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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 436 OF 1994.
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Date of Decision : 07.04.1995.

Haresh D. Ramaiya,

Petitioner

Shri S. R. Atre,

Advocate for the
Petitioners

Versus

Union Of India & Others,

Respondents

None.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M. R. Kolhatkar, Member (A).

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- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M. R. Kolhatkar
(M. R. KOLHATKAR)

MEMBER (A)

OS*

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 436 OF 1994.

Haresh D. Ramaiya ... Applicant

Versus

Union Of India & Others ... Respondents.

CORA-M :

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

APPEARANCE :

1. Shri S. R. Atre,
Counsel for the applicant.

ORAL JUDGEMENT

DATED : 07.04.1995.

¶ Per. Shri M. R. Kolhatkar, Member (A) ¶

1. In this O.A., the applicant has asked for the relief of directing the respondents, namely, Administration of Union Territory of Daman & Diu, to transfer the applicant as a Public Health Dentist at Daman. The facts of the case are as follows :-

The applicant joined at Diu as Public Health Dentist with effect from 18.11.1975 in the former Union Territory of Goa, Daman & Diu. In the meantime, he had done a spell of service at Panji, Goa but since June, 1986 he has been working as Public Health Dentist at Diu. Consequent on reorganisation of the Union Territory with effect from 30.05.1987, he continued in the Union Territory of Daman & Diu even after the reorganisation. As at present, he

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continues as Public Health Dentist in Diu. He has been making representations for transfer to Daman since 1991. The representations were made on 20.02.1991, 26.11.1991, 22.04.1993 and 29.06.1993. The reason for requesting transfer from Diu to Daman is on the ground that he has completed more than five years at Diu and since he is a heart patient and taking treatment at Bombay and his family members are residing at Bombay, Daman would be a convenient place. The respondents have given a reply to the representation on 10.12.1992 at exhibit R-I to the written statement of the respondents, in which it is stated that as regards his request for transfer to Daman, the same will be decided in the next financial year. However, so far the transfer has not materialised. The applicant has stated that one Dr. Vaz from Daman had been transferred to Diu sometime in 1993 but for some reasons, the same was cancelled. The applicant has enclosed transfer guidelines dated 5th June, 1985 of the former Government of Goa, Daman & Diu which still continue in force at page 11. The applicant has invited our attention to guideline no. 2. The guideline no. 2 states that the Government Servants who have completed three years in one place as on 31st March should normally be transferred. It is further stated that the Government servants who have completed four years at one place as on 31st March should invariably be transferred. The normal period of stay in case of posting at Daman & Diu should in no case exceed two years.

2 The applicant has therefore, claimed the relief of transfer to Daman on the ground of overstay at Diu, on medical grounds and being in accordance with

the transfer guidelines. He has further contended that cancellation of transfer of Dr. Vaz shows malafide intention on the part of the Respondents.

3. The respondents have resisted the application. They have referred to Supreme Court judgements as well as C.A.T. judgements purporting to lay down that the Courts should be slow to interfere with the matters of transfer. Reliance is placed on Supreme Court judgement in S.C. Abas 1993 (2) SLR 585 and Shilpi Bose (AIR 1991 SC 532) and also the judgement of the Tribunal in O.A. No. 103/89 in the case of Dr. Bhalchandra Maganlal Rana, where this Tribunal took special note of the difficulty in following the guidelines relating to transfer in a small Union Territory like Daman and Diu, where some departure due to administrative exigencies is unavoidable. It is contended that the applicant's posting is in the interest of the administration. A reply was sent no doubt on 10.12.1992 that ^{the} request for posting at Daman would be decided in the next financial year but the applicant has no legal right to be posted at Daman. He cannot force the administration to transfer him. The respondents, however, have not dealt with the specific point relating to cancellation of order of transfer and posting of Dr. Vaz from Daman to Diu.

4. There is no doubt that an employee has no legal right to claim a posting at a particular place. The matter of transfer has been held to be an incident of service and not a condition of service and the Courts are expected not to interfere in the transfer matters except when malafides are alleged or when there is violation of transfer guidelines. In this particular case, we have ^{also} to take account of the difficulties of following the

transfer guidelines in toto because of the tiny nature of the Union Territory of Daman & Diu of which a judicial notice has been taken by this Tribunal in Dr. Bhalchandra M. Rana's case. All the same, we have also to take into account the following special circumstances, which are material :-

Firstly, the applicant has undisputedly continued at Diu for about 9 years, which is twice the period of the minimum 4 years of service, beyond which the transfer guidelines expect the administration to take action in regard transfer.

Secondly, we are required to read the reply of the respondents dated 10.12.1992 assuring the applicant to take decision on his request for transfer in the context of his allegation that the transfer order of Dr. Vaz from Daman to Diu was cancelled for unexplained reasons.

Lastly, any administration in a welfare state, is expected to take account of the health problems of its employees while taking a decision in such matters.

We also take note of transfer guideline no. 1 which states that the transfer orders of the Government servants shall be generally issued between the 15th April and 15th May of every year. We take note of the submissions made by the applicant that there are three to four posts of Public Health Dentists at Daman and not merely an

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isolated post, so that the transfer to Daman is not a physical impossibility. Considering all these circumstances, we dispose of this O.A. by passing the following order :-

: ORDER :

The O.A. is allowed. Respondents are directed to consider the request of the applicant for transfer from Diu to Daman within a month of receipt of this order, keeping in view the observations made in this order. There would be no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

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