

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 388/97

Date of Decision: 6.5.97

Vijaykumar B. Halpati. .. Applicant

Shri M.S. Ramamurthy. .. Advocate for
Applicant

-versus-

The Assistant Commissioner .. Respondent(s)
of Excise, Moti Daman and Others.

Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(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)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 388/97

Tuesday the 6th day of May 1997.

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

Vijaykumar B. Halpati
Excise Inspector,
Excise Station
P.O. Moti Daman.

... Applicant.

By Advocate Shri M.S. Ramamurthy.

V/s.

The Assistant Commissioner
of Excise, Excise Department,
Administration of Daman & Diu
Fort Area, Moti Daman.

The Administrator of U.T. of
Daman and Diu.
Administrator's Secretariat,
P.O. Moti Daman.

Union of India, through
The Secretary, Ministry of
Home Affairs,
Central Secretariat
North Block, New Delhi.

... Respondents.

O R D E R (ORAL)

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

In this O.A. on earlier date, viz 29.4.97
no interim relief was granted, but Dasti notice was
allowed to be taken. Departmental representative
Shri Joseph Mendonsa, Statistical Assistant was
present today. He states that the counsel is out
of town. M.P. 276/97 has been filed by
Shri R.R. Mahyavanshi, the counsel contends that
he is affected by the transfer order dated 25.10.96
read with order dated 22.4.97. The prayer made in
the M.P. is that he is a necessary party and may be
allowed to joined as private respondent, that the
O.A. be dismissed and that the applicant be directed
to report for duty.

2. Shri Ramamurthy for applicant opposes the M.P. 276/97 filed by Shri R.R. Mahyavanshi.

According to him the O.A. has been filed against the order passed by the Government and the petitioner in M.P. 276/97 has no Locus standi.

3. So far as the merit is concerned, the learned counsel for the applicant has taken me to the guide lines regarding transfer of SC/ST employees (Annexure A-3) dated 20.6.89. The Government had relied upon the same judgement in O.A. 848/94 decided on 17.8.94 in the case of Kantilal D. Pamsi V/s. Union of India (Annexure A-4).

4. According to the counsel for the applicant, the transfer order has been passed mechanically, keeping in view of the Tribunal's order dated 24.12.96 in O.A. 1104/96 (Annexure A-6), in which the Tribunal had relied upon the decision of the Supreme Court in Director of School Education V/s. O. Karuppa Thevan and Anr. (1994) 28 ATC 99 and disposed of the O.A. by directing the respondents not to give effect to the impugned order dated 25.10.96 till the academic year upto the end of April 1997. Shri Ramamurthy has drawn my attention to the earlier portion of the judgement in which it is stated that the respondents have not adduced any documentary proof in support of Administrative exigencies. Shri Ramamurthy has also drawn my attention to the difficulties of the applicant which are enumerated in para 4 (pages 7 and 8).

5. Shri Ramamurthy states that subsequent to the judgement there has been further development viz. death of his father one week prior to the filing of O.A. and in view of the mechanical nature of the order the applicant is entitled to the interim relief. He further submits that if the official respondents would have applied their mind to the guide lines regarding transfer of SC/ST employees, the respondents might have transferred Shri L.M. Vaghela from Daman to Diu instead of transferring the applicant. In that case Shri R.R. Mahyavanshi would not in any way be affected.

6. It appears to me that it is difficult for the applicant to over come the difficulty regarding the Tribunal having adjudicated the matter in its earlier judgement in O.A. 1104/96 dated 24.12.96. No doubt, the same referred to absence of Administrative exigencies. The Hon'ble Supreme Court in the case of Director of School Education V/s. O. Karuppa Thevan and Anr. had emphasised that unless there are Administrative exigencies, the Government employees are entitled to remain at the station till the end of academic session. In my view that judgement does not help the applicant because absence of administrative exigencies has ~~been~~ ^{was} ~~in~~ with Tribunal ~~while~~ ^{not} granting relief ~~it~~ ^{it} did.

7. So far as the transfer gude lines regarding SC/ST employees are concerned, those guide lines being standing guide lines ought to have been urged before the Trinunal in O.A. 1104/96 and if they were not cited, principle of res-judicata will still apply.

More over the Transfer guide lines regarding SC/ST employees do not apply to cover the facts and circumstances of this case. So far as the applicant is concerned, apart from the academic difficulties, the new development that applicant's father has expired a week prior to the filing of the O.A. In the circumstances, it is open to the applicant to bring this difficulty to the notice of the respondents and seek proper relief by way of availing extension of leave etc. The Transfer order however has to be implemented which has been issued in terms of this Tribunal's judgement. In view of this discussion I am not inclined to grant interim relief as prayed for by the applicant. The O.A. is dismissed at the admission stage itself.

8. The applicant however is at liberty to make a representation to the respondents to grant further leave in connection with personal affairs requiring his attention consequent on the death of his father. It is also open to the applicant to make representation to authorities to modify the transfer order by way of exchange with Shri Vaghela. However, applicant must implement transfer order by handing over charge and then make the representation.

9. M.P. 276/97 does not survive in view of the order of disposal of O.A. passed by me. I have therefore not gone into the question of ^{merg} stand of the petitioner in M.P.

10. Before parting with the case, I must take adverse notice of the fact that the respondents did not ensure presence of their counsel although dasti notice was served and the Tribunal had specifically observed that interim relief prayed by the applicant will be considered only after hearing the other side.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

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