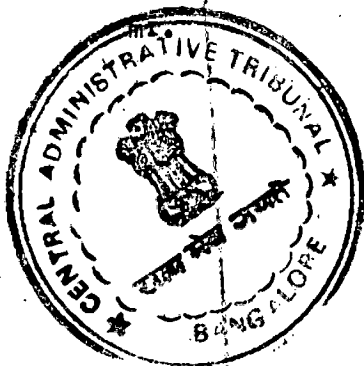
7. At this stage, learned counsel for the applicant makes a request that the applicant having 2 young children studying at Bangalore, he would find it difficult to proceed to far-off

Shahabad and prayed that R-2 may be directed to consider the case of the applicant on humanitarian grounds. I do not consider it proper to give any such direction. However, if the applicant makes a representation in this regard after reporting for duty at Shahabad, R-2 may like to consider the same keeping in view the administrative exigencies and other considerations that may be relevant for the disposal of such a representation.

8. In the circumstances of the case, there will be no orders as to costs.

Sd-

(T.V. RAMANAN)  
MEMBER(A)



TRUE COPY

*[Signature]*  
16/11/24  
Section Officer

Central Administrative Tribunal  
Bangalore Bench  
Bangalore