

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 738/98

Date of Decision: 24/9/98

Shyamrao Mangoji Shambarkar Petitioner/s

Shri S.S.Karkera Advocate for the  
Petitioner/s.

v/s.



Union of India & 3 Ors. Respondent/s

Shri V.S.Masurkar 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? 
- (2) Whether it needs to be circulated to other Benches of the Tribunal? 

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:738/98.

DATED THE 24TH DAY OF SEPTEMBER, 1998.

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

Shyamrao Mangoji Shambarkar,  
Service as Administrative Officer,  
resident of Jawahar Nagar,  
Plot No.149, Manewada Road,  
Nagpur.

.... Applicant.

By Advocate Shri S.S.Karkera.

V/s.

1. The Union of India,  
Ministry of Home Affairs,  
New Delhi through its Secretary.
2. The Director General,  
Archaeological Survey of India,  
Janpath, New Delhi-110011.
3. The Director Administration,  
Office of the Director General,  
Archaeological Survey of India,  
Janpath, New Delhi-110 011.
4. The Superintending Archaeologist,  
Archaeological Survey of India,  
Prehistory Branch, Old High Court  
Building, Civil Lines,  
Nagpur - 440 001.

.... Respondents.

By Advocate Shri V.S.Masurkar.

I O R D E R I

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

1. This is an application filed by the applicant challenging the order of transfer dated 19/8/98. Respondents have filed reply. I have heard both the counsels regarding admission and Interim Relief.
2. The applicant is working as an Administrative Officer in the Archaeological Department at Nagpur. Now the post of Administrative Officer has been shifted to Bhopal and the applicant also stands transferred to Bhopal by order dated 19/8/98. The applicant has also been relieved from his present post. He has approached this Tribunal challenging the order of transfer on some grounds.
3. Respondents have filed <sup>stating</sup> reply that the post

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itself is transferred to Bhopal on administrative grounds. It is further stated that there is no other post of Administrative Officer to accommodate the applicant at Nagpur. The respondents have justified that the order of transfer is in Public interest and in administrative exigencies.

4. After hearing both the sides, I do not find that any case is made out to interfere with the order of transfer. It is well settled by catena of decision of Supreme Court that an order of transfer cannot be interfered with by a Court or Tribunal unless the order is contrary to any statutory rules or it suffers from malafides. It is also the opinion of the Supreme Court that Personal grounds or personal inconveniences are not reasons to interfere with an administrative order of transfer. It is also well settled by decision of Supreme Court, that guidelines regarding transfer policy are not enforceable in a Court of law though they may be grounds to be urged before proper authority. An order of transfer cannot be found to be bad because it violates guidelines of transfer policy (vide AIR 1993 SC 2444 - Union of India v/s. S.L.Abbas, 1995(1) SC SLJ 350 - State of Madhya Pradesh v/s. S.S.Kourav and other cases which are mentioned in para-5(e) of the reply of the respondents at page-40 of the paper book).

5. In view of the law declared by the Apex Court, personal inconveniences or personal difficulties like Daughter's marriage or education of daughter are not grounds to be interfered with in the order of transfer. Further, it is brought on record that Applicant's son Shri R.S.Shambarkar is working in the same department at Bhopal and therefore that will take care of applicant's personal difficulties if any. As far as the decision of the Administration to shift the post of Administrative Officer from Nagpur to Bhopal is concerned, the Tribunal cannot sit in appeal before the decision of the administration. It is for the administration

to decide about the shifting of office. It is not part of a duty of Court or Tribunal to decide whether shifting of an office is just and necessary or not. When the shifting of office cannot be challenged before Court or Tribunal, then the applicant cannot question his transfer on any grounds since he cannot be continued in Nagpur since there is no vacancy of Administrative Officer at Nagpur.

