

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 743/98

Date of Decision: 8/10/98

Shri S.C.Hiremath Petitioner/s

Shri I.J.Naik Advocate for the
Petitioner/s.

v/s.

Administration of Daman & Diu 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. 743/98.

DATED THE 8TH DAY OF OCTOBER, 1998.

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

S.C.Hiremath,
B.E.(Civil); M.I.E.:
F.I.V.:
Executive Engineer,
Public Works Department,
Administration of Daman & Diu,
Fort Area, MOTI DAMAN.

... Applicant.

By Advocate Shri I.J.Naik.

v/s.

1. Administrator of U.T. of
Daman and Diu,
Secretariat, Fort Area,
MOTI DAMAN.
Pin Code: 396 220.

2. Union of India,
through: the Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
NEW DELHI.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R

[Per Shri R.G.Vaidyanatha, Vice Chairman]

1. This is an application challenging the order of transfer. Respondents have filed reply opposing the application. I have heard both counsels on admission and Interim Relief.

2. The applicant is working as Executive Engineer at Daman and has been transferred by Impugned order as Executive Engineer at Diu. The applicant has pleaded some personal difficulties caused to him as a result of this transfer. One of the grounds mentioned in the application is that applicant's daughter is studying in 11th standard and if in the middle of the academic year he is transferred

from Daman to Diu he will be put to great hardship.

Respondents have filed reply stating that order of transfer has been issued in public interest and it is fully justified.

3. The original order of transfer was issued on 23/4/98. It appears it was kept in abeyance for some time and then on 11/6/98, an order was issued directing the applicant to report to Diu on the afternoon of 31/8/98.

4. The learned counsel for applicant relied on number of earlier decisions of this Tribunal which are mentioned in page-4 of the OA where orders of transfer have been quashed, as they are mid academic transfer orders namely:-

- 1) OA No.743/96, 2) OA No.676/96.
- 3) OA No.130/97 and 4) OA No.1104/96.

In my view, it is not necessary to consider the earlier decisions of this Tribunal since the matter is crystallised by number of decisions of Supreme Court that transfer can be done in the mid academic year and that personal difficulties or personal hardships are no grounds for Tribunal or Court to interfere with order of transfer. It is further stated in the judgements of Supreme Court that guidelines given by Government are not statutory rules and therefore the Courts or Tribunals cannot interfere with order of transfer on the grounds that it violates any transfer guidelines. It is pointed out by Apex Court consistently, that Tribunals or Courts should not interfere with order of transfer passed by administration unless it suffers from malafides or are contrary to any statutory rules. If there is any violation of guidelines the official has to complain to higher authorities. It is the view of the Apex Court that Court or Tribunal should not sit in appeal over administrative orders of transfer by exercising judicial review. This settled positions by number of decisions of Supreme Court is that order of transfer should not be interfered with by Tribunal or Court unless it is contrary



to any statutory rules or suffers from malafides.

(vide

- i) 1995(1) SCSLJ 350 S/o. MP v/s. S.S. Kourav.
- ii) (1994) 28 ATC 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) 3 SCC 445

5. The learned counsel for applicant submitted that in a judgement of Supreme Court reported at (1994) 28 ATC 99, Director of School Education v/s. O. Karuppa Thevan and Anr., it is held that while effecting transfer, the fact that children are studying in school should be given due weight. It was a case where the Tribunal had even quashed the order of transfer on the ground that employee must be heard before the order of transfer is passed. A submission was made that Government cannot effect transfers during mid academic term. The Supreme Court rejected that submission observing that there is no such rule and transfers can be done in public interest at any time. Therefore, the order of Tribunal was set aside by Apex Court. This order was passed on 31/1/94 which was at the fag end of the academic year. In those circumstances, the Supreme Court observed that the order should not be given effect to till the end of academic year which was hardly two months ahead. In the facts and circumstances of that case, since the order was passed on the last day of January, at the fag end of the academic year, the Supreme Court gave a direction that order of transfer should not be given effect to till end of academic year.

6. In the present case, the order of transfer was issued in April, 98 and then it was kept in abeyance on some ground., and the impugned order was issued in June, 98. Therefore, the observations in the above judgement of Supreme Court will not apply to this case. Personal difficulties or hardships are not grounds for quashing

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of transfer order and administration cannot be run if every individual seeks to quash transfer order on personal grounds. It is very difficult for administration to run if its wheels are interdicted by orders of Tribunal or Court as pointed out in one of the judgements of Supreme Court mentioned above. Having heard both sides, I do not find any case is made out and hence the matter is liable to be rejected at the admission stage.

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

abp.



(R.G. VAIDEYANATHA)
VICE CHAIRMAN