



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.70 of 2021

Orders reserved : 15.02.2021

Orders pronounced on : 05.03.2021

Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)

Aruni Kumar. Sr. Accountant, Group 'C'
Aged about 35 years,
S/o Late Sh. Alok Deo Narayan,
R/o Qtr.No.441, Income Tax Colony,
Pitampura,
New Delhi-110034.

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Applicant

(through Advocate Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi.
2. The Controller General of Accounts,
Mahalekha Niyantrak Bhawan,
Ministry of Finance, GPO Complex,
Block-E, Aviation Colony, INA,
New Delhi-110023.
3. The Principal Chief Controller of Accounts,
Central Board of Direct Taxes,
9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

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Respondents

(through Advocate Mrs. Anupama Bansal)

O R D E R



Hon'ble Mr. R. N. Singh, Member (J):

In the present Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 23.12.2020 (Annexure A-1) vide which the applicant has been transferred from CBDT, Headquarters to ZAO, Rajkot.

2. The applicant has prayed for the following reliefs:-

- “8(i) To quash and set aside the impugned Order No. 148/2020-21 dated 23.12.2020 to the extent the applicant has been transferred from CBDT, HQ to ZAO Rajkot and direct the respondents to continue the applicant in the office of Pr. Chief Controller of Accounts, CBDT, Delhi.*
- (ii) To declare the action of respondents in transferring the applicant as illegal and issue appropriate directions to continue him at the present place of posting.*
- (iii) Such other and further order which their Lordships of this Hon'ble Tribunal deem fit and proper may please be passed.”*

3. Pursuant to notice from this Tribunal, the respondents have filed their counter reply and the applicant has filed rejoinder.

4. One Misc. Application, being MA No.314/2021, has also been filed on behalf of the respondents praying



therein to vacate and/or to suitably modify the interim order dated 14.1.2021 passed by this Tribunal in the present OA.

5. As the learned counsels for the parties have agreed to argue the OA itself, the same has been heard with the consent of learned counsels for the parties.

6. The facts leading to the present OA are that the applicant was initially appointed as Accountant under the respondents and posted under respondent no.3 at New Delhi in the month of November 2012. After completion of three years of service, he was promoted to the post of Senior Accountant. Aggrieved by the impugned transfer order dated 23.12.2020 (Annexure A-1), the applicant is stated to have made representation dated 28.12.2020 followed by another representation dated 06.01.2021 (Annexure A-4 Colly).

7. Shri Bhardwaj, learned counsel for the applicant, has argued the following grounds in support of the applicant's aforesaid prayers in the present OA:-

(i) that the applicant's wife is serving in Bank of India, a public sector undertaking bank, and is posted at New



Delhi and, therefore, the applicant is protected from transfer in view of the guidelines issued by the Department of Personnel and Training (hereinafter referred to as 'DoP&T') vide their Office Memorandum dated 30.09.2009 (Annexure A-5). He submits that provisions of para 4.(vi) of the said guidelines has been violated by the respondents in passing the aforesaid impugned order;

(ii) that the applicant has been discriminated in as much as the longest stayees in Delhi have not been transferred whereas the applicant has been picked up for transfer vide the impugned order. He submits that such action of the respondents is arbitrary and discriminatory. In this regard, he has placed reliance on the decision of a Single Bench of this Tribunal at Allahabad in OA No.938/2013, titled **Deepak Kumar Dhasmana** vs. **Union of India and others**, dated 21.5.2015;

(iii) that the impugned transfer is in violation of letter dated 27.4.2020 (Annexure A/7) issued by the Ministry of Housing and Urban Affairs (Works Division) of Govt. of India wherein it has been provided that rotational transfers in respects of officers in CPWD should be kept in



abeyance with immediate effect till further advice from the Ministry in the light of the prevailing situation arising out of pandemic COVID-19; and

(iv) that the Accountants and Senior Accountants are not subjected to routine transfer and the respondents have not formulated any transfer policy for them though formulated in the case of Assistant Accounts Officer.

8. Though the learned counsel for the applicant has taken only the aforesaid grounds in support of the claim of the applicant, however, while going through the pleadings, we find that the applicant has also taken a few other grounds in his aforesaid representation dated 28.12.2020. Such grounds includes that the applicant's wife was in family way when the impugned order of transfer has been passed. The applicant is blessed with a baby boy on 25.12.2020. The applicant's wife and newly born baby need his presence. The applicant's mother is 75 years old and suffering with old aged health problems. His father-in-law is blind and applicant and his wife are the only support to him. Besides, after unfortunate demise of his elder brother in 2011, the applicant is responsible to take



care of his brother's wife, i.e., his sister-in-law and her two daughters.

9. With the assistance of counter reply, Mrs. Bansal, learned counsel for the respondents has raised a preliminary objection that the applicant has not approached this Tribunal with clean hands in as much as he has concealed the material facts. She submits that vide Order dated 7.1.2021 (Annexure R-1), the applicant was granted paternity leaves as per rules and even the paternity leave was extended and he was relieved w.e.f. 14.1.2021 (afternoon). However, the applicant concealed these facts for obtaining interim order dated 14.1.2021. She further argues that the applicant has been transferred in public interest and transfer being an incidence of service, the applicant is not having any enforceable right to stay at a particular place. The Recruitment Rules for Accountant/Senior Accountant notified in Gazette notification dated 24.1.2012 (Annexure R-2) itself in para 6 provides that 'The Accountant and Senior Accountant shall be liable to serve in any part of India.' She also submits that transfer policy is not a pre-requisite for transfer of the Accountant and Senior Accountant as it is



done keeping in view the administrative need and to ensure smooth functioning of offices and overall administrative efficiency in the organisation in public interest. She reiterates that Recruitment Rules (Annexure R-2) clearly provides that the post, which the applicant holds, carries all India transfer liability. She further submits that even the policy/guidelines dated 30.9.2009 (Annexure A-5) issued by the DoP&T and relied upon by the applicant has not been violated in as much as the applicant's wife is admittedly working in PSU Bank and in view of provisions of para 4 (vi) of the said OM, his wife is required to apply to the competent authority and the said authority may post her to the station where the applicant is posted. The Bank of India in which the applicant's wife is working, has a very large presence in Gujarat and has 12 (twelve) branches in Rajkot itself (Annexure R-3) where the applicant has been transferred. She also submits that it is an admitted case of the applicant that applicant's wife has not chosen to apply for her transfer at the place where her husband, i.e., the applicant was posted. She further argues that applicant's representation dated 28.12.2020 has been considered by the respondents, however, the same could not be acceded to on administrative grounds



and such decision has been conveyed to the applicant on 12.1.2021 (Annexure R-4). Respondents in their counter reply have further explained that Shri B. Srujan Babn, Accountant was posted in the Field Pay Unit (FPU), Guntur in 2016 and since November 2019, he was given additional charge of FPU, Vijaywada since the post of Accountant at Vijaywada was vacant. For more than a year, Shri Babu has been shuttling between Guntur and Vijaywada every 2-3 days to discharge his main duty and the additional charge. They have further explained that when the administrative circumstances improved, Shri Babu has been transferred to Vijaywada. She further argues that mere hardship shown by the applicant in his representation or asserted in the OA will not vitiate the impugned order in as much as the same has been passed by the competent authority keeping in view the relevant Recruitment Rules and also administrative exigency. She has further invited our attention to sanctioned strength of Accountant/Senior Accountant (Annexure R-9) and submits that there is a shortage of Accountant/Senior Accountant in most of the offices of the Principal Chief Controller of Accounts, Ministry of Finance, Department of Revenue, Central Board of Direct



Taxes at various stations and total vacancies being more than 200, certain appointments were made on deputation at various offices across the country including Delhi to improve the situation. To ensure smooth functioning of office at Rajkot, the competent authority has decided to transfer the applicant to Rajkot where only two Accountants/Senior Accountants were working against the sanctioned post of seven Accountants/Senior Accountants (Annexure R-9). She further submits that OM dated 27.4.2020 (Annexure A-7) referred to and relied upon by the applicant is internal communication of Ministry of Housing and Urban Affairs and that too with regard to transfer in respect of officers working in CPWD and the same is neither a policy decision of the Government of India nor binding on the respondents. She further adds that the said OM was issued by the concerned Ministry when the country-wide lockdown was enforced and now after a lapse of around eight months thereafter almost all the restrictions, including domestic transportation have been removed. Transfer orders are being passed in respect of officers of all levels in various departments. She has also placed on record certain orders of transfer from the Income Tax Department



(Annexure R-6). Lastly she submitted that in view of the aforesaid facts and circumstances of the case, the present OA is liable to be dismissed by this Tribunal.

10. Before we deal with the respective contentions, we intend to refer the legal principles relating to the transfer of an employee and the scope for this Tribunal to interfere therein. In this regard, we may take the benefit of a Judgment of Hon'ble Apex Court in the case of **State of Madhya Pradesh and another vs. S.S. Kourav and others**, 1995 (29) ATC 553, wherein it has been ruled that hardship caused to an employee from transfer cannot be a ground for judicial review. The Hon'ble High Court of Delhi vide Order/Judgment dated 20.12.2007 in Writ Petition (Civil) No.1358/2007, titled **Sujata Kohli vs. High Court of Delhi**, reported in 2008 (101) DRJ 83 (DB), has noticed and ruled in paragraphs 13 to 21 as under:-

"13. It is not in dispute that transfer is an incidence of service and the High Court, which has the superintending control over the subordinate judiciary, is empowered to decide about the posting, transfer, promotion etc. of the judicial officers belonging to the subordinate judiciary. Law in the matter of transfers is also well settled by catena of judgments of the Apex Court. Instead of taking note of all these judgments, it would be sufficient to refer to two decisions of the Apex Court wherein the Court



considered its earlier decisions. First case, note whereof we take, is *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Ors.* AIR 2004 SC 4850, wherein the Court reiterated the principle of law in the following terms:

14. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray v. State of Orissa* 1995 4 SCC 169. Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the Court cannot interfere with it (see *Union of India v. S.L. Abbas* (1993) II LLJ 626 SC . Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In *Union of India and Ors. v. Janardan Debanath and Anr.* (2004) II LLJ 1057 SC it was observed as follows:

15. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National*



Hydroelectric Power Corporation Ltd. v. Shri Bhagwan (2001) II LLJ 1243 SC .

16. Again, in a recent judgment in the case of Mohd. Masood Ahmad v. State of U.P. and Ors. JT 2007 (11) 540 , the Supreme Court made the following pertinent observations:

17. As repeatedly held in several decisions, transfer is an exigency of service vide B. Varadha Rao v. State of Karnataka (1986) II LLJ 516 SC, Shilpi Bose v. State of Bihar (1991) II LLJ 591 SC, Union of India v. N.P. Thomas (1993) II LLJ 626 SC, Union of India v. S.L. Abbas (1993) II LLJ 626 SC (sic) etc.

18. In State of Punjab v. Joginder Singh Dhatt AIR 1993 SC 2486 this Court observed (vide paragraph 3 of the said AIR):

We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.

19. In Abani Kanta Ray v. State of Orissa 1995 4 SCC 169 : 1996 IC 982, this Court observed (vide paragraph 10):

It is settled law that a transfer which is an incident of service is not to be interfered



with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh v. Union of India).

20. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao v. Union of India AIR 1993 SC 1236 , National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan (2001) II LLJ 1243 SC , State Bank of India v. Anjan Sanyal (2001) I LLJ 1687 SC . Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. (1997) 3 ESC 1668 : 1998 All LJ 70 and Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866 : 1998 All LJ 245, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

21. In view of the aforesaid dicta, it is clear that transfers normally are not to be interfered with in exercise of the power of judicial review under Article 226 of the Constitution. The only grounds on which the Court can strike down an administrative order of transfer are -(a) when the order is mala fide; or (b) when service rules prohibit such transfer; or (c) when the transfer order is issued by incompetent authority.”



11. The Division Bench of this Tribunal at Kolkata in OA No.406/1991, titled **Aloke Nath Mitra vs. Union of India and others**, vide Order/Judgment dated 27.5.1991, reported in 1991 (17) ATC 786, has held in paragraph 17 as under:-

“17. Finally, we must reject the plea of the applicant that there are other people in Asansol Division with longer stay at the same station, as it is well established that the administration is the best judge to decide which employee can be best utilised where and for how long. Since the applicant has had a long tenure at Asansol since 1978, he can have no grievance against the impugned transfer order. Hence, this application must fail.”

12. The Hon'ble Supreme Court in **Union of India and another vs. N.P. Thomas**, reported in 1993 SCC (L&S) 237, has held in paragraphs 7 and 8 as under:-

“7. In Shilpi Bose's case (AIR 1991 SC 532), the Court observed thus (Para 4):

"In our opinion, 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 as 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."

8. In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion."

13. We have heard the learned counsels for the parties and we have also perused the pleadings on record as well as the judgment of Single Bench of this Tribunal at Allahabad in **Deepak Kumar Dhasmana's** case (supra) relied upon by the learned counsel for the applicant.

14. In the present case, it is not in dispute that in view of relevant Recruitment Rules, the applicant is having all India transfer liability. It is also not in dispute that the



transfer order dated 23.12.2020 has been passed by the competent authority qua not the applicant but also in respect of two other officials. It is also not the case of the applicant that any of the conditions of service of the applicant has been infringed by the impugned order. The guidelines issued by the DoP&T through the aforesaid OM dated 30.9.2009 in para 4 (vi) provides as under:-

“(vi) Where one spouse belongs to a Central Service and the other spouse belongs to a PSU:-

The spouse employed under the PSU may apply to the competent authority and the said authority may post the officer to the station or if there is no post under the PSU in that station, to the station nearest to the station where the other spouse is posted. If, however, the request cannot be granted because the PSU has no post in the said station, then the spouse belonging to the Central Service may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station, to the station nearest to the station where the spouse employed under PSU is posted.”

15. In view of the aforesaid provision of DoP&T's OM dated 30.9.2009, it is evident that the applicant's wife, who is working in PSU Bank, is at liberty to apply to her competent authority for her posting at the station where



the applicant has been transferred. Therefore, there is no violation of the said OM by the respondents. The aforesaid facts also indicate that the respondents were in administrative need of posting certain person(s) at Rajkot as out of nine sanctioned posts of Accountant/Senior Accountant, only two were filled up. It is also not in dispute that the applicant's representation has been considered by the respondents and has been responded to by the respondents vide their communication dated 12.1.2021 (Annexure R-4). The applicant's aforesaid OA was listed before the Tribunal and was heard on 14.1.2021, however, it has not been revealed by the applicant that his representation has already been replied to on 12.1.2021 and even thereafter the applicant has not chosen to challenge the same on whatsoever ground. It is also the admitted case that though in the Original Application as well as in his representation, the applicant has taken the ground of personal hardships arising out of age and ailments of his mother, father-in-law and on account of unfortunate demise of his elder brother, however, the same has not been argued as noted hereinabove. Moreover, in view of law laid down by the Hon'ble Apex Court in **S.S. Kourav's** case (supra),



hardships caused to an employee from his transfer cannot be a ground for judicial review. The Order/Judgment of Single Bench of this Tribunal at Allahabad in **Deepak Kumar Dhasmana's** case (supra) referred to and relied upon by the learned counsel for the applicant is of no help to the applicant in as much as therein in the said case, the Tribunal has come to the finding that the impugned transfer order therein in the said case was issued against the norms, policy and guidelines of the concerned respondent. Further the Order/Judgment of the Single Bench is neither binding for us nor of any help in view of the law laid down by the Hon'ble Apex Court in **N.P. Thomas's** case (supra) as well as the decision of the Division Bench of this Tribunal at Kolkata in **Aloke Nath Mitra's** case (supra). The impugned transfer is also not a result of any malafide.

16. In view of the aforesaid facts and law laid down by the Hon'ble Apex Court and Hon'ble High Court and Order/Judgment of this Tribunal as noted hereinabove, we find that the present OA lacks any merit. Accordingly, the same is dismissed. The interim order dated 14.1.2021 is vacated. However, in the facts and circumstances, cost

is made easy. Pending MA also stands disposed of accordingly.



(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

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