

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 605/94.
~~XXXXXXApplicationXXXX~~

Date of Decision : 26.5.95

Shri Surindar Singh, Petitioner

Shri B. L. Nag, Advocate for the Petitioners

Versus

Ministry Of Defence & 3 Others, Respondents

Shri Suresh Kumar for Shri M.I. Sethna, Advocate for the respondents

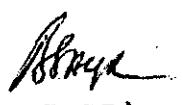
C O R A M :

The Hon'ble Shri B. S. Hegde, Member (J).

~~XXXXXXShri B. S. HegdeXXXX~~

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)

MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 605 OF 1994.

Surindar Singh Applicants

Versus

Union Of India & Others Respondents.

CORAM :

Hon'ble Shri B.S. Hegde, Member (J).

APPEARANCE :

1. Shri B. L. Nag,
Advocate for the applicant.
2. Shri Suresh Kumar proxy for Shri M.I. Sethna,
Advocate for the respondents.

JUDGEMENT :

DATED : 26.5.95

I Per.: Shri B. S. Hegde, Member (J) I

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the transfer order dated 27.08.1993 (Annexure A-2) and also movement order dated 30.08.1993 (Annexure A-1). He was appointed in the Respondent's office in the post of Junior Scientific Assistant Grade-II and completed 20 years of service and he is holding a permanent post of Junior Scientific Assistant Grade-II with effect from 01.04.1988 and now holding the post of Junior Scientific Assistant Grade-I. As against the transfer order he has made representations to the Competent Authorities on



30.12.1993 requesting for cancellation of transfer order and he be allowed to continue to work in the Kirkee office. He states that his transfer to Dehu Road is a malafide one and motivated in order to accomodate one Shri D. N. Kachre, Junior Scientific Assistant Grade-I on compassionate grounds. He also submitted that this transfer has caused financial hardship due to travelling up and down a long distance every day from his permanent residence from Pune to Dehu Road for a distance of nearly 60 Kms. daily which would cause him both financial hardship and mental agony. At the time of transfer there was a enquiry pending against him. In response to the enquiry report, the applicant submitted his representation/25.11.1993 on 25.11.1993. He states, without considering the representation he was imposed ~~by~~ a major penalty under Rule 11 (v) of CCS (CC&A) Rules 1965 and reduced by one stage from Rs. 2000 to Rs. 1950 in the time scale of pay for a period of one year, etc. The

2. The respondents in their reply deny the various allegations made by the applicant and submit that the applicant's transfer was purely based on exigencies of service and on his own request because he sought personal interview with Maj. Genl. M.K. Saxena while he was in Pune in the year 1993. During this interview, the applicant requested in presence of Dr. S.S. Rathi, Controller, CQA (ME) and Shri P. Das, Addl. Controller, CQA (ME) for his transfer out of CQA (ME), Pune. In this connection, the applicant has addressed Annexure A-12 to Maj. Genl. Saxena for narrating his various grievances. There is no denial on the part of the applicant that he has met Maj. Genl. Saxena when he visited Pune. During the relevant time, Shri D.N.Kachre

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who had made a request for transfer on compassionate grounds to Kirkee and the respondents considering the respective requests of the parties passed the transfer order vide dated 27.08.1993 transferring the applicant to Dehu Road in place of Mr. D.N. Kachre, who has come in place of the applicant to Kirkee on compassionate grounds. Though the transfer order was passed on 27.08.1993, the movement order was issued on 30.08.1993 directing the applicant to join at Dehu Road on 06.09.1993.

3. The Learned Counsel for the applicant urged that the transfer order is malafide, as no joining time was given to the applicant and the said contention is not justified in view of the orders referred to above because of the distance involved in the other postings. In the last occasion on 09.02.1995 the Tribunal passed an order after hearing the Learned Counsel for the parties and on the submissions made by the Learned Counsel for the respondents that the transfer order of the applicant was made not only on account of pressing necessity of a Chemist at QAE (ME), Dehu Road but also on the request made by the applicant himself when he met Maj. Genl. M.K. Saxena, DQA (Armaments) despite the fact of pending enquiry against the applicant. The Learned Counsel for the applicant has drawn my attention to para 4.6 which only states that he has met Maj. General Saxena alongwith respondent no. 3. It is true that normally when enquiry is pending against a person, till the enquiry is completed, transfer is not being expected but in this case, in view of the request made

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by the applicant and in the meanwhile, the request from Shri D. N. Kachre for transfer on compassionate ground was received by the respondents and they passed the transfer order despite the pending enquiry against the applicant. Therefore, they treated as 'transfer on account of personal necessity'. Pursuant to the transfer order, the applicant has gone and joined the new place of duty and on perusal of the records, I find no specific allegations made against any official regarding the transfer being made on the ground of malafide. At the time of passing the tribunals order dated 09.02.1995, it was neither in the knowledge of the respondents Counsel nor the Tribunal was aware of the retirement of Maj. Genl. M.K. Saxena, accordingly, the Tribunal directed the Maj. Genl. M.I. Saxena to file an affidavit as to the fact whether the applicant has made a request for transfer when he met him at Pune. Today, during the course of hearing, we are told by the Learned Counsel for the respondents that Maj. General Saxena retired from service and accordingly the Respondent has sent the direction of the Tribunal to Maj. Genl. M.K. Saxena's address vide their letter dated 29.03.1995 to file an affidavit on his behalf. In support of their contentions, the respondent no. 3 who happened to be present when the applicant met Maj. Genl. M.K. Saxena also reiterate that the applicant had made a specific request to the effect that he may be transferred from CQA (ME), Kirkee. Since the applicant has already joined the new posting, the question of cancellation of the transfer order at this stage, after a lapse of 1½ years does not arise.

4. In this connection, it is pointed out that when the allegations of malafide are made, the inference must be based on firm foundation of facts pleaded and established and not merely on the insinuation of vague allegations. Therefore, the challenge to transfer on the basis of merely vague allegations and malafides are not sustainable. The Supreme Court again in Union Of India V/s. S. L. Abbas (1993) 25 ATC 844 have held that an order of transfer is an incident of Government service. Who should be transferred where, is a 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, etc.

5. In the light of the above, since the applicant has not made any specific allegation about his transfer against any particular officer and he has not drawn our attention to breach of any statutory rules regarding his transfer, one has to come to the conclusion that the transfer order is issued on the basis of his request and the cancellation of such transfer cannot be entertained at this belated stage. In the circumstances, I find that there is no merit in the O.A. and the same is dismissed but no order as to costs. However, it is understood that the applicant has made a representation against the transfer order on 30.12.1993 seeking cancellation of retransfer to Kirkee for which the department has not sent any reply so far. In the facts and circumstances of the case, the Respondents are directed to consider his request sympathetically, especially in the absence of

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affidavit by Maj. Genl. M.K. Saxena and pass appropriate order within a period of two months from the date of receipt of this order. The O.A. is disposed of with the above directions.


(B. S. HEGDE)
MEMBER (J).

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