

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:111/98

Date of Decision: 25/2/98

Shri N.M.Seshadri

Applicant.

Shri R.C.Ravhani

Advocate for
Applicant.

Versus

The Union of India & 2 Ors.

Respondent(s)

Shri R. K. Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? x
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal?

abp.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT RD, 4TH FLOOR.,

MUMBAI-400 001.

ORIGINAL APPLICATION NO.111/98.

DATED THE 26TH DAY OF FEBRUARY, 1998.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A).

Shri N.M.Seshadri,
Works Manager,
High Explosives Factory,
Khadki, Pune-411 003.

... Applicant.

By Advocate Shri R.C.Ravhani.

V/s.

1. The Union of India,
Through: The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
High Explosives Factory,
Khadki,
Pune - 411 003.

... Respondents.

By Advocate Shri R.K.Shetty.

I ORDER I

I Per Shri M.R.Kolhatkar, Member(A) I

In this OA, the applicant who is working as Works Manager, at High Explosive Factory, Khadki, Pune is ^{impugning order of} transfer ~~as~~ as Works Manager, Bhandara. It is not in dispute that the applicant had submitted a detailed representation ^{on} 5/8/97 and further representations as a result of which the transfer was deferred first to December, 97 and subsequently to January, 98. The applicant then filed this OA seeking a direction to respondents to restrain from effecting the transfer of the applicant till the end of academic session i.e. till April, 98. Interim Relief was granted on 22/1/98 and the I.R. still continues.

2. since the applicant has not challenged the transfer order as such but has only sought deferment of the transfer till end of

April, 98 which the department has not found fit to concede the issue is in a very narrow compass. Counsel for applicant states that his wife is a chronic patient of Rheumatic Arthritis and she requires his personal attention and he is required to make arrangements for proper treatment in his absence. There is also a problem of examination of his children and, in particular, Board Examination of his daughter who is studying in the 10th standard which is an important Public Examination and the examination of his son who is studying in 6th standard which will be over on 11/4/98, hence he is required to attend to the children during the crucial period of preparation for the important examination. According to him, therefore the respondents who had been considerate enough to defer the transfer till January, 98 could do so till end of April, 98.

3. Counsel for the respondents states that from the order dated 7/7/97 at Annexure R-1 to Written Statement, it is clear that transfer is ordered in public interest. According to him, Ordnance Factory is engaged in filling up cartridges for the defence forces and the applicant would be holding an important position in Bhandara Factory where the production is suffering which will in turn endanger the security of the nation. All the problems which are pleaded by the applicant could have been taken care of during the period of deferment of transfer. He therefore prays for immediate vacation of Interim Relief.

4. Learned Counsel for applicant has relied on Supreme Court judgement reported at (1994) 28 ATC 99 (Director of School Education, Madras and Others v/s. G. Karuppa Thevan and Anr.). In this case the Hon'ble Supreme Court observed that

"in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent."

5. Counsel for respondents however states that the ratio of Karuppa Thevan does not apply because the transfer

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is in Public interest and the exigency of Public service are specifically pleaded by the respondents in the present case. He also relies on judgement of the Hon'ble Supreme Court in Prem Praveen and Ors. v/s. Union of India, N.K.Singh v/s. Union of India, S.L.Abbas v/s. Union of India, S.S.Kaurav v/s. Union of India, Abonikant Roy v/s. Union of India to support his contention that this Tribunal has no jurisdiction to interfere in transfer order in which there are no malafides or in which there is no violation of statutory transfer guidelines.

6. It is true that the case of Director of School Education v/s. G.Karuppa Thevan is not entirely applicable to the facts of the case as in that case the exigency of service was Meated by Government. However, the department have not transferred the applicant in July,97 and having on its own deferred the Transfer till January,98 it cannot certainly take a stand that the relief of the applicant cannot brook a single day's delay.

7. In the present case, I am required to note that the applicant's daughter is studying in 10th standard which is an important Public Examination, and where the preparation of the child would be the responsibility of the father (as the mother is suffering from Rheumatic Arthritis). I am however not impressed by the plea of the examination of his son in 6th standard which is upto 11th of April,98. In my view the applicant is entitled to the relief of deferment of transfer till his daughter's examination is over, viz. 2/4/98. The applicant should therefore be relieved on the next working day after the completion of the examination of 10th standard. Transfer order is therefore directed to be deferred till 3/4/98. Respondents are at liberty to relieve the applicant on or after 3/4/98. It is clarified that if for any reason, the 10th standard examinations are further re-scheduled,

the applicant is at liberty to make a representation to his immediate superior who should consider the same and allow appropriate deferment but only to the extent of reschedulement and no more. The OA is disposed of in these terms. No costs.

ABP.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)