

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1032 OF 1998.

Date of Decision : 05.01.1999.

Dr. R. V. Kode, Petitioner.

Shri S. P. Saxena, Advocate for the
Petitioner.

VERSUS

Union Of India & Others, Respondents.

Shri R. R. Shetty for
Shri R. K. Shetty, Advocate for the
Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1032 OF 1998.

Dated this Tuesday, the 5th day of January, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Dr. R. V. Kode,
Works Manager,
Ordnance Factory,
Dehu Road, (Dist. Pune)

... Applicant

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union Of India through
The Secretary, Deptt. of
Defence Production,
Ministry of Defence,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A Shaheed Khudiram Bose Marg,
Calcutta - 700 001.

... Respondents.

3. The General Manager,
Ordnance Factory,
Dehu Road, (Dist. Pune).

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application challenging the order of transfer. Respondents have filed reply opposing the application. An interim order was passed on 03.12.1998 directing the respondents to maintain the status-quo. I have heard the learned counsels appearing on both sides.

2. The applicant is working as Works Manager at Ordnance Factory, Dehu Road, and by the impugned order dated 23.11.1998 he has been transferred as Works Manager, Ordnance Factory, Bolangir. Being aggrieved by this order of transfer, the applicant has approached this Tribunal. The applicant's case is that, he suffered an accident when he was travelling in a bus on official duty and suffered fractures. He had been under treatment for quite sometime. He had to undergo some operations. It is further stated that his wife is working in telegraph department at Pune. His two children are studying at Pune and the order of transfer is issued during the middle of the academic year. It is also alleged that in the place of transfer there is no proper medical facilities. Therefore, the applicant has approached this Tribunal for quashing the order of transfer.

3. The respondents have filed reply justifying the action taken and it is stated that the transfer is ordered in public interest. It is admitted that the applicant suffered injuries due to an accident. But it is stated that inspite of the accident, after treatment, the applicant has been attending to his duties by travelling from Pune to Dehu Road, partly by scooter, partly by train and partly by walk. It is, therefore, stated that the injuries sustained by the applicant due to accident is not coming in the way of discharge of duties and therefore, this cannot be considered as a ground for interfering with the order of transfer. The fact that his wife is working at Pune, is not a ground for interfering with the transfer order.

As far as the mid academic year is concerned, it is stated that transfer order was issued in April, 1998 prior to the start of the present academic year but the order of transfer was kept in abeyance on the request of the applicant and it is now given effect to and, therefore, the order of transfer cannot be challenged on that ground. It is, therefore, stated that there are no grounds for granting reliefs prayed for in the application.

4. After hearing the Learned Counsel appearing on both sides, I find that the applicant is not alleging that the order of transfer is malafide or that the order of transfer is contrary to any statutory rule. Now it is fairly well settled by catena of decisions of the Supreme Court that a Court or Tribunal should not normally interfere with an order of transfer unless it suffers from malafide or is contrary to any statutory rule. In this case, the applicant has not made out that the order of transfer is either malafide or contrary to any statutory rules.

5. The applicant is alleging the personal difficulties due to the injuries sustained by him during the accident and his wife's employment and children's education. As far as the education of children are concerned, as already pointed out, the order of transfer was issued in April 1998, prior to the start of the academic year, therefore, the order of transfer cannot be challenged on the ground that it interferes with children's education. Similarly, the order of transfer cannot also be quashed on the ground that applicant's wife is working at Pune and

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if the applicant is transferred, it will affect his family. Such an argument has been rejected by the Supreme Court in the case of S. L. Abbas reported in A.I.R. 1993 SC 2444. The guidelines for transfer policy are matters which are meant as guidelines for administration but they are not statutory rules to be enforced by a Court of law or Tribunal.

6. But we cannot lose sight of the fact that the applicant has sustained major injuries during the accident and he has partly recovered from the injuries and he is attending to his duties. He has been advised to undergo bone grafting operation and he has still not fully recovered the injuries sustained by him during the accident. It is true that the applicant has been attending to his duties by travelling from Pune to Dehu Road. Now we are in the fag end of the academic year. We are now in the first week of January, 1999 and end of the academic year is hardly 2½ or 3 months hence. I, therefore, feel that though it is not a fit case for interfering with the order of transfer, in the facts and circumstances of the case, it is a fit case where the order of transfer should be ordered to be given effect to w.e.f. 01.05.1999.

7. It is now brought to our notice that the applicant has been relieved on 30.11.1998. Though the Tribunal passed a status-quo order on 03.12.1998, it will not help the applicant, since prior to the date of the order, the applicant had been relieved. In the view I have taken that the order of transfer should be given effect to from 01.05.1999, I feel that a direction should be issued to the respondents to reinstate the applicant

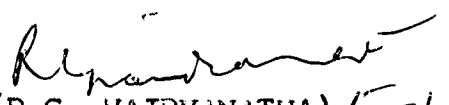
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in the present post till 30.04.1999. As far as the period from 01.12.1998 till the date of reinstatement of the applicant in the present post, the applicant may make an application to the administration either for grant of leave, if available to his credit or to treat this period as extra-ordinarily leave. It is also open to the applicant to apply leave on medical grounds and it is for the administration to pass appropriate orders as per rules. However, the respondents are directed not to take any action against the applicant for not complying with the order of transfer in view of the stay order granted by this Tribunal.

8. In the result, the application is disposed of at the admission stage with a direction to the respondents not to give effect to the order of transfer dated 23.11.1998 till 30.04.1999. The applicant may be relieved by the administration on 30.04.1999 and then it is for the applicant to join in the transferred place after availing whatever joining time is permissible under the rules. The respondents are directed to reinstate the applicant in the present post at Dehu Road forthwith. The question of treating the period of absence from 01.12.1998 till the date of reinstatement shall be decided as observed in para 7 above. In the circumstances of the case, there will be no order as to costs.

Liberty to the applicant to get this order served on Respondent No. 3 for the purpose of information and immediate compliance.

DASTI.


(R.G. VAIDYANATHA) 5-1-99
VICE-CHAIRMAN.