

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1475 of 1999

New Delhi, this the 30th day of June, 1999

HON'BLE SHRI N.SAHU, MEMBER(A)

Shri S.K.Gupta,
S/o Shri MR Gupta,
r/o 20-Jagrati Apartments,
Captain Satish Marg, Delhi-34.
working as Principal Scientific Officer
in Directorate General of Quality Assurance
under Deptt. of Defence Production,
Ministry of Defence, New Delhi.

-APPLICANT

(By Senior Advocate Shri R.Venkatramani with Shri
S.M.Garg)

Versus

1. Union of India through
its Secretary (DP&S),
Deptt. of Defence Production & Supplies,
Room No.136, South Block,
Ministry of Defence,
New Delhi-11.
2. Directorate General of Quality Assurance,
Deptt. of Defence Production & Supplies,
DGQ PO, Room No.234,
H-Block, New Delhi-11.

-RESPONDENTS

O R D E R (ORAL)

By Hon'ble Shri N.Sahu, Member(A)

This O.A. has come up on admission impugning the order of transfer vide D.G.Q.A. letter No. A/98969/RTS(NFSG)(PSCO)/99/DGQA/Adm-6A dated 21.4.99. The applicant aggrieved by this order, has submitted a representation dated 10.5.99 to respondent no.1. This representation has not been disposed of, till date.

2. The Hon'ble Supreme Court in the case of Gujrat Electricity Board vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433 has held that no legal rights of a transferred employee are infringed on account of transfer. Transfer is an incident of service. At the same time, the transferred official has one right and

that is the right of representation. In this judgement, the Hon'ble Supreme Court elevated this right of representation to the status of an alternative remedy.

3. Shri Venkatramani, learned senior counsel argued at length as to how this transfer order was arbitrary and as to how the respondents have not followed their own transfer policy spelt out in letters dated 17.11.88, 24.5.89, 26.2.97 and 1.12.98. Learned senior counsel tries to submit that if the respondents do not scrupulously follow their own guidelines, then the official cannot have any faith in those guidelines and cannot plan his stay in a particular place. Once the guidelines are issued, it is binding on the respondents. Shri Venkatramani submits that the applicant has not completed five years posting at Delhi on 30.6.99 and he was, therefore, not due for rotational transfer in the year 1999.

4. I am, however, impressed by one submission of Shri Venkatramani that the applicant's wife is an official of the R.B.I. and the place to which the applicant has been transferred namely Medak, does not have any subordinate or attached office of R.B.I. After the recommendations of the 5th Pay Commission, the Ministry of Personnel have issued a circular which, in my view, has the status and force of a rule and this is binding on the respondents. Respondent no.1., Secretary, Department of Defence Production and Supplies cannot say that the instructions of the Ministry of Personnel are not binding on them. This circular reads as under:-

"Copy of O.M. No. 28034/2/97-Estt(A) dated 12.6.1997 Government of India (Department of Personnel & Training)
Subject: Posting of husband and wife at the same station reiterated.

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The undersigned is directed to say that on the subject mentioned above, Government had issued detailed guidelines vide O.M. No. 28034/7/86-Estt.(A) dated 3.4.1986.

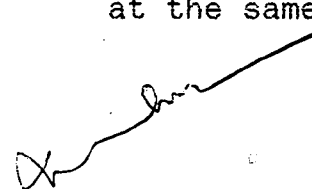
The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt.(A) dated 3.4.1986 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence.

3. It is further clarified that even in cases where only the wife is a Government servant, the concession elaborated in Para 2 of this O.M. would be admissible to the Government servant.

4. These instructions would be applicable only to posts within the same department and would not apply on appointment under the Central Staffing Scheme."

By transferring the applicant to Medak, there is ex-facie a violation of the order in categorical terms of the Ministry of Personnel that as far as possible and as far as practicable, wives and husbands, even though belonging to different govts' or formations should be accommodated at the same Station.

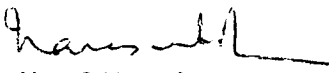


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5. I direct respondent no.1 to consider the representation dated 10.5.99 in the light of the instructions of the Ministry of Personnel as also the various grievances of the applicant raised in this regard within a period of four weeks from the date of receipt of a copy of this order. He shall give an opportunity to the applicant of being heard before disposing of the representation.

6. Till the representation is disposed of by a reasoned and speaking order, the order of transfer is stayed. If even after the disposal of the representation, any grievance of the applicant still survives, he is at liberty to move this Tribunal again.

7. The O.A. is disposed of with the above directions.


(N. SAHU)
MEMBER(A)

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