

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 787/98

Date of Decision: 29.9.98

Shri V.R. Kanekar.

Petitioner/s

Shri S.G. Aney

Advocate for the
Petitioner/s.

v/s.

Union of India and others.

Respondent/s

Shri V.S. Masurkar.

Advocate for the
Respondent/s

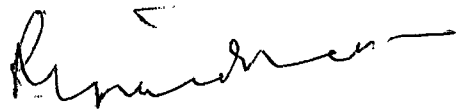
CORAM:

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

Hon'ble Shri

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

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


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO: 6
PRESCOT ROAD, BOMBAY:1

Original Application No. 787/98

Tuesday the 29th day of September 1998.

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

V.R. Kanekar
Deputy Conservator of
Forests, Akola Forest
Division.
residing at Vanshri,
Banglow Near Ashok
Vatika, Dist Akola.

... Applicant.

By Advocate Shri S.G. Aney.

V/s.

Union of India through
the Secretary, Ministry of
Environment and Forest,
Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi.

State of Maharashtra, through
the Principal Secretary,
Revenue and Forest Dept.
(Forest), Mantralaya,
Mumbai.

Principal Chief Conservator of F
Forest, Government of Maharashtra
Nagpur.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

{ Per Shri Justice R.G. Vaidyanatha, Vice Chairman }

This is an application filed by the
applicant challenging the order of transfer dated
15.9.98. Official respondents have filed reply.
One Shri Sanjay K. Pathak has filed an M.P. 622/98
for intervention on the ground that the interim
relief granted in this case is affecting him.
M.P. 622/98 is allowed. The learned counsel for
the applicant has filed M.P. 623/98 for a direction
to the respondents for production of documents.

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2. I have heard the learned counsel for both sides and also the intervenor.

3. The applicant is now working as Deputy Conservator of Forests, Akola and he has been transferred to Chandrapur vide order dated 15.9.98 which is being challenged by the applicant.

The only ground is that the order of transfer is in the mid academic year and his daughter has completed her BHMS medical professional course and doing her internship at Akola. In view of the mid term transfer, the applicant is put to great difficulty.

4. It is well settled, as per the decisions of the Supreme Court, the Tribunal or Court cannot sit in appeal over the orders of transfer passed by the administration. It is also well settled that the order of transfer cannot be interfered by a Court or a Tribunal. It is also well settled that the guidelines of transfer are not to be enforced by court of law but are to be observed and if they are not obeyed, the matter should be taken before the competent authority. It is also well settled position that the difficulties or hardships are not the grounds for the Court or Tribunal to interfere, though they may be the grounds for the officer to make his grievance or representation before the higher officer. (Vide 1995 29 ATC 553 State of M.P. and another V/s. S.S. Kourav and others and 1994 28 ATC 246 Union of India and others V/s. S.L. Abbas.) On the other hand the learned counsel for the applicant had invited my attention to some decisions.

5. In 1993 (1) SC 126 Rajendra Roy V/s. Union of India and Another, the Supreme Court observed that this is a case of transfer of an officer from Delhi to Calcutta. The Supreme Court declined to interfere with the order of transfer and observed that the order of transfer cannot be interfered unless it is malafide or violative of any rules. Therefore, this decision will not help the applicant. The applicant then placed reliance in the case of N.K. Singh V/s. Union of India and others 1994(5) SLR 153. There also the Supreme Court declined to interfere with the order of transfer. In fact in para 23 of the reported judgement on which the learned counsel for the applicant placed reliance, also does not help the case of the applicant. In any way the Supreme Court has clearly observed that unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially and the Courts have no power to interfere with the transfer order.

6. The learned counsel for the applicant placed reliance on the circular and guide lines regarding transfer, where the normal tenure at a place is shown as three years. In the present case the applicant has been transferred after he has put in two years and four months. The Tribunal cannot sit in appeal on the decision of the administration on transfer. Admittedly there is no allegation of malafide in this case.

7. As far as the personal difficulties and hardship of the applicant is concerned, it is not a ground for interference by the Tribunal. This

is admittedly a case where the applicant ^{has} had ~~got~~ a daughter who has already completed her degree in Homeopathy and now under going internship. This is not a ground for the Tribunal to quash the order of transfer.

The learned counsel for the applicant has placed reliance in the case of Director of School Education, Madras and others V/s. O. Karuppa Thevan and another 1994 SCC (L&S) 1180, wherein the Supreme Court has clearly observed that there is no such rule regarding ^{transfer of} the mid term transfer but in that case we find that the judgement was delivered on 31.1.94 and the academic year ends in March for the school and in those circumstances the Supreme Court has made an observation that the order of transfer should not be given effect till the end of academic year which is hardly two months.

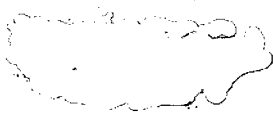
In the present case it is the beginning of the academic year and the applicant's daughter is not in school or college. She had completed her education and she is only doing her internship which she can do on her own. Any personal difficulty of the official ^{is} are ^a not the ground for interference by the Tribunal.


8. The intervenor who now came to take charge cannot resume the duty in view of the stay granted by the Tribunal. The learned counsel for the applicant has stated that there are some vacancies and the intervenor can be accommodated in that vacant post. Which officer to be posted where is the prerogative of Government. It is for the Government to decide as to where to post a particular officer and not ^{by} the Tribunal or the Court. On merits also I am not inclined to

interfere with the order of transfer. The learned counsel for the applicant has filed an M.P. for production of some records the same does not survive. The documents sought to be produced are pertaining to the orders of transfer, Hence M.P. is liable to be rejected.

9. In the result the O.A. is dismissed at the admission stage itself. In the circumstances of the case there is no order as to costs.

10. Copy of the order be given to the parties today.




(R.G. Vaidyanatha)
Vice Chairman

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