

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 549/95

Transfer Application No.

Date of Decision 20/10/95

P.C.Majumdar

Petitioner/s

Shri S.P.Saxena

Advocate for
the Petitioners

Versus

Union of India & 5 Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

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

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 ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

(7)

O.A.549/95

P.C. Majumdar

... Applicant.

V/s.

1. The Union of India,
Trhough the Secretary,
Ministry of Defence,
DHQ? PO, South Block,
New Delhi - 110 011.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.
3. Chief Engineer,
Southern Command,
Pune - 411 001.
4. Chief Engineer(A.F.)
Ahmedabad Zone, Camp Hanuman,
Ahmedabad - 3.
5. Commander Works Engineer(AF)
Lohgaon,
Pune - 411 032.
6. Garrison Engineers (AF),
Lohagaon,
Pune - 411 032.

... Respondents.

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

APPEARANCE :

Shri S.P.Saxena, Counsel
for Applicant

Shri R.K.Shetty, Counsel
for Respondents.

ORAL JUDGEMENT :

DATED : 20/10/95.

X Per Shri M.R. Kolhatkar, Member (A) X
filed on 30/5/95
In this application 7 under section 19
of Administrative Tribunals Act, the applicant has
impugned the order dated 21/3/95 at Exhibit-A
transferring him from Lohagaon to Allahabad. The
relief claimed are to direct the respondent No. 2
and 3 namely Engineer-in-Chief and Chief Engineer
to consider the case of the applicant for a posting
at Calcutta instead of Allahabad. and direct
respondent-4 to forward his representation dated
28/4/95 to Respondent No.2 and 3 for their

sympathetic consideration and to direct Respondent-4 to review and modify the order dated 21/3/95 in the case of the applicant. Interim Relief was granted by this Tribunal vide its order dated 2/6/95. which is reproduced in full.

" Shri Marlepalle on behalf of the Applicant.

He challenges the transfer from Lohagaon, Pune to Allahabad. As per the Transfer order the movement of the Officers will be implemented by 31/5/95. The Transfer order is effected by Respondent-2. As against the Transfer Order, the applicant has made representation to the respondent-2. But the Learned Counsel for Applicant submits that the same has not been forwarded to the Competent Authority and the same has been rejected by the Respondent-4 stating that the Officer is not due for last leg posting since he is retiring in June 2000 and accordingly directed him to go as per Transfer Order.

They also stated that move of the officer shall be implemented as per posting order and he may apply for last leg posting after joining at new formation. The Learned Counsel for applicant submits that he has made representation to Competent Authority on 26/4/95 stating the circumstances in which his family is situated. His wife is an "ANAEMIA, OSTROR-THRISTES REE JOINTS & BOW BACK PAIN" and his son aged 13 years is physically handicapped and is under treatment at National Institute for orthopaedically Handicapped and his aged Mother is of 80 years. Under these circumstances he requested the Competent Authority to transfer him to Calcutta instead of Allahabad. The main contention is that the representation made against transfer order be forwarded to Competent Authority

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for consideration since the respondents themselves have understood the serious situation of the applicants' family. Accordingly they have stated that his compassionate request may be considered after joining at Allahabad. As per the existing norms he can seek for last leg posting on compassionate ground immediately after one year. 3 years before the retirement.

Considering the various circumstances, stated by applicant, and since the applicant has not been relieved from the post at Lohagaon station and status quo be maintained for one week till 8th June, 95. Respondent is directed to file reply and make appearance for admission and Interim Relief. S.O. to 8/6/95.

"DASTI"

The Learned Counsel for Applicant submits that copies have been served to the respective respondents. No need to serve separately."

2. It would appear that the representation dated 28/4/95 was in fact forwarded to the Competent Authority and the Competent Authority since has also disposed of the same by his letter dated 21/6/95 giving following reasons:-

- "(a) The Officer, before posting to GE (AF) Lohagaon was serving at CWE Barrackpore (Near Calcutta) from Feb 88 to June 92 a period of 4 years.
- (b) The Officer is due for retirement on 30th Jun 2000, and hence is not due for consideration for last leg posting to home town/near home town now.
- (c) Posting back to hometown/near home town after completion of one tenure at GE (AF) Lohagaon is not in accordance with posting/transfer

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policy, hence request cannot be considered.

(d) The Officer was aware of his impending posting out from his present appt as he has already completed 3 years, but did not apply/represent for a posting to Calcutta on account of his personnel problems on compassionate grounds. It was only after having received his posting order that the Officer decided to represent.

