

Central Administrative Tribunal
Principal Bench

O.A.No.1672/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of January, 2003

Sh. Bipin Bihari Choudhary
29, Railway Colony
Punjabi Bagh, New Delhi
working as Asstt Commissioner of Police
8th Bn, Delhi Armed Police
PTS Malviya Nagar
New Delhi. Applicant

(By Advocate: Sh. Arun Bhardwaj)

Vs.

1. Union of India through
Secretary, Ministry of Home Affairs
North Block, New Delhi - 1.
2. Commissioner of Police
Police Headquarters
IP Estate
New Delhi.
3. Joint Commissioner of Police (HQs)
Police Head Quarters
IP Estate
New Delhi.
4. Deputy Commissioner of Police
8th Bn., DAP
PTS Malviya Nagar
Delhi. Respondents

(By Advocate: Sh. R.N.Singh, proxy of Sh. R.V.Sinha)

Q R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' orders dated 2.5.2002, 7.6.2002 and 12.6.2002 whereby he has been transferred from Delhi to Andaman and Nicobar Islands and was also relieved. He has sought quashment of these orders.

2. By an order dated 1.7.2002 by this Court status-quo has been maintained.

3. Applicant was appointed as Grade-II Officers DANIPS in the year 1997 on the basis of result of UPSC (Civil Services Examination, 1995). Applicant underwent training and after completion of it, he had started working as Assistant Commissioner of Police in Delhi and was posted at PTS, 8th Bn. DAP Malviyanagar.

4. Wife of applicant who is a Group "A" Officer working as Doctor in the Indian Railways and is presently working in Delhi. She had come on request transfer, on the ground of spouse, from North East Railway and is currently pregnant with hypertension. One of the child, aged about five years, of applicant is studying in School.

5. By an order dated 2.5.2002 along with six other persons have been transferred to one Union Territory to other Union Territory. Applicant represented on 13.5.2001 to cancel his transfer orders but respondents malafidely issued the relieving orders on 12.6.2002, giving rise to the present OA.

6. Sh. Arun Bhardwaj, learned counsel appearing for applicant, placing reliance on an OM issued by the DoPT on 3.4.1986 contended that as wife of applicant has already been transferred from Gorakhpur to New Delhi in 1997, husband and wife should be posted together and as by transferring applicant to Andaman & Nicobar Islands, respondents have violated the aforesaid OM of 1986. It is contended that wife of applicant is not in a position

to seek transfer to the said Island as there is no such post exists. His family is being split and the policy has been kept at bay. Pressing hardships it is stated that the previous pregnancy of the wife was complicated and she had suffered from a high degree of pregnancy induced hypertension, which threatened state of her life as well as of baby. Respondents had not kept in view that applicant has a five year old son, who has been admitted in a School, Delhi after depositing heavy charges and as the parents of the applicant who are about 80 years old staying in their native place, respondents have adopted an inhuman approach, ignoring these justifiable grounds to transfer him, which is in violation of Articles 14 and 16 of the Constitution of India.

7. Shri Arun Bhardwaj further stated that pick and choose policy has been adopted as number of ACPs have longer stay have been retained whereas applicant, who had not completed three years has been made a scape goat.

8. According to Sh. Bhardwaj, as per OM of 1986 where his spouse belongs to one Central Service and the other member to another Central Service, the spouse with longer service station should apply to the appropriate cadre controlling authority to post them together. As the request of applicant's wife has already been acceded by the Railways, proper procedure was not followed.

9. Shri Bhardwaj contended that though the transfer is an incidence of service, respondents have acted unfairly with arbitrariness by an application of an ununiform and improper procedure.

10. By referring to their policy, it is contended that while picking up the Batch, the respondents have acted arbitrarily and adopted the pick and choose method as neither applicant is the seniormost of the Batch and other officers who have transferred does not belong to same Batch. He refers to one Sh. R.S.Sagar of 1994 whereas applicant belong to 1995 Batch. According to him no reasonable criteria has been followed rather arbitrariness has been shown to select the Batch. According to him, the officers belonging to different Batches and as per the policy guide-lines only a particular Batch is to be considered. By referring to the case of one Suman Nalwa, it is contended that she has been favoured by keeping her transfer in abeyance. But on pointed out by the respondents she has also been transferred, applicant does not press this ground.

11. He further refers by placing reliance on the seniority list with one Sanjay Bhami, being senior, of the Batch has been retained.

12. According to Shri Bhardwaj, the representation has been rejected without application of mind and is in violation of principles of natural justice.

13. On the other hand, respondents' counsel, Shri R.N.Singh, proxy of Shri R.V.Sinha, strongly rebutted the contentions and also produced the relevant official record and contended that applicant a member of the DANIPS holding Grade-II post as per Rule 13, he is to be allocated to services of Andaman and Nicobar Islands and UTs and other places having an all India transfer liability within these places he has been transferred in public interest and exigency of service and his refusal is against the public interest.

14. Sh. Singh further stated that the criteria adopted is on the basis of rotation and officers who had completed a tenure of more than two years in UT segment outside NCT of Delhi are ordinarily transferred back to NCT of Delhi, the senior most officers of a Batch who is yet to be served outside NCT of Delhi is transferred from NCT of Delhi to other UT segments. Accordingly, applicant being the senior most officer of the Batch has been picked up for transfer along with other members of his batch and there is no embargo to club two or more batches while transferring the officers who are yet to be posted outside the UT segments. He further stated that 'a batch' has been used in a generic term.

15. In so far as Smt. Nalwa's case is concerned, it is contended that as she was on maternity leave and the facts have been put to MHA which decided to keep the transfer of Smt. Nalwa in abeyance, and applicant has been picked up for transfer being senior, on expiry of her leave, she has

already been transferred. With regard to manner of transfer and picking of batch outside, the action in public interest and on administrative exigencies which does not suffer from any arbitrariness or mala fides. Moreover, it is contended that no personal mala fides have been alleged by applicant.

16. Sh. R.N.Singh relies upon the decision of Calcutta Bench of this Court in A.K.Mitra v. Union of India, 1991(17) ATC 786 to contend that transfer of persons with shorter stay and retaining the persons having longer stay would not amount to any illegality. Further reliance has been placed on the decision of Apex Court in Union of India v. S.L.Abbas, 1993(3) SLR 582 to contend that guide-lines to post spouses' together at same place does not confer applicant a legally enforceable right and as wife of applicant belongs to different service, authorities on representation have clearly stated that applicant may take paternity leave at the time of delivery.

17. In so far as other problems are concerned, it is stated that in view of Rule 13 of DANIPS Rules 1998, he cannot avoid transfer by citing medical and domestic problems as these facilities are available in Islands as well.

18. Shri R.N.Singh further stated that allocation of the segment of the services outside Delhi is made for a short period spelling to two to three years only, normally the family of the transferred official out of Delhi is allowed to retain

the official accommodation to continue education uninterrupted and their wives to perform duties if employed.

19. Lastly, it is contended that action of respondents is neither discriminatory nor arbitrary as the transfer has been resorted as per the policy and in administrative exigency and none of his senior within his Batch has been left out from transfer.

20. In additional reply, Sh. R.N.Singh, contended that services of three Grade-II officers of NCT of Delhi were required to Andaman and Nicobar (Administration) as replacement of two officers, who have completed their tenure and against one vacancy in ex-cadre post. As these five officers of the same batch of direct recruits who were due for transfer, they have been transferred without any iota of mala fide.

21. I have carefully considered the rival contentions of the parties and perused the material on record.

22. The Apex Court in a recent decision in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan, 2001(8) SCC 574 has observed as follows:

"Transfer of employee, held, is not only an incident but a condition of service - Unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine - Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management."

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23. In *Shilpi Bose v. State of Bihar*, 1991(supp.) 2 SCC 659, the Apex Court has observed as follows:

"If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore the High Court had no jurisdiction to interfere with the transfer orders. (Para 3)

The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

24. Apex Court in *Union of India v. S.L. Abbas*, 1993(2) SLR 585 has observed as under:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions,

the Court cannot interfere with it. While ordering the transfer, there is no doubt,, the authority must keep in mind the guide-lines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

25. In N.K.Singh v. Union of India & Others, 1994(28) ATC 246 (SC) the following observations have been made by the Apex Court:

Transfer - Scope of judicial review - interference justified only in cases of mala fides or infraction of any professed norm or principle - Where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed.

Transfer - Public interest - Transfer from a sensitive and important post - Nature of evidence required to prove such transfer in a particular case to be prejudicial to public interest.

Held: The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

Transfer - Mala fides - Whether the impugned transfer order is mala fide - Procedure for determining - Held, the court will look into the records only and not enter into a roving inquiry.

The appellant added that even though as per record there was nothing unusual, the interference of mala fides should be read in between the lines and taking into account the attendant

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circumstances. Supreme Court rejected these contentions and dismissed the appeal."

