

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(4)

Original Application No. 508 OF 1995.

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Date of Decision : MAY 30.5.95

Shri V. R. Salunke,

Petitioner

Shri S. S. Karkera,

Advocate for the  
Petitioners

Versus

Union Of India & Others,

Respondents

Shri V. S. Masurkar,

Advocate for the  
respondents

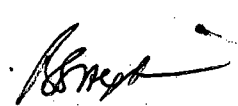
C O R A M :

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)  
MEMBER (J).

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(B)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 508/95.

Shri V. R. Salunke ... Applicant  
Versus  
Union Of India & Others ... Respondents.

CORAM :

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

APPEARANCE :

1. Shri S. S. Karkera,  
Counsel for the applicant.
2. Shri V. S. Masurkar,  
Counsel for the respondents.

JUDGEMENT

DATED : 30.5.95

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

1. Heard the arguments of the Learned Counsel for the applicant, Shri S. S. Karkera and Shri V. S. Masurkar for the respondents.

2. This relates to transfer of the applicant from Bombay to Daman. The applicant has filed an earlier O.A. No. 465/95 against the apprehended transfer which was disposed by this Tribunal on 02.05.1995 on the ground that in the absence of any transfer order, the application was treated as pre-mature, however, in the facts and circumstances of the case, the Tribunal has directed the Respondents not to implement the transfer order for a period of seven days from the date of issue of the transfer order. The respondents in compliance with the Tribunal's Order dated 12.05.1995, deferred the transfer order till 26.05.1995 when the matter came up for further hearing. The applicant

has filed this O.A. No. 508/95 challenging the transfer order of the applicant dated 08.05.1995 reiterating the same grounds which was urged in the previous O.A. In this O.A. the applicant has asked to quash the transfer order dated 08.05.1995 and/or in the alternative to accord deferment of transfer to Daman for a period of 5 months and also to direct the Respondents to decide his representation dated 17.01.1995, etc.

3. The Learned Counsel for the Respondents, Shri Masurkar, vehemently urged that the ex-parte order obtained by the applicant was not warranted in the facts and circumstances of the case and the same requires to be vacated. He also urged that the applicant has not made out any case for retention on the ground that his transfer was either malafide or breach of statutory rules. In this connection, he draws our attention to the appointment letter issued by the Respondents on 04.03.1995 where it is made specific that "the applicant will be liable to be posted and transferred anywhere in India and if he, on account of the family circumstances, anticipate any difficulty in the matter of place of posting, he should not accept the offer." Therefore, he submits that the applicant knew that he would be liable to be transferred after serving ten years in Bombay and in exigencies of service he is transferred to Daman, which is a neighbouring Union Territory of Daman and akin to Bombay. Further, he contended that the order of transfer issued on 05.01.1995 was not only against the applicant but also against 8 other officials. It was a cumulative order and the same was issued in administrative exigencies. He

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a-also draws our attention to the representation made by the applicant on 18.01.1995 seeking deferment of transfer for a period of one year. Even in his wife's representation of the same date, she did not mention anything about the pregnancy except certain other difficulties mentioned in the representation.

4. On the other hand the applicant contended that he was unaware of the transfer order. If that be so, he would not have made representation against the transfer order dated 05.01.1995 on 18.01.1995, which itself is contrary to the contention of the applicant and which is clear from the correspondence that against the transfer order he made representation on 18.01.1995 which has been rejected by the Respondents on 17.04.1995 and directed the Competent Authority to relieve him from duty against which he filed the earlier O.A. which was disposed of by the Tribunal treating it as pre-mature. The Learned Counsel for the applicant urged that the transfer order does not indicate that the same was in public interest. As stated earlier, the transfer order is not an isolated one and not indicating in transfer order that it is in public interest does not vitiate the transfer order in the absence of any malafides or contrary to Rules. He draws our attention to Jodhpur Bench decision in support of his contention. With respect that decision would apply to Railway servants and belongs to SC/ST candidates. Admittedly, the applicant though belongs to SC community, did not belong to Railway Service, therefore, the ratio laid down in that case cannot be extended to other service. Further, the Railway's specifically issued a circular giving the guidelines dated 14.01.1975 in so far as SC/ST while on transfer.

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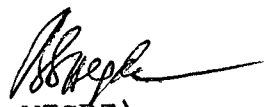
5. The Learned Counsel for the Respondents further submitted that the applicant has suppressed the material facts stating that the alleged transfer may be stayed but in substance, the transfer order was issued as back as January 1995 and further correspondence by the Respondents only reiterates the same order, therefore, the contention of the applicant that the transfer order was not given to him is found to be incorrect and the same is not tenable. The medical certificate furnished by the applicant is dated 09.05.1995 given by the Medical Practitioner stating that the applicant's wife is pregnant (4½ months) and is under his treatment, etc.

6. The Learned Counsel for the Respondents also draws our attention to the various decisions of the Supreme Court stating that if the transfer order is not violative of any statutory rules nor malafide, the Court/Tribunal are not called upon to interfere in the administrative decisions of the Executive. Further, the allegations of malafides, the inference must be based on firm foundation of facts, pleaded and established and not merely on insinuations and vague allegations. Challenge to transfer on the basis of some vague allegations of malafides are not sustainable. It is a well known principle that the 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 violated by malafides or is made in violation of any statutory provisions, the Court/Tribunal cannot interfere with it.

(10)

he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the Competent Authority for stay or modification of the same. In the instant case, though the applicant made representation to the Competent Authority staying the transfer order for one year or two years, but in his application, he seeks 5 months time. Respondents are not prevented in giving effect to the transfer order. However, it is amazing to note that though transfer order was passed in January 1995, after of lapse of 5 months, the same was not given effect to, thereby, leads to infructuous litigation.

9. In view of the clear ruling of the Apex Court on this issue, I cannot find fault with the impugned order. In the result, I see no merit in the application and accordingly dismiss the same but without costs. It is open to the applicant to make further representation to the Respondents to defer his transfer in view of the plea taken in this O.A. and the Respondents to consider the same at an early date on receipt of the same and pass appropriate order as they deem fit.

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