

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 742/98

Date of Decision: 15/10/98

Mr. Karbhari Trimbak Kamble Petitioner/s

Shri A.I. Bhatkar Advocate for the
petitioner/s.

v/s.

Union of India & Anr. Respondent/s

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
(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:742/98.

DATED THIS 15TH DAY OF OCTOBER, 1998.

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

Mr. Karbah

Mr. Karbhari Trimbak Kamble,
presently working as A.E., Akashwani,
Ahmednagar and residing at C-3
Akashwani Quarters,
Ahmednagar.

... Applicant.

By Advocate Shri A.I.Bhatkar.

v/s.

1. Union of India,
through the Director General,
All India Radio,
Parliament Street,
New Delhi-110 001.

2. The Chief Engineer(WZ),
All India Radio & Doordarshan,
Old CGO Building,
3rd Floor,
101, Maharshi Karve Road,
Mumbai - 400 020.

... Respondents.

By Advocate Shri P.M.Pradhan.

I O R D E R I

I Per Shri R.G.Vaidyanatha, V.C. I

1. This is an application challenging the order of transfer. Respondents have already filed reply opposing the application. I have heard the learned counsel appearing on both the sides regarding admission and Interim Relief.

2. The applicant is now working as Assistant Engineer in All India Radio at Ahmednagar now stands transferred to Nagpur, which is being challenged by applicant on many grounds.

Respondents have filed reply justifying the transfer in Public interest.

3. At the time of arguments, the learned counsel for applicant, stated that the order of transfer is malafide and



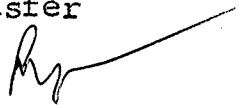
causes great hardship and personal difficulties to applicant and members of his family.

4. As far as malafide^s are concerned, reliance is placed on the complaint of one Shri Deshpande who is subordinate to applicant making some allegations against the applicant. Therefore, applicant's contention is that he is being transferred without holding any enquiry and therefore the order suffers from malafide^s. But the respondents have clearly stated in the reply that the complaint of Shri Deshpande has nothing to do with the order of transfer and the order of transfer is made in Public interest.

It is noted that Shri Deshpande has sent a letter against the applicant making some allegations. After all Shri Deshpande is junior to applicant, who is a Group 'E' Officer, and the transferred~~ed~~ is ordered at the highest level in the Head Office at New Delhi. It cannot be said that Shri Deshpande, who is a junior to applicant, can put pressure on the Director or Head of office at Delhi to effect the transfer of applicant from Ahmednagar to Nagpur. Respondents have clearly ^{states} said that the order of transfer is in the interest of administration and Public Interest.

5. After going through the materials on record, I am not satisfied that there is any malafide^s in the matter of transfer.

When the applicant came to be transferred vide order dated 6/5/98 from Ahmednagar to Rajkot, the applicant made a representation dated 1/6/98 making some personal grievances and hardships against the order of transfer. One of the reason given is that applicant's one ^{son} is studying in Engineering College at Ahmednagar and two of the applicant's children are studying in Marathi medium school which are not available at Rajkot where only Gujrati medium is available and therefore he wanted the order of transfer




to be cancelled. I find that the department considered the request of applicant on merits and modified the order of transfer by order dated 30/7/98 by transferring the applicant from Ahmednagar to Nagpur. It is brought to my notice that the allegation/ⁱⁿthe representation dated 1/6/98 that applicant's son is studying in Engineering College at Ahmednagar is not correct but he is studying at Pune. Therefore, the order of transfer cannot be said to be mala fide as the main grievance of the applicant was that there are no marathi medium schools at Rajkot and admittedly in Nagpur marathi medium schools are available. It is stated that the applicant's second son is studying in 12th standard and is in mid-term, of academic session, reliance was placed on the decision of Apex Court in the case of Director of School Education, Madras & Ors v/s. O. Karuppa Thevan and Anr. reported at 1994 SCC (L&S) 1180. That was a case where the order of transfer had been quashed by Tribunal and the Government carried the matter in appeal before Supreme Court. One of the points pressed before Supreme Court was that order of transfer during mid academic term is bad. The Supreme Court rejected this argument stating that there is no such rule and transfer can be done at any time depending upon the exigencies of service. But on facts and circumstances, the supreme Court was inclined to direct that the order of transfer should not be effected till end of academic year. Though that was a case of transfer which had been stayed by Tribunal and ultimately, the order was quashed by Tribunal, the Supreme Court disposed of the appeal on 31/1/94 which was nearing end of academic year^{by} about two months. In those circumstances, in the fag end of academic year, the Supreme Court directed that order of transfer should not be given effect to till end of academic year. In the present case, before the commencement of academic year, the order of transfer was issued., we find that the original order of transfer was issued on 6/5/98



which is well before the commencement of the academic year which normally commences in June. Then on applicant's representation pleading difficulties, by order dated 30/7/98, which may be taken as beginning of the academic year, the above transfer order came to be passed. Therefore the above cited case decided by Supreme Court is not directly applicable as the facts of that case ^{are} is different. Even otherwise, there is no legal bar to a mid academic transfer if it is necessary in the exigencies of services.

6. An officer who is working on All India cadre and that too a senior Officer in Group 'B' cannot object to transfer as ^{held} given by catena of decisions of Apex Court ^{decisions of} pressing on this point. Now the trend of Supreme Court is that Court or Tribunal cannot interfere with order of transfer unless it is contrary to statutory rules or malafide, which is alleged in this case, but ^{with} no proof. Supreme Court has also observed in many cases that personal difficulties or hardships are no grounds for a Court or Tribunal to interfere with an order of transfer. Similarly, it is pointed out by Supreme Court that violation of Transfer guidelines or transfer policy is also not a ground for a Court or Tribunal to interfere with the order of transfer, though the official may make a representation to the higher officers. It is further pointed out by Supreme Court that Courts or Tribunals cannot sit in appeal over the decision of transfers of officials on administrative grounds. In one case (1997 SCC L&S 643), Laxmi Narayan Neher's case, the Supreme Court has pointed out ^{that even} ~~but~~ if in case of transfer of SC/ST candidates, the Court cannot interfere but the official can make a representation to the higher authorities for redressal of his grievance.

- (vide
- 1) AIR 1993 SC 2444, Union of India v/s. S.L.Abbas.
 - 2) 1995 SCC 3666, State of M.P. v/s. S.S.Kourav & Ors.
 - 3) AIR 1993 SC 1236, Rajendra Rai v/s. Union of India.
 - 4) 1997 SCC L&S 643, Laxmi Narayan Neher v/s. Union of India.)
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7. The applicant's counsel submitted that the applicant is an SC candidate and he is being harrassed and unnecessarily transferred. The respondents have denied the above statement and stated that order of transfer is in public interest and I do not find any reason to doubt the statement made by respondents. I therefore, find that no case is made out for interfering with the order of transfer.

8. In the result, the application is rejected at the admission stage. Interim order dated 27/8/98 is vacated. No costs.

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN