

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 604/98

Date of Decision: 8/10/98

Shri S.V. Deshpande Petitioner/s

Shri Uday Warunjikar Advocate for the
Petitioner/s.

v/s.

Comptroller and Auditor General Respondent/s
New Delhi & 2 Ors.

Shri P.M. Pradhan Advocate for the
Respondent/s


CORAM:

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

Hon'ble Shri

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

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO.604/98.

DATED THE 8TH DAY OF OCTOBER, 1998.

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

Shri S.V.Deshpande,
Divisional Accounts Officer,
Grade-II, Public Works Department,
Pune.

... Applicant.

By Advocate Shri Uday Warunjikar

V/s.

1. Comptroller and Auditor General,
New Delhi.
2. Accountant General,
(A&E-I), Maharashtra,
Maharshi Karve Road,
Mumbai - 400 020.
3. The Executive Engineer,
Public Works Division Pune,
Pune.

... Respondents.

By Advocate Shri P.M.Pradhan.

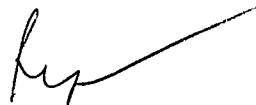
I O R D E R I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

1. This is an application challenging the order of transfer. Respondents have filed reply opposing the application. I have heard the learned counsels appearing on both sides.

2. The applicant who is a Divisional Accounts Officer Grade-II in the Department of Accountant General is now working in Public Works Division at Pune. By the Impugned order of transfer dated 2/7/98, the applicant has been transferred to Irrigation Project at Dimbhe in Pune District. Being aggrieved by order of transfer pleading number of grounds, the applicant has approached this Tribunal.

Respondents have filed reply justifying that the order of transfer is in Public interest.



The applicant gave a representation for re-consideration of the order of transfer and for retention at Pune, which has been examined by the Competent Authority and the representation came to be rejected.

3. The learned counsel for the applicant has questioned the legality and validity of the Impugned order of transfer and raised number of contentions in support of his arguments. The learned counsel for the respondents justified the order of transfer ^{being} ~~is~~ in Public Interest.

4. The grounds of challenge to the order of transfer by the learned counsel for applicant are that the transfer should be before the rainy season or academic year. It is further stated that applicant's wife and son are suffering from illness and the family will be put to great difficulty since there will be no proper facilities at Dimbhe to which place the applicant has been transferred. Then it is submitted that the applicant has less than 2 years service and as per transfer guidelines, one should not be transferred to a different place at the fag end of the career.

As already stated, the applicant had made a representation for re-consideration of the order of transfer. Learned counsel for respondents pointed out that this is a case of general transfer involving about 770 officers in Maharashtra State of whom 16 are from Pune District. He pointed out that 250 officers including the applicant had sent representations seeking modification of the order of transfer. The matter was considered by a Screening Committee of three senior Officers and they have considered the claim of 15 Officials and rejected the remaining applications. Then the matter was placed before the highest authority ~~in the State, the~~ ^{Now,} ~~Accountant~~ General and he has approved the same. / The applicant is challenging the decision of Screening Committee and Accountant General in rejecting the representation of the applicant.

5. The personal grounds or hardships of family members are not circumstances which the Court or Tribunal

can consider for interfering with an order of Transfer. This Tribunal cannot sit in appeal over the administrative orders of transfer. ^{There are} From the number of decision, of the Apex Court, where ~~the~~ consistent view taken is that Court or Tribunal should not interfere with an order of transfer passed by administration unless it suffers from malafides or is contrary to any statutory rules. Personal difficulties or hardships are no grounds for a Court or Tribunal to interfere with an order of transfer. It is further pointed out by Supreme Court, even if transfers are in violation of guidelines or transfer policy, it is not a matter for the Court or Tribunal to interfere with an order of Transfer. In such a case of hardship or violation of guidelines, the Officer may make a representation to higher Officers and it is for the higher officer to consider the same but certainly not a matter for Court or Tribunal to consider (vide

- i) 1995(1)SCSLJ 350 S/o.MP v/s. S.S.Kourav.
- ii) (1994)28ATC N.K.Singh V/s. Union of India.
- iii) AIR 1993 DC 2444 Union of India v/s. S.L.Abbas.
- iv) AIR 1993 SC 1236 Rajendra Roy v/s. Union of India.
- v) 1991(17)ATC 935 Shilpi Bose v/s. S/o.Bihar.
- vi) (1992)17 ATC 474 Srichand V/s. Union of India.
- vii) E.P.Royappa v/s. S/o.STN(1989)3SCC 445)

6. In the present case the applicant had a chance and did make a representation. A high level committee has considered his request and rejected it. The same has been approved by ^{the} Head of Department. However, the file produced by learned counsel for respondents has confidential information which points out that applicant cannot be retained at Pune on administrative grounds. Since it is a confidential entry in the file, I do not want to ~~bring~~ the same on record by ^{mentioning it in} placing it on the order. It shows that order of transfer is in Public interest. Hence, it cannot be said ^{that} it is malafide or contrary to law. It may be that ~~since~~ the applicant is the President of the Association. ^{is}

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~~that is no bar to transfer him.~~ There is no statutory rule that an office bearer should never be transferred.

Infact, the applicant is working as President since 4years and earlier he was Secretary of the same Association.

The learned counsel for respondents pointed out that applicant is working at Pune since 12 to 13years and therefore if in administrative interest the applicant is now transferred, it cannot be said that since he is an office bearer of the Association, he should not be touched at all. There is no such rule that an office bearer of the association should never be transferred even if the order of transfer is in Public interest. However, Government servant, when he joins the service, he is liable to be transferred in Public interest. Therefore, the applicant's grievance about the order of transfer is not justified. From the records made available I find that transfer of applicant from Pune is certainly in Public interest and not due to any ulterior motives.

7. Learned counsel for applicant invited my attention to a case reported in 1997(2)SLJ-33 (R.S.Ajwani v/s. Union of India & Ors), where the learned single Member of this Bench quashed the order of transfer on the sole ground that the applicant was suffering from Heart Problem and there was an opinion of a Medical Board that he should be kept at a place where Cardiac treatment is available and in those circumstances, the Tribunal quashed the order of transfer. For one ^{thing} in that decision is purely passed on the facts of that case, for another, I have pointed out number of Supreme Court judgements above, which clearly says that a Court or Tribunal should not interdict the wheels of administration by interfering with the order of transfer. Administration cannot be run from the corridors of Court or Tribunal. In view of the law laid down by Supreme Court, I held that this is not a fit case for interference of Tribunal in the matter of transfer of applicant.



8. Before parting with the case, I will observe that it is open to the applicant to make a representation for transfer to any other place other than Pune where there is a vacancy and it is for the administration to consider the same and pass appropriate orders according to law. Applicant should get himself relieved from the present post where he is working and then make a representation and it is open to the department to consider the same as per rules. This observation I am making is only on humanitarian ground and not to make a legal right to challenge the order of administration if in case they don't consider his request for transfer. I am making this observation so that, the administration may take a sympathetic view of applicant's personal problem and try to accommodate him at some other place where medical facility is available. I repeat, that I am making the statement on humanitarian grounds and not to give any legal right to applicant to approach the Court, if the order is passed against him.

9. In the result, the application is rejected at the admission stage. No costs.

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

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