(e) The Officer retires on 30 June 2000, and hence will be considered for his last leg posting to Calcutta after his tenure in Allahabad."

Although this is a negative reply, all
8(b),
the same the prayer/of the OA becomes infructuous.

3. The basic prayer of the applicant is, however that he should be transferred to Calcutta in view of various reasons which are mentioned in this OA. The Respondents have opposed the OA and stated that the difficulties which are mentioned by applicant are not extraordinary difficulties but normal ones which occur in the life of any Government employee who as held by Supreme Court repeatedly, has no right to be posted at a particular place and any order of transfer could be challenged only on the ground of malafide or if it is in violation of any formally established transfer guidelines. It is contended that the applicant has served in areas around Calcutta which is his Home Town for nearly 24 years prior to this posting and there is no case for conceding the request for transfer to Calcutta. It is also contended that the person who was to relieve the applicant has reported at Lohgaon and already been relieved and/that because of the order of statusquo, the department is paying

salary to two persons which is waste of Government money.

4. At the argument stage, the Counsel for the applicant has particularly urged two points. First of all he has stated that apart from other difficulties relating to his wife and the daughter, the main ground on which he seeks transfer to Calcutta is that he has a mentally retarded son who is studying in Std. IX in Calcutta and the medium of his education is Bengali and that according to the Department of Personnel and Training O.M. No. 14018/90-Estt (RR) dated 15/2/91, it is a policy decision of the Government that the posting should be done at the place of their choice. The applicant has produced a copy of the memorandum dated 15/2/91:-

"The undersigned is directed to say that there has been a demand that an employed parent of a mentally retarded child should be given posting at a place of his/her choice. This demand has been made on the plea that facilities of medical aid and education of such children are not available everywhere. Also looking after such children does require special care and patience and is expensive. Hence some concessions from the Government atleast in matters of posting at a place of choice is called for.

2. The matter has been examined. Considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice. Ministries/

W.M.

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Departments are requested to take a sympathetic view of the merit of each case and accommodate such requests for posting to the extend possible."

5. The Counsel for applicant says that the representation dated 24/8/95 has been sent to Head quarters during the pendency of the OA and that representation is still pending.

6. The second contention of the applicant is that there are guidelines on the subject of career planning and posting policy of MES Civilian Officers vide Order No. 41254/POLICY/E1B dated 21/2/91 in which it is laid down in para-14(ab) that

" a maximum of two compassionate tenures (including the last leg posting) aggregating to three years in tandem may be considered subject to availability of posts and job acceptability criteria.

Para-18 deals with Last leg posting. Para 18(d) states that compassionate/last leg posting will generally be issued twice a year.

7. It is not disputed that the applicant is due to retire in 2000. He is not seeking the last leg posting but compassionate posting.

8. Thus it is clear that compassionate posting and last leg posting are quite distinct and the contention of the applicant is that in his whole career he has never availed of any such compassionate posting. The combining of Compassionate posting with last leg posting does not arise in his case, On this point the Respondents have stated in their

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written statement vide para-9 that it is not known whether the applicant has applied for choice posting in the past, in other words the fact that he has never sought and got compassionate posting remains undisputed.

9. Keeping in view the pleadings, documents on record and the arguments, we find that Respondents have not considered the case from the point of view of the Department of Personnel and Training O.Memo dated 15/2/91 nor have they considered the fact that the applicant has sought compassionate and not last leg. posting in view of mental retardation of his son and therefore we are of the view that this case can be disposed of by giving short appropriate directions to the respondents which we proceed to do.

10. The applicant will implement the posting order dated 21/3/95 within a fortnight of communication of this order.

11. After the applicant joins at Allahabad, which is his place of posting, the applicant may apply in April, 96 which is the time when compassionate postings are recommended by the Competent Authority, for compassionate posting to Calcutta by making a detailed representation in terms of Personnel Departments O.M. dated 15/2/91 and also enclosing appropriate medical certificates. The respondents would consider the same within 3 months of the receipt of representation and pass speaking order conceding his request or rejecting the same. If the applicant feels aggrieved by the order passed,

May he would be at liberty to agitate the matter

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before the appropriate bench of this Tribunal.

Since the applicant will be implementing the transfer order, his representation dated 21/8/95 would be treated as withdrawn specially because he is being given liberty to make proper representation by April, 95 on the same subject. There will be no orders as to costs.

M.R.Kolhatkar

abp.

(M.R.KOLHATKAR)
MEMBER (A)