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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 380/95  
Transfer Application No.

Date of Decision : 26.6.95

Prafull Narvankar

Petitioner

Shri. Madhukar Soochak with Shri.  
B. P. Pandey

Advocate for the  
Petitioners

Versus

Employees' State Insurance Corprn.

Respondents

Shri. Suresh Kumar

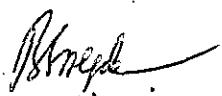
Advocate for the  
respondents

C O R A M :

The Hon'ble Shri B.S.Hegde, 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?

  
(B.S. HEGDE)  
M(J)

J\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. 380/95

Prafull Narvankar

.. Applicant

Vs.

Employees' State Insurance Corp... Respondents

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

Appearances

1. Shri. Madhukar Soochak and Shri. B.P. Pandey Advocates for the applicant.
2. Shri. Suresh Kumar Advocate for the respondents.

JUDGMENT

DATED : 24.4.95

(PER: Shri. B.S. Hegde, Member (J) )

Heard the learned counsel.

2. On 6.4.1995, after hearing the learned counsel for the applicant, interim relief was granted in terms of para 9(a) and (b) not to give effect to the transfer order dated 15.2.1995, for a period of 14 days and accordingly the matter came up for hearing today for admission and interim relief. It is true that the respondents have not filed reply. The learned counsel for the respondents was present and he submits that there is no need to file any reply because the applicant has already been relieved on 13.3.1995 whereas the O.A. is filed on 05/04/1995 and hence the O.A. becomes infructuous and requires to be dismissed. He also made preliminary objection stating that the applicant was working at Pune office but have not been made a party in this O.A. Further the applicant's alleged representation dt. 25.3.1995 was made to the Director, Employees' State Insurance

Corporation, Sub Regional Office at Pune and not to the present respondents. After making the representation, within 10 days, the applicant filed this O.A, without awaiting reply of the respondents.

3. The learned counsel for the applicant contends that the transfer order is bad on four grounds. First is the transfer order is punitive in nature, secondly where-ever both husband and wife are working, no transfer should be effected outside the place of working, thirdly the transfer order is mala fide to weaken the applicant's court claim for the regularisation of the retention of his Bombay quarters etc.etc. The applicant further submits, that he has been issued four memos during November 1994 to January 1995 regarding certain irregularities happened in office. He therefore prays that since the transfer order has been effected on the basis of memos and with an intention to separate from his spouse, the order of transfer be quashed. However, on perusal of the impugned order, we do not see any reason to believe that the transfer order is based on the memos issued by the respondents and as a matter of fact, he has been transferred to an office which is a sub-region of Pune office and the applicant has been working at Pune since his transfer from Bombay. As far as O.M.No.28034/7/86-Estt(A) dt. 3.4.1986 is concerned, it is mentioned that 'it is the policy of the Government that as far as possible and within the constraints of administrative feasibility the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children.' This is however, only a guideline made by the Government and it is not in mandatory nature.

(S)

4. The learned counsel for the respondents submits that there is nothing malafide in this case except the vague allegations and grounds made by the applicant. So far as separation of husband and wife is concerned, the applicant has been separated from his wife since 1991 consequent to his transfer from Bombay to Pune and not as alleged, in 1995. In this connection, he draws our attention to Supreme Court judgment in Union of India Vs. S.L. Abbas reported in (1993) 25 ATC 844, wherein the Supreme Court has clearly 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 mala fides 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 same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force.'

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5. In the light of above, I am inclined to dispose of the O.A at the admission stage itself, having heard the counsel for both the parties. Since the applicant has already been relieved, there is no need to direct the respondents to file any reply. Accordingly I find no merit in the O.A. While I dismiss the O.A at the

admission stage itself, liberty is given to the applicant to make a suitable representation to the competent authority within one month from the date of communication of this order and the competent authority is directed to dispose of the same in accordance with law, by passing a speaking order. There will be no orders as to costs.

  
(B.S. HEGDE)  
MEMBER (J)

J\*