

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 662/95
Transfer Application No.

Date of Decision : 27.7.95

Shri I.S. Lingam Petitioner

Shri S.N. Pillai Advocate for the
Petitioners

Versus

Union of India & Anr. 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)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 662/95

Shri I.S. Lingam Applicant

v/s

Union of India & Anr. Respondents

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

APPEARANCE : 1) Shri S.N. Pillai, counsel for the Applicant.

2) Shri V.S. Masurkar, counsel for the Respondents.

JUDGEMENT

Dated: 27.7.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. The Applicant in this O.A. has challenged transfer and posting orders issued by the Respondents vide dated 1-2-1995 and 23-6-1995 - Exh. A-1 and A-2 respectively. The Applicant was initially appointed as a Messenger in 181 Military Hospital, Arunachal Pradesh on 10-8-1982. The said post is a civilian under the Defence Services. The Applicant was transferred at his request on 10-12-1987 from 181 Military Hospital, to Pune on "compassionate" ground and reported at Pune on 19-2-1988. The Applicant passed B.A. Examination in July 1988 and after having joined the Pune Office, Headquarters, he came to know that there were no promotional prospects at this Headquarters; accordingly, he applied for transfer from Pune to A.M.E. or any department where departmental promotion, examination can be held or opportunities were available.

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2. In this connection, the Applicant made a representation vide dated 14-3-1988 (R-1) which has been duly recommended by the competent authority. Again, he made another representation dated 26-6-1988 seeking for transfer to Secunderabad, Vishakhapatnam or any place where an individual can get departmental promotion. Though the representation is recommended, however, the request for transfer is rejected by the competent authority vide order dated 23-8-1988 (Annexure 3) stating that "the persons once transferred to the station of his choice, will not normally be considered for further transfer except in special circumstances that too only after he has served at that station for a period of three years. No applications for posting from one unit to another in the same station are entertained. In this connection, please refer to para 6 of SAO 8/S/76." Despite the same, in order to enhance his career prospects, the Applicant made another application/representation vide dated 26-5-1990 seeking transfer anywhere in India where he can get departmental promotion and in order to improve his financial hardships etc. He has given an undertaking to abide by the rules. Again, another application was made on 8-8-1991. Though recommended, both the applications were rejected stating that the Applicant has not completed three years' service in Pune; a fresh application for his posting be forwarded. Accordingly, the Applicant submitted another application dated 6-2-1992 for posting on compassionate ground giving reasons on the ground of promotion prospects (R-6 to R-8). The same was replied by the Respondents on 28-8-1992. While rejecting his claim, the Respondents have stated that postings on compassionate ground are issued only in cases where

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the individuals have "domestic" problems of extreme compassionate nature. There is no dispute regarding facts of this case between the parties. It is an established fact in view of the repeated request made by the Applicant, after completion of minimum period of 3 years of service and considering the qualification he attained while in service, the Respondent No. 1 issued combined transfer order of various persons including the Applicant on 1-2-1995 transferring the Applicant to Secunderabad ~~and~~ accordingly posting order was issued on 23-6-1995, which are being assailed in this Application.

3. Heard the learned counsel for both the parties - Shri S.N. Pillai for the Applicant and Shri V.S. Masurkar for the Respondents and noted their arguments. The main ground of attack in the O.A. is that the Applicant had not requested for transfer to Secunderabad. In case his request is not accepted by the Respondents, the same could have been rejected, however, in the posting order, they have referred to his letter dated 6-2-1995 wherein he has asked for anywhere in Pune; therefore, the transfer order issued on 1-2-1995 is not on his request and also not on administrative ground.

4. It is true that subsequent to his request vide letter dated 6-2-1992, the reason stated is the same as mentioned earlier, nevertheless, he had stated that he may be posted in any establishment in and around Pune despite the fact that the said request has already been turned down earlier. Inspite of the same, the Respondents vide their letter dated 24-2-1995 addressed a letter to Secunderabad, requesting to confirm whether there is

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any prospects for his promotion from Group 'D' to Group 'C' through departmental examination. The Establishment Officer, Secunderabad replied vide dated 6-3-1995 stating that the minimum service for appointment from Group 'D' to Group 'C' is 5 years; he may take the test whenever conducted. It is not possible to forecast the prospects for his promotion.