26. If one has regard to the rulings cited above, and the law crystallised on the subject, a transfer is to be interfered in judicial review, if the same has been issued without jurisdiction, is mala fide or in violation of statutory provisions.

27. As per Rule 13 of Rules ibid, members of the Grade of DANIPS holding Grade-II post are liable to serve under (Page 47) any of the segments of the service, which includes NCT of Delhi, A&N Islands and other UTs. As a policy laid down, those who completed a tenure of more than two years in UT Segments outside NCT ordinarily transferred back to Delhi. While transferring from the persons from Delhi to Other UT segments, those who have yet to serve outside NCT of Delhi, the Batches are considered and more particularly, the senior most officer are transferred.

28. In the light of policy decision, respondents have issued orders in respect of the applicant, who had already completed a tenure of two years, and has not been posted outside NCT of Delhi. Other officers from his batch, including, D.K.S.Singh, H.K.Singh and Mohd. Akthar Rizvi have been posted to Andaman & Nicobar (Admn.). It is not the case of applicant that any senior officers of his batch has been left out. As such I do not find any violation of the guidelines resorted to by respondents and their action is in consonance with the guidelines. Having

all India transfer liability and without any mala fides established from the record, the transfer is in public interest and in the administrative exigency.

29. Another contention of applicant that a manner in which the batch has been picked up and other officers of different batch have been clubbed together to be transferred, shows pick and choose method adopted by respondents, and his contention that he is not senior most officer of the batch is concerned, cannot be countenanced, as from the records it transpires that while applying the policy guidelines, respondents have also clubbed together officers of another batch ^{which} is not precluded. The guide-lines provides consideration of seniormost officers of a Batch who are yet to serve outside NCT of Delhi the emphasis added "a batch" is a generic term and refers to two or more and to be read as Batches. The contention that officers who are from other Batches, who have been continuously working have been retained number of years in Delhi, have not been subjected to transfer, cannot be countenanced as while picking out a Batch, the respondents have taken into consideration the tenure of more than two years for an officer posted outside NCT segment awaiting posting to NCT of Delhi. Moreover, while picking up the Batch, in absence of any mala fides alleged the same cannot show pick and choose method adopted by respondents. This has been based on intelligible differentia based on an object sought to be achieved and is in consonance with the principles of equality enshrined under the Article 14 of the Constitution of India.

30. In so far as the relief and claim, that wife of applicant who is also working as Group 'A' officers in Railways, in the light of the DoPT's OM of 1986 supra, applicant should have been retained in Delhi with a view to live with her wife and the respondents have not adhered to the mandatory guide-lines which envisaged that in so far as possible, wife and husband should be posted together at same station is concerned, I find that the wife of applicant was also transferred in 1997 and had been with applicant for the last five years.

31. In view of the S.L.Abbas's case one has no indefeasible right to claim posting of spouse at the same station and it depends upon the exigency of service and does not confer upon a Government employee a legally enforceable right. As per the statutory rule, the guide-lines one has to serve outside UT segment, the contention that the wife is having hyper pregnancy and his hard pressed domestic problems cannot override the object of administrative exigency as well as public interest. The authorities have, in their representations, clearly stated that in case of delivery applicant is free to avail paternity and other kinds of leaves and in that manner, he would have been satisfied. Moreover, if the contention of applicant is accepted, wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system, by assuming the ^lrole of an appellate authority. This has been held to be beyond

jurisdiction of this Court by the Apex Court in State of Madhya Pradesh & Ors. v. Sri S.S.Kourav & Ors., JT 1995(2) SC 498.

32. In so far as the Smt. Nawla's case supra is concerned, the fact of her paternity leave was in the knowledge of respondents, i.e., MHA, her transfer was kept in abeyance and now she has been subjected to transfer after expiry of her leave, I do not find any discrimination meted out on this ground. Moreover, this Court is precluded from conducting the roving inquiries into the administrative exigency and the public interest involved. As neither any mala fides have been proved nor any provision of statutory rule has been established to have been violated the transfer guide-lines, which is a simple order of transfer, as per the rules, having all India transfer liability, cannot be interfered with.

33. The representation made by applicant has been meticulously examined by respondents and was rejected which does not show lack of application of mind.

34. As far as the education difficulties of the children are concerned, the same have been taken care of moreover, even at Islands the education and medical facilities are available at the transferred place.

35. In the result and having regard to my observations made above, I do not find any legal infirmity in the orders passed by respondents, OA is bereft of merit and is accordingly dismissed. No costs.

36. Interim order issued on 1.7.2002 is vacated.


(Shanker Raju)
Member(J)

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