

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 626/93

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~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION: 17-3-94

Shri Nandkishore Narayan Rao Aglawe Petitioner

Mrs. N.V. Masurkar Advocate for the Petitioners
Shri V.S. Masurkar

Versus

Union of India and others-----Respondent

Shri M.I. Sethna Advocate for the Respondent(s)
Shri R.K. Shetty..

CORAM :

The Hon'ble ~~xxx~~ Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
 2. Whether it needs to be circulated to other Benches of the Tribunal ?
- ye
No

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(13)

Original Application No. 626/93

Shri Nandkishore Narayan Rao Aglawe
V/s.

... Applicant.

Union of India through
Director General/Chairman,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta.

The General Manager
Ordnance Factory,
Ambernath.

Shri Saroj Kumar Mohanty
General Manager,
Ordnance Factory,
Ambernath.

... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance:

Mrs. N.V. Masurkar with
Mr. V.S. Masurkar, counsel
for the applicant.

Shri M.I. Sethna with Shri
R.K. Shetty, counsels for
the respondents.

JUDGEMENT

Dated: 17-3-94.

Per Smt. Lakshmi Swaminathan, Member (J)

This application has been filed under section 19 of the Administrative Tribunals Act 1985, whereby the applicant has impugned the transfer order dated 6.4.93, issued by the Director General/Chairman, Ordnance Factory Board, Calcutta. By this order 60 officers, including the applicant were transferred to various places. The applicant, Shri N.N. Aglave, who was Deputy General Manager in Ordnance Factory, Ambernath had been transferred to Ambazari, Nagpur and the transfer order was implemented in July 1993.

2. The applicant had made a representation dated 6.4.93 to the Chairman, Ordnance Factory Board for retaining him in Ordnance Factory, Ambernath and requesting for cancellation of the transfer order.

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According to the applicant he had been transferred to Ordnance Factory, Ambazari within 2½ years of his posting at Ordnance Factory, Ambernath. In his representation he has, inter alia referred to the fact that his wife is a teacher in Kendriya Vidyalaya, located in Ordnance Factory, Ambernath with effect from 21.10.92 and is on probation for a period of 2 years. The main grievance of the applicant is that while disposing of his representation, respondent No.1, namely, Director General, Ordnance Factory Board has not taken into account the two relevant policies issued by the Government of India, namely (1) O.M. dated 24.6.85 which provides that Scheduled Caste/Scheduled Tribe officers should not be, subjected to harassment being transferred to far-off places or subjected to discrimination on account of being members of Scheduled Caste/Scheduled Tribe communities and (2) the Government's avowed policy that ordinarily as far as practicable and possible husband and wife who are employed should be posted at the same station. The applicant has also stated that he has been, subjected to harassment by the respondents inasmuch as he had been denied leave after filing of this application in the Tribunal on malafide grounds.

3. The learned counsel for the respondents has referred to their reply and stated that he is holding a transferable job and he could be transferred to any of the units under respondent No.1 as per his service conditions. According to them the applicant was transferred from Ordnance Factory, Ambernath to Ordnance Factory, Ambazari in the public interest alongwith 59 others Group 'A' officers employed under respondent No. 1 in various Ordnance Factories all over India. They have denied any malafide interest in the transfer of

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the applicant and have stated that the impugned transfer order was passed in public interest. They submitted that this is evident from the reply to the representation given by the respondent No.1 dated 15.5.93 referred to in the letter dated 23.6.93, rejecting the applicant's representation dated 4.5.93. The learned counsel for the respondents has produced the original letter of respondent No.1 dated 15.5.93, which was also shown to the applicant's counsel, as well as the letter dated 15.7.93 which has been referred to by the Senior Medical Officer, Ordnance Factory, Ambernath dated 17.7.93 which is given as annexure R-4 to the reply. As regards the other allegation of the applicant, the Respondents contention is that although the applicant may be an officer belonging to the Scheduled Caste community, since he was a group 'A' officer, the policy letter regarding the Scheduled Caste/Scheduled Tribe relied upon by the applicant was not applicable to him, but only applicable to persons who are not holding such senior positions. Apart from this, they have also stated that the allegation of harassment and humiliation alleged by the applicant has been made only after the transfer order and hence no malafide action can be attributed to the respondents on the impugned transfer order dated 6.4.93. They have stated that since the applicant was a Deputy General Manager, Metallurgy and a person of his qualification was required at the Ordnance Factory, Ambazari, the transfer order has been effected entirely in public interest, arising out of the exigencies of service. They have also produced the FAX message dated 21.2.94 in which the position regarding the applicant's leave application and

grant thereof has been mentioned with an assurance that whenever he applies for leave for the purpose of attending the Tribunal, the same will be sanctioned. The respondents also referred to the option given by the applicant for posting in order of preference, wherein he has indicated (1) Ordnance Factory, Ambazari, Nagpur (2) Ordnance Factory, Chanda and (3) Ordnance Factory, Bhandara. Against his option for Ordnance Factory, Ambazari he has stated that 'provided his wife is transferred to Kendriya Vidyalaya' at that place. The learned counsel for the respondents states that since the applicant's wife was not under the control of the respondents, they are not responsible for the transfer or otherwise of his wife.

4. Having considered the arguments of the learned counsels and the records in this case very carefully, I am satisfied that the impugned transfer order has not been passed by the respondents with any malafide intention. However, I find some force in the contention of the learned counsel for the applicant that there has been no application of mind by respondent No.1 while rejecting his representation dated 4.5.93, inasmuch as the Government policy on transfer where husband and wife are both employed should be posted as ~~far~~ as practicable in the same place, as well as the special treatment to be given to persons of Scheduled Caste/Scheduled Tribe community, do not appear to have been considered by them at all.

5. It will be sufficient to refer to a recent decision of the Supreme Court in the case of Union of India and others V/s. S.L. Abbas (AIR 1993 SC 2444 at 2446) where it was held that :

"Who should be transferred where, is a

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matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.

There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different.....

....No doubt the guideline requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as a right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees".

6. Having regard to the observation of the Supreme Court on ~~the~~ ^{Government's} ~~Policy~~ and the facts in this case, it was necessary on the part of respondent No.1 to consider and deal with the applicants representation in the context of the Government of India guidelines/policies on transfer and exigencies of service before rejecting it. From the records they do not appear to have done so. The only reason given by the respondents

is that the transfer order is in public interest taking into account the qualifications of the applicant and vacancy position at Ambazari, Nagpur. It was no doubt their duty also to keep in mind the guidelines issued by the Government of India on the subject, referred to by the applicant in his representation and in this application.

7. In the facts and circumstances of the case, the rejection of the representation made by the applicant is, therefore, quashed and set aside. The respondents are directed to consider the applicant's representation dated 4.5.93 on merits within one month from the date of receipt of this order, in the light of the guidelines issued by the Government of India and in particular the transfer policies relied upon by the applicant. If the respondents decide to reject the representation they shall do so by a speaking order, giving the reasons as to why the norms laid down in the said transfer policies have not been followed in the case of the applicant. Since the applicant had already assumed charge at Ordnance Factory, Ambazari, Nagpur, he shall continue there till the representation is disposed of as directed above. With these directions this application is disposed of. No order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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17-3-94
Order/Judgement despatched
to Applicant/Respondent(s)
on 17-3-94.

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