

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 971/97

Transfer Application No.

Date of Decision 3.12.97

R.W.Limje

Petitioner/s

Shri M.S.Ramamurthy

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to *o* other Benches of the Tribunal ?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 971/97

3rd this the 26th day of December 1997

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

R.W.Limje, INAS,
General Manager,
Naval Armament Depot,
Trombay, Mumbai.

By Advocate Shri M.S.Ramamurthy

... Applicant

v/s.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Chief of Naval Staff,
Naval Head-quarters,
New Delhi.
3. The Flag Officer,
Commanding-in-Chief,
Headquarters, Western
Naval Command, INS ANGRE
Mumbai.
4. The General Manager,
Naval Armament Depot,
Naval Dockyard,
Gun Gate, Mumbai.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

ORDER

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

Heard Mr.M.S.Ramamurthy, learned counsel
for the applicant and Mr.V.S.Masurkar, learned counsel
for the respondents.

2. The applicant has filed this OA. on 29.10.1997 challenging the impugned transfer order issued by the respondents on 23.5.1997 wherein the applicant has been transferred from Bombay to New Delhi. It is noticed that in transfer order dated 23.5.1997, 8 people are transferred from one place to another. Pursuant to the transfer order, the applicant has been issued movement order dated 26.8.1997 wherein it is mentioned that his name will be struck off strength from Naval Armament Depot, Mumbai/Trombay w.e.f. 28.8.1997. Thereafter, the applicant has sent a request to the Chief of Naval Staff dated 23.9.1997 stating that he was ill and advised rest by the Doctor and further stated that transfer of General Manager like S/Shri A.Azmi, S.Ahuja, S.P.Hore & A.G.K. Nair have been postponed till December, 1997 and requested the competent authority to stay his transfer order till December, 1997. No reply has been given by the respondents so far.

3. The matter came up before the Tribunal on 31.10.1997. After hearing the learned counsel for the applicant, the transfer order was stayed by the Tribunal. It is continued from time to time till today.

4. The main thrust of the argument on behalf of the applicant is that the transfer order is not in public interest. The same is required to be

quashed or stayed till the current academic year. Secondly, the said transfer order is not in exigency of service because the applicant is transfer~~ed~~ against the vacant post which is lying vacant for more than one year. Thirdly, respondents have allowed Azmi, Ahuja and Hore to continue in their posts till December, 1997. But in the case of the applicant premature movement order has been issued despite his request to defer his transfer which is not in public interest. Further, counsel for the applicant contended that the applicant has been transferred from one place to another several times during his career. The applicant was transferred from Vishakhapatnam to Karanja as Deputy General Manager, from Karanja he has been transferred to Naval Armament Depot, Bombay. Again he was transferred to Naval Armament Depot, Trombay and promoted as General Manager.

5. On the other hand, the learned counsel for the respondents Mr. V. S. Masurkar vehemently contested that the ex-parte stay order passed by the Tribunal is not sustainable for the following reasons. The transfer of the applicant was made on 23.5.1997 vide order dt. 26.8 and movement order was issued on 28.8.1997 and he has 97 handed over the charge to other officer on 28.8.1997 passed by the Tribunal has itself. Therefore, the stay order~~ed~~ become infructuous.

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The applicant acknowledged the relieving order on 1.9.1997. Thereafter, another officer was asked to carry out the duties of General Manager, NAD Trombay w.e.f. 29.8.1997 till further orders. Before that the applicant has ^{been} asked to intimate the date on which he could be relieved by General Manager Naval Armament Depot, Mumbai atleast on 4 occasions between June 97 to Aug. 97. The applicant neither informed the date nor did make any appeal to the concerned authorities for seeking deferment of transfer. Finally, the General Manager, Naval Armament Depot, Mumbai was constrained to relieve him vide order dated 26.8.97 w.e.f. 28.8.1997. During that period the applicant has not made any representation for his deferment of transfer order. Regarding deferment of transfer order on the point of children's education, the respondents submits that the transfer order was issued before the beginning of the current academic year. He did not prefer an appeal to the competent authority to defer his transfer order before he was relieved from Trombay Office. He made a request only in the month of September, 1997 in which he has not made any specific ground for deferment. In this regard, the respondents submits that the applicant's son is a student of IIT Mumbai and is staying in the hostel and his daughter is a student of Kendriya Vidyalaya and can obtain admission in any of the Kendriya Vidyalaya at New Delhi even during the middle of the academic year.

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Further, the various transfer orders referred to by the applicant were within Mumbai in terms of rules of HRA and CCA and hence did not effect in any way.