6. No doubt he has <sup>made</sup> an allegation of malafides against the Superintendent, but the Officer is not made a party in the personal capacity. He has <sup>made</sup> an allegation of communal or caste bias on the part of respondent

No.4. This allegation has been denied in the reply. It is a case of oath against oath. If respondent No.4 is the transferring authority, then we could have considered <sup>some</sup> the <sup>merit in the</sup> point of allegation, but the decision to transfer the post to Bhopal is taken by Head Office at Delhi. The order of transfer is issued by Head Office at Delhi. Therefore, even if there is some hostility between applicant and respondent No.4, it is no ground to be interfered with since the order has been passed by Head of Department at New Delhi. Then the applicant had made a detailed representation to the Competent Authority urging all his grounds regarding the transfer.

7. The learned counsel for respondents places before me now an order dated 11/9/98 passed by Director (Administration), Archaeological Survey of India, New Delhi which shows that <sup>competent</sup> Disciplinary Authority has applied his mind to the facts of the case and the grievance of the applicant and decided to reject the representation. The order also shows that it has been approved by the Competent Authority. It is well settled that this Tribunal cannot sit in appeal over administrative decisions. Judicial review is only to find out whether the authorities have acted according to law and rules. Once the order is passed by competent

authority according to rules and if malafides are not established, then this Tribunal has no jurisdiction to interfere with an order of transfer.

8. The learned counsel for applicant places reliance on the decision of Apex Court reported at 1994 SCC L&S 1180 (Director of School Education v/s. Karuppa Thevan and Anr.) where the Supreme Court has observed that the applicant in that case should be kept in the <sup>current</sup> same place till the end of the/academic year. The Supreme Court has clearly observed that there is no such rule that there cannot be transfers during academic year. Therefore, the Supreme Court has held that transfers during the mid academic year are permissible in exigencies of service. Since in that case no urgency was made out by the Government, Supreme Court passed the order on 31/1/94, a direction was given that the applicant should be kept till end of the academic year. Now, we are just in the beginning of the academic year. The order of transfer is dated 19/8/98. The applicant has also been relieved from the post. Further, the post has been shifted to Bhopal *and* therefore the applicant cannot be kept at Nagpur.

9. I have already pointed out that this Tribunal cannot sit in appeal over the decision of administration about shifting the post of Administrative Officer from Nagpur to Bhopal. The learned counsel for applicant also relied on 1997(2)(SLJ) 33 - (R.S.Ajwani V/s. Union of India and Ors), where the Learned single Member of this Tribunal had ~~interfered~~ with the order of transfer. Infact, the decision of Supreme Court was cited before the Learned Member who ~~conceded~~ that in view of the decision of Supreme Court, the order of transfer cannot be interfered with. However, in view of medical grounds pressed by applicant namely that the applicant was a cardiac patient and the place to which he has been posted did not have facility of treating cardiac patients, the order of transfer was quashed. Further,

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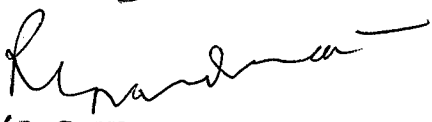
the Tribunal took into consideration that the applicant in that case was retiring within 8 months, therefore, while making it clear that the Tribunal is reluctant to interfere in the Administrative decision regarding transfer, the Tribunal passed that order in the peculiar facts and circumstances of the case including medical grounds. In my view this decision has no bearing on the facts of the present case.

10. After considering the facts and circumstances of the case, I am not inclined to interfere with the Impugned order of transfer. Hence the application is liable to be rejected at the admission stage.

11. At this stage, the applicant's counsel submits that the applicant has not gone to Bhopal to take charge in view of filing this application and also in view of the representation made to the Head of the Department. I feel, that in the circumstances, the respondents should not take <sup>disciplinarily</sup> any action against the applicant for not complying with the order of transfer. However, the period from 19/8/98 till the date of joining Bhopal may be ~~adjusted~~ against leave to the credit of the applicant or if there is no leave then the period may be adjusted with extra ordinary leave, ~~or~~ leave without pay and allowances. ~~However, this action can~~ be taken only after the applicant gives his representation after joining the post at Bhopal.

12. In the result, the application is rejected at admission stage subject to the observations made in para-11. No costs.

abp.

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN