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Central Administrative Tribunal
Principal Bench
...

O. A. No. 1838/95

New Delhi, this the ~~16th~~ day of Nov., 1995

Hon'ble Shri B. K. Singh, Member (A)

Smt. Suman Bajaj
w/o Sh. S. K. Bajaj
Upper Division Clerk
Central Social Welfare Board,
R/o Sector VII/285, R. K. Puram,
New Delhi.

...Applicant

(By Shri B. B. Srivastava, Advocate)

Versus

The Chairman,
Central Social Welfare Board,
Samaj Kalyan Bhavan,
12-B, Tara Crescent Road,
South of IIT Campus,
New Delhi.

....Respondent

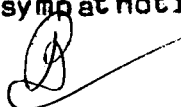
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O R D E R

delivered by Hon'ble Shri B. K. Singh, Member (A):

This O. A. No. 1838/95 has been filed against the order No. F-14-3/SK8/93-SB-Admn. (Annox-1) dated 16.9.1994.

The application was filed in pursuance of the observation of the Hon'ble Tribunal in order dated 2.6.1994 (Annoxure 2) made in O. A. No. 1627/93 regarding transfer of her husband Shri S. K. Bajaj from Chandigarh to Delhi. The Tribunal had not given any direction as is evident from para 3 of the orders. It only states "The wife of the applicant shall be free to make suitable application according to rules and the respondents may consider the same sympathetically as per their own



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various O.A.s issued by the Ministry from time to time. This cannot be construed as a direction. The transfer is an inherent administrative power and judicial review of transfers on administrative grounds or, in the exigency of public service is not permissible. The judicial review under Article 226 is permissible only when it is shown that there is ^{involved} mala fide/in the transfer orders or there is breach of statutory rules. The matter has already been decided in O.A. No. 1621/93 ^{alongwith} / P.A. No. 1373/94. The Hon'ble Supreme Court has laid down the law in the case of Bank of India V/s. Jagjit Singh Mehta - 1992(1)ACC page 306. The word used in the guideline is merely directory in nature. It only lays down that as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. This does not, however, mean that their place of postings should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In such a case, the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All India Services with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot, as of right, claim to be relieved of the ordinary incident of All India Service and avoid transfer to a different place on the ground that the spouses would be posted at different places. The same view has been reiterated in a catena of judgments that transfer being an incident of service, who will be transferred where is not for the courts to look into unless

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malafide is alleged and proved or there is breach of statutory rules. In one of the latest judgement, the Hon'ble Supreme Court have even gone to the extent of observing that judicial review of transfer orders in the exigency of public service or on administrative ground is impermissible. This is Union of India V/s. Ganesh Dass Singh 1995(30) ATC Page 629. Whatever the hardship, the transfer liability is there and another O.A. on the same subject cannot lie since while deciding that O.A. the Hon'ble Tribunal had indicated that the Tribunal cannot sit as an appellate body over the transfer orders issued by the competent authority and no liberty was granted to the applicant to approach the Tribunal again.

Thus this O. A. is barred by principles of res judicata. Since the parties are the same and issue involved is also the same that wife and husband should be posted at the same station. This matter has already been adjudicated by a court of competent jurisdiction. upon/ The order only states that applicant would be free to make suitable application according to rules and the respondents may consider the same sympathetically. Sympathy is one thing and the rule position is another. Rule position is that transfer being an incident of service, the competent authority can exercise that inherent power of transfer in case of an All India ^{transfer} liability to any place inside the country. The husband and wife as far as practicable can remain at one station but not for good. This application is barred by res judicata because no other issue has been raised which was not raised in the previous O.A. In the previous O.A., the applicant had prayed that the husband should be shifted to Delhi while

in the present O.A. the prayer is that the wife should be shifted to the place of posting of her husband. It means the same thing that both wife and husband should be posted at the same station. Since no liberty was granted to the applicant to approach the court again and since she was given the freedom to file the application and the respondents were asked to consider the same sympathetically and they have considered the matter and have rejected the application. The orders of the court have been complied with. The matter has already been adjudicated upon by a court of competent jurisdiction and no new issue has been raised rather the same issue has been raised in a different manner. This is covered by the principles of resjudicata which embodies the law of universal application that there should be an end to litigation as a public policy. If the litigating parties and the issues are the same and the issues have been decided by a court of competent jurisdiction, no other application will be permissible.

This application is dismissed in limine at the notice stage itself as being barred by resjudicata.

(B. K. SINGH)
Member (A)

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