6. It is true that the transfer order issued against S/Shri A.Azmi, S.Ahuja and S.P.Hore is deferred till December,1997. Shri S.Ahuja who is at Goa and in whose place Shri S.P.Hore is to go, appealed for deferment of his transfer upto December,1997 during the first week of July,1997 itself due on medical grounds. This was agreed to by the competent authority after careful examination. Because of this, the transfer of Shri S.P. Hore to Goa was also deferred. As Shri A.Azmi whose move to Mumbai where Shri S.P.Hore is currently employed, only in the place of Shri S.P.Hore, the transfer of Shri A.Azmi was also postponed upto December,1997. The respondents submits that Mr.Ahuja appealed for postponement with a specific reason as early as in the first week of July,97 whereas the applicant did not make any appeal inspite of repeated communications asking him to intimate the date on which he could be relieved till the date he was relieved on 28.8.1997 and for the first time he sought deferment and that too only upto December,97 vide his letter dated 23.9.1997 wherein also he has not specified any reason for seeking deferment etc.

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7. In the rejoinder, the applicant has submitted that he has made oral request to General Manager NAD that the commissioning of the project is getting delayed due to technical problems and shortage of technical expertise and he may be allowed to complete the project before he is transferred to New Delhi. The applicant further submits that though he was reminded twice for date of movement, he has always orally informed that he should be permitted to move after December, 1997.

8. Heard the learned counsel for the parties and perused the pleadings. In so far as factual position is concerned, the applicant has been transferred along with others as back as on 23.5.1997. It is noticed that Shri Ahuja had requested for deferment of his transfer order within appropriate time immediately after the order of transfer some time in the month of June, 1997. The applicant did not make any request for deferment of transfer order till September, 1997. The applicant, nowhere made any request to competent authority that in view of his children's education and mid academic year, his transfer be deferred till the end of academic year. Even if such a request is there, the same is not tenable in the instant case because firstly the transfer order made prior to starting of academic year and secondly, his daughter is in Kendriya Vidyalaya and can obtain admission in any of the Kendriya Vidyalaya at New Delhi even during the academic year. Hence that plea is not sustainable. Further, the postponement

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of transfer order of Shri Ahuja, Azmi and Hore is not linked with transfer of the applicant.

The transfer of the applicant is against an existing vacancy at New Delhi.

9. In the light of the above, there is nothing illegal in the transfer order issued by the respondents dated 23.5.1997 though relieving order was issued in the midst of academic year, for which respondents cannot be faulted with for the reasons referred to above.

10. The Apex Court in catena of cases fairly held that Tribunal should not interfere in the transfer order if it is made in public interest unless the transfer order is in violation of mandatory rules or on the ground of malafides. In this case, there is no violation of mandatory rules or malafides. But considering the peculiar circumstances of the case and in view of the interim order granted by the Tribunal, the applicant is allowed to continue in Bombay till now.

11. The main thrust of argument on behalf of the applicant is that he is involved in the important project and he would be able to move out after December, 1997, however, the project is delayed due to technical problems and shortage of technical expertise and if

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he is moved out at this stage, he does not get credit for completing the project and therefore, in his rejoinder he submitted that his continuance as G.M. Trombay till April, 1998 would be in the national interest. The contention of the applicant appears to be contrary in law, in his representation he sought extension till December, 1997, but in his rejoinder, he seeks postponement of his transfer to Delhi till April, 1998 on the pretext that his continuance in Trombay is indispensable. The Apex Court in N.K. Singh's case has observed that the tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of work must be left to the bonafide decision of the superiors in service and accepted as a part of service discipline. Transfer of a Govt. servant in a transferable service is a necessary incident of the service career. To introduce and rely on the element of prejudice to public interest as a necessary factor of the transfer of a public servant, it must first be pleaded and proved that the replacement was by a person not suitable for the post and the transfer was avoidable, unless this is pleaded and proved at the thrush-hold no further enquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a necessary element in the impugned transfer dated 23.5.1997. Therefore, in my view there is nothing else in the present case which requires any further

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examination of the public interest for testing the legality of the impugned transfer. Further, it cannot be said that there is any infraction of any rules or ~~professed~~ guidelines as a result of the applicant's transfer to New Delhi and also it cannot be said this transfer would in anyway detrimental to his career prospectus. The OA. is not maintainable on its merits.

12. In the light of the above, though the OA. is not maintainable on its merits, however, in the facts and circumstances of this case, I direct the respondents to defer the transfer order of the applicant till the end of December, 1997 and relieve him on 31.12.1997 so as to enable him to join at Delhi after availing of joining time. To that extent, the OA. is allowed. Interim relief already granted would continue upto 31.12.1997 and thereafter stands vacated.

13. The OA. is disposed of with the above directions with no orders as to costs.


(B.S. HEGDE)
MEMBER (J)

mrj.