5. Admittedly, though he was posted in Pune, he has been making repeated representations seeking for transfer on the ground of career prospects and not on domestic problems. During the course of hearing, I was told that but for the compassionate ground, no transfer can be effected since he belonged to Group 'D' post. Since his request to transfer outside Pune is on the ground of career prospects, he cannot be transferred but for compassionate ground. The mere fact that he had sought for transfer to any establishment in and around Pune, not to Secunderabad, such a plea is not available to him and he is fully aware that he cannot be transferred from one unit to another unit in Pune where there is no promotion prospects which he has already been intimated by the Respondents that his request can be considered in Pune provided there are opportunities for promotion prospects. Accordingly, the Respondent No. 1 considered his earlier request and issued transfer orders on 1-2-1995 transferring the Applicant to Secunderabad. Thereafter, posting order was issued on 23-6-1995. Since the movement order has not been issued by the Respondents and the Applicant has been asked to vacate Government accommodation occupied by him vide their letter dated 23-6-1995, he approached the Court and obtained ex parte stay order

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not go give effect to the said order. His application for retention of the married accommodation was kept pending at this Headquarter at the direction of Headquarters Southern Command not to send the Applicant till clearance accorded by the Headquarters, Pune as he was a prime witness in a summary Court Martial; therefore, no movement order has been issued in favour of the Applicant.

6. In the light of the above, the contention of the Applicant that the transfer order is not in accordance with his request does not have much substance because throughout he has been asking for transfer outside Pune in order to enhance his promotion prospects. Though the posting order issued by the Respondents refers to his last letter dated 6-2-1992, the decision taken by the Respondents was on the basis of the recommendations sent by the Unit in which he is working and cumulative order has been passed by the Respondents.

7. On perusal of the Application, I find that the Applicant has not made out any ground that the order issued by the Respondents is arbitrary or biased with malice. Admittedly, the Applicant's request for transfer was for career prospects and not on domestic problem; thereby the Respondents could not accede to his request.

8. The Respondents in their reply have stated that the Applicant was carrying on illegal activities while serving at the Headquarters and he has been using his skill for wrongful purposes and is involved in tout activities in connection with recruitment of candidates in the Army etc; thereby the Respondents intend to take

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action in accordance with the rules and hence they did not issue the movement order. The Supreme Court in its latest decision in State of Madhya Pradesh & Anr. v/s Sri S.S. Kourav & Ors. 1995(2) All India Services Law Journal SC 109, has held that "the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts of tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation." The ratio laid down in the aforesaid decision of the Supreme Court does not apply to the facts of this case. Admittedly, the Applicant is transferred on compassionate grounds vide the Respondents' order dated 1-2-1995 and the Respondent is not expected to bring in extraneous consideration such as proposed disciplinary enquiry against the Applicant or action against the Applicant on his illegal activities while he is working at Pune; that is not a ground on which the transfer is issued against the Applicant. The transfer order is issued purely on compassionate ground on the basis of repeated requests to go outside Pune in order to improve his promotional prospects. Though there is a mistake on the part of the Respondents while issuing the posting order with reference to the Applicant's earlier letter dated 6-2-1995 wherein he had asked for transfer in and around Pune only.

9. As a matter of fact, the Applicant knew very well that it is not possible for the Respondents to post him in and around Pune which he had already been intimated earlier as there is no promotion prospects; however, that by itself does not vitiate the transfer orders issued by the Respondents. It is made out that the Applicant has not come up with clean hands and suppressed the material facts. He has been harping throughout that the transfer order issued by the Respondents is not in accordance with his request but he failed to notice that the transfer order issued was on the basis of repeated requests made by the Applicant earlier than 6-2-1995 and the Army Headquarters issued the transfer order on compassionate ground not only the Applicant but also others considering the facts and circumstances of the case.

10. Since the movement order has not been issued by the Respondents, the Applicant has not moved out of the place of work i.e. Pune so far and I had given ex parte interim order not to give effect to the order passed by the Respondents vide dated 23-6-1995 till further orders. On perusal of the record, it is made out that the Applicant's presence is required in Pune in order to verify whether he is involved in tout activities in connection with recruitment of candidates in the Army etc. It is an undisputed fact that but for the compassionate ground, the Applicant cannot be transferred out of Pune. As the Applicant has been transferred on compassionate ground, it is not open to the Respondents to bring ⁱⁿ any ^{extraneous} stage/consideration such as proposed disciplinary enquiry against the Applicant etc. and

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retaining in Pune for that purpose thereby keeping in view the ratio laid down by the aforesaid Supreme Court decision, the Respondents is not expected to bring in extraneous consideration in transferring the Applicant. Accordingly, the transfer order issued by the Respondents is required to be stayed and the impugned orders at Annexure 1 and Annexure 2 are hereby quashed and set aside. The Applicant is allowed to continue in the same post and any further requests made in this behalf is not to be entertained by the Respondents for the reasons stated above. It is open to the Respondents to take appropriate action in accordance with law; accordingly, the O.A. is allowed. However, in the facts and circumstances of the case, no order as to cost.


(B.S. Hegde)
Member (J)

ssp.