

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

Original Application No.600/93.

Shri N.T. Devesia.

.... Applicant.

V/s.

Union of India & Anr.

.... Respondents.

Coram: Hon'ble Shri M.Y. Priolkar, Member(A).

Appearances:-

Shri S.P. Kulkarni for
the applicant.

Shri P.M. Pradhan for
the Respondents.

Oral Judgment:-

[Per Shri M.Y. Priolkar, Member(A)]

Dated: 7.9.1993

Heard Shri S.P. Kulkarni, counsel for the
applicant and Shri P.M. Pradhan, counsel for the
Respondents.

2. In this application, the main relief claimed
is for quashing and setting aside the order of transfer
dt. 30.4.1993 and communication dt. 18.5.1993. The
second relief is to direct the Respondents to expunge
the adverse remarks made against the applicant for the
years 1988 and 1989. Since there should be separate
distinct and independent ^{by} applications for separate reliefs, the learned counsel
for the applicant suggested that this OA be considered
only as regards the relief against the transfer order,
if so advised, with liberty to the applicant to approach the Tribunal
separately, in accordance with law, regarding the
grievance about adverse remarks.

3. The applicant ^{who} was employed as a Pharmacist,
under the Welfare Commissioner, Ministry of Labour
had been transferred from Pune to Redi on compassionate
grounds in 1988. By the impugned order dt. 30.4.1993
the applicant is transferred to ^{a place in} ^{stated to be} Goa which is only
about 165 kms. from his present place of posting i.e.
Redi. The applicant's contention is that he had

been bringing to the notice of his superiors the various malpractices indulged ⁱⁿ by the Medical Officer of the Primary Health Centre, Redi under whom he was working and his transfer order is issued mala fide immediately after he had sent a telegram dt. 26.3.1993 stating the Private practice of the Medical Officer was still continuing during the Office Hours and was adversely affecting the smooth working of the health centre and demanding an inquiry.

4. According to the Respondents, transfer order was issued in the routine course and it was not a punitive transfer as sought to be made out by the applicant. It is stated that the applicant himself had sought a transfer to Sangli in 1992 which place is far more distant than the place to which he has been now transferred viz. in Goa. It is also stated that the applicant has been transferred after more than 4½ years from the present place of posting.

5. After hearing the learned counsel for the applicant, I do not find much substance in the contention that the applicant is being transferred only because he had been persisting ^{in making} ~~any~~ allegations of malpractices against the Medical Officer. The first complaint of the malpractices was made by the applicant in December, 1990. If the respondents wanted to take immediate action against him for bringing out such malpractices, he would have been transferred within a reasonable time from that date. The very fact that he has been allowed in the present place of posting

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for more than $4\frac{1}{2}$ years and for more than $2\frac{1}{2}$ years even after he had made the allegation, shows that there is no reasonable ground to hold that there is clear ^{between} nexus in the allegations and the transfer order. Moreover, the present place is admittedly much nearer to his home town than Sangli to which he himself had made a request for being transferred. The allegation of mala fides is also against the Medical Officer and not against the Officer competent to transfer the applicant viz. Welfare Commissioner who ~~has~~ stated that he has already ordered an investigation into the malpractices which is entrusted to another Assistant Welfare Commissioner and stated to be in progress.

6. The second ground of which the transfer is challenged is that according to the IVth Pay Commission Recommendations, an employee should not normally be transferred during the last three years preceding superannuation. It does not mean that the recommendations ^{however} are ~~not~~ mandatory ^{or} ~~not~~ ^{an} employee can claim exemption from transfer merely on that ground. ^{Another} ~~One of the~~ grievance of the applicant is ~~also~~ that a mid-wife ^{but she} has been ordered to take over charge from him ~~who~~ is not a qualified Pharmacist. I do not see any reason why this should come in the way of the applicant, as alleged by him about the proper ~~handing~~ over of the stocks in his possession. It is difficult to agree that the mid-wife is not competent to take over stock of the medicine according to the list prepared by the applicant. It is not his case also that she either refused to take over the medicines or refused to sign any lists prepared by the applicant listing ~~of~~ the stock.

7. In view of the above, I do not find any merit in this application and is accordingly dismissed. No order as to costs.


(M.Y.PRIOLKAR)
MEMBER (A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

REVIEW PETITION NO. 138/93
IN
ORIGINAL APPLICATION O:600/93

N.T.Devasia

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar
Member(A)

Appearances:

1. Mr.S.P.Kulkarni
Counsel for the
Petitioner.
2. Mr.S.S.Karkera
Counsel for the
Respondents.

TRIBUNAL'S ORDER:

Date:10-6-94

In O.A.600/93 decided on
7-9-93 the relief claimed by the applicant
for quashing and setting aside the order
of transfer dated 30-4-93 was declined.

In the review application the main ground
taken for review of this order is recommen-
dation of IVth Pay Commission contained in
para 26.28 which is reproduced below:

"26.28. A suggestion has been
made received that central
government employees having
all India transfer liabilities
should not be transferred away
from their home towns during the
last 3 years of their service
to enable them to settle their
affairs satisfactorily before
retirement. Such a policy has
already been followed by some
state governments. Government
may consider the advisability
of transferring a central
government employee with all
India transfer liability

to his home state during the last three years of his service."

The applicant has also relied on the division bench judgment of the Central Administrative Tribunal, Calcutta Bench, Shanti Kumar Ghosh v. Union of India, ATR 1987(2)CAT 564, in which the application was allowed on the ground that "in the circumstances of this case, the recommendation of the 4th Pay Commission is definitely of significance". The Calcutta case, therefore, proceeded on the facts of the case and holds that recommendation of 4th Pay Commission are of significance in that particular case as a ground for allowing that application. In O.A. 600/93, however, the recommendations of 4th Pay Commission were considered in para 6 of the order and the matter has been disposed of with an observation that recommendations are not mandatory and that an employee can claim exemption from transfer merely on that ground.

2. Other grounds made out for intervention of this Tribunal are that the wife of the applicant is unwell and there are medical certificates to that effect and that one Philipose Geevarghese had applied to the respondents on 27-9-93 requesting transfer to Redi. These latter two matters cannot be taken ⁱⁿ ~~by~~ ^{consequence of} way of review.

3. We are hence not inclined to entertain the review petition especially as we do not find any error apparent on the face of the record nor do we not find that the other pre-requisites for review are satisfied in this case. The application for review is rejected. We, however, make it clear that it is open to the applicant to make an application to the respondents pointing out his difficulties including the illness of his wife and the willingness of a colleague to serve at Redi and it is open for the respondents to consider his case on merits.

4. No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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