

•(Reserved on 09.10.2020)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad, this Thursday, the 15th day of October, 2020

Original Application No. 330/00565/2020

Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)
Hon'ble Mr. Navin Tandon, Member (A)

Girijesh Kumar Gaur, S/o Late K.R. Gaur, aged about 47 years, permanent resident of Mahavidya Colony, Govind Nagar, Mathura, presently posted as ADSTE Orai under NCR Jhansi Division, R/o Railway Colony, Station Road, RB-4, Orai, District Jalaun (U.P) 285001.

...Applicant
By Adv : Shri S.M. Ali

V E R S U S

1. Union of India through General Manager, Head Quarter, North Central Railway, Allahabad.
2. General Manager (P), Head Quarter, North Central Railway, Prayagraj.
3. Senior Personnel Officer, (Gaz.) Head Quarter, North Central Railway, Prayagraj.
4. Principal Chief Signal and Tele Communication, Head Quarter, North Central Railway, Prayagraj.
5. Senior Divisional Signal and Tele Communication Engineer (Coordination), N.C.R., Jhansi .

...Respondents
By Adv: Shri Shesh Mani Mishra

O R D E R

By Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)

We have joined this Division Bench online through Video Conferencing.

2. Shri S.M. Ali, learned counsel for the applicant and Shri Shesh Mani Mishra, learned counsel, who has received advance notice on behalf of respondents, both are present in court.

3. We have heard learned counsel for the parties on admission and perused the records available in pdf. form.

4. The applicant herein, who is presently posted as Assistant Divisional Signal and Telecommunication Engineer, at Orai, under North Central Railway, Jhansi Division, is aggrieved by his transfer order dated 30.09.2020 whereby he has been transferred from Orai to Prayagraj/Allahabad Headquarter. The main reason for grievance of the applicant, as stated in the OA, is that his elder son is suffering from haemophilia and he is now under medical treatment in Ganga Ram Hospital and AIIMS, New Delhi.

5. According to the applicant, he is the only male member in the family, who is the care-giver of his disabled son. Learned counsel for the applicant has drawn our attention to the comprehensive transfer policy issued by the Railway Board for railway officers on 31.08.2015 (copy whereof has been annexed as Annexure A-6 to the OA). According to this transfer policy, a government servant, who is also a care-giver of a disabled child, will be exempted from routine / rotational transfer subject to Office Memorandum dated 06.06.2014.

6. Learned counsel for the applicant has contended that in view of the disability of son of the applicant, the impugned transfer is not sustainable as it has been passed in clear violation of para XV of the aforesaid transfer policy. In this regard, our attention has been drawn to para XV of Annexure A-6, which provides as under: -

“XV. A government servant, who is also a care-giver of disabled child, may be exempted from the routine exercise of transfer / rotational transfer subject to administrative constraints as per OM No. 42011/3/2014-Estt (RS) dated 06.06.2014.”

7. It is next contended that the Office Memorandum dated 08.10.2018, also provides for exemption from routine exercise of transfer/rotational transfer of a government employee, who is the care-giver of dependent daughter/son/parents/spouse/ brother/sister with specified disability.

8. Our attention has also been drawn to clause 3(ii) of O.M. dated 08.10.2018, which defines the term 'specified disability' and a perusal of it reveals that haemophilia is included in the term 'specified disability'. Sub clause (iii) of clause 3. of the aforesaid O.M clearly stipulates as under: -

"The term 'specified disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer / rotational transfer by a government employee, who is a care-giver of the dependent daughter/son/parents/ spouse/brother/sister with specified disability, as stated in para 3(i) above."

9. It is further contended that the applicant had requested for his posting at any place situated nearby Delhi like Mathura or Agra, but the respondents, without considering his difficulties and without keeping in view their own transfer policy and OMs dated 06.06.2014 and 08.10.2018, have issued routine transfer order of the applicant for Prayagraj, which is situated far away from Delhi where the treatment of applicant's son is going on.

10. The applicant is aggrieved due to the reason that he has always to perform road journey while taking his son to Delhi, in order to avoid any injury on his body because even any small injury can be very harmful for the life of his son. It is submitted that a person, who is suffering from Haemophilia starts to bleed continuously and profusely even if he suffers a small injury. The distance by road from Prayagraj to Delhi is just double

to the distance from Orai to Delhi and great difficulty will be caused to the applicant while taking his son by road to Delhi from Allahabad.

11. On the aforesaid grounds, it has been prayed that the impugned transfer order be set aside. As an interim relief, it has been prayed that the operation of the impugned transfer order dated 30.09.2020 be stayed during the pendency of the present OA.

12. Alternatively, it has been prayed by learned counsel for the applicant that a representation dated 06.10.2020 is pending consideration before the respondents, who may be directed to decide it by a reasoned and speaking order in a time bound manner, in the light of the provisions of transfer policy dated 31.08.2015 and O.M dated 08.10.2018.

13. To the contrary, learned counsel for the respondents has opposed the OA by contending that the transfer, as per the settled legal principles, is an incidence and condition of service and a government servant cannot disobey the transfer order by not reporting at the place of posting where he has been transferred. In this regard, reliance has been placed on the judgments of Hon'ble Supreme Court rendered in S.C. Saxena Vs. U.O.I & Ors decided on 21.02.2006 (Civil Appeal No. 280/2003), Gujarat Electricity Board and Anr. Vs. Atma Ram Sungomal Poshani – 1989 SCC (2) 102 and Union of India & Anr. Vs. S.L. Abbas – 1993 AIR 2444.

14. Learned counsel for the respondents, in support of his contention, has also filed two recent judgments of Hon'ble Allahabad High Court. The first judgment is dated 08.07.2020 passed in Writ (A) No. 4226/2020 – Dr. Rakesh Bhartiya Vs. U.O.I. & Ors. and the second one is the judgment, passed in Special Appeal (defective) No. 402/2020 – U.O.I & Ors. Vs. Dr.

Rakesh Bhartiya, filed against the judgment passed by Hon'ble single judge, in aforementioned Writ (A) No. 4226/2020.

15. Hon'ble Allahabad High Court. In Writ (A) No. 4226/2020, had directed the respondents not to transfer the petitioner from his current posting till 31.05.2021, on the ground that the petitioner's wife was in the midst of a PG Course at Sitapur and the petