IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 72/98

Date of Decision: 30.7.1998

V.D.Bambodkar .. Applicant

Shri Humane .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri R.K.Shetty. .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble -

(1) To be referred to the Reporter or not ? No

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 72 OF 98.

Thursday, this the 30th day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

V.D.Bambodkar,
New Mangalwari,
Nagpur. ... Applicant.

(By Advocate Shri Humane)

V/s.

1. Union of India through the
Secretary, Ministry of Defence
(Finance), South Block,
New Delhi.

2. The Controller General of Defence
Accounts, R.K.Puram, Block V,
New Delhi - 66.

3. The Controller of Defence Accounts,
(Air Force, Dehradun- 248001.

4. Joint Controller of Defence Accounts
(Air Force), New Secretariat Bldg.,
Civil Lines, Nagpur - 440 001.

5. Controller of Defence Accounts (A),
Ridge Road, Jabalpur-482001(MP). ... Respondents.

(By Advocate Shri R.K.Shetty).

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application challenging the order of transfer dt. 28.4.1997. The respondents have filed their reply opposing the application. The case was part-heard on 23.7.1998 and adjourned to to-day since time was over. On the last hearing day, after hearing the counsels for some time till the Court time was over, a suggestion was made by me to the Respondents whether they can consider the case of the applicant for transfer to any other place near or around about Nagpur. The

...2.

learned counsel for the respondents wanted time to take instructions from the respondents. In the circumstances, the case was adjourned to to-day.

2. To day, the case was called out for further arguments. The learned counsel for the Respondents Shri R.K.Shetty fairly submitted that the respondents have taken the suggestion made by the Tribunal positively and they have since issued an order dt. 28.7.1998 transferring the applicant to Bhandara which is at a distance of about 60 kms. from Nagpur. In my view, this action of the respondents is commendable and they have made this order of transfer to accommodate the applicant near Nagpur in view of his personal difficulties. To day, the learned counsel for the applicant on taking instructions from the applicant fairly submitted that the applicant is accepting the order of transfer to Bhandara.

3. Now that both the parties have agreed to the modified order of transfer from Jabalpur to Bhandara, nothing survives in the O.A.

However, the learned counsel for the applicant brought to my notice that in view of the family difficulties, the applicant was not able to join the transferred place i.e. Jabalpur as per the impugned orders of transfer. He therefore, submitted that necessary direction may be given regarding the period of absence. The fact that the applicant has not obeyed the order of transfer and joined at the new place is certainly a serious lapse. However, the applicant belongs to SC community, his wife as per the allegation in the application is suffering from mental

...3.

illness, the applicant's children are studying at Nagpur. Further, the applicant had filed this O.A. challenging the order of transfer. It may be in these circumstances the applicant under a bonafide impression that he may succeed in this O.A. and due to some personal difficulties he had not joined the transferred place. I therefore, feel that having regard to the peculiar facts and circumstances of this case, the respondents should be magnanimous in not taking any disciplinary action for not complying with the impugned order of transfer. As per the record the applicant was relieved from Nagpur on 11.7.1997, now more than one year has passed and we are now in July, 1998. One of the well settled principle in service jurisprudence is "no work no pay". Therefore, the applicant will not be entitled to get any salary for this period particularly when it is admittedly unauthorised absence. But, in view of the special facts and circumstances mentioned above, the respondents should treat the absence of the applicant partly by leave to the extent at his credit and the balance period should be treated as Extraordinary Leave without pay and Allowance. Liberty is given to the applicant to make a formal application to the respondents for treating the absence partly as leave with pay to the extent of leave to his credit and the remaining period to be treated as Extraordinary Leave without pay and allowance and to regularise the period of absence accordingly. On such application given by the applicant, the Respondents shall pass necessary orders on the basis of the directions given in this Judgment.

I make it clear that this order is passed due to peculiar facts and circumstances of this case and should not be treated as a precedent in any other case.

...4.

4. In the result, the O.A. is disposed of with the following directions.

(1) The plea of the applicant for quashing the impugned order of transfer dt. 28.4.1997 is rejected and the submission made by the learned counsel for the respondents and the subsequent modified order of transfer dt. 28.7.1998 transferring the applicant to Bhandara is taken on record.

(2) The Respondents shall not take any disciplinary action against the applicant for not obeying the order of transfer and remaining absent from 11.7.1997 till to day.

(3) The applicant submitted that he will join his duties in the newly transferred place on 3.8.1998 is recorded.

(4) The applicant's period of absence from 11.7.1997 till he joins his duties at Bhandara shall be regularised partly as leave with pay to the extent of leave to his credit and the remaining period as Extraordinary Leave without pay and allowances as per the directions given in this Judgment.

(5) A copy of this order be communicated to Respondent No.4 and Officer-in-charge, Defence Accounts Office, Bhandara.

(6) In the circumstances of the case, there will be no order as to costs. Dasti.

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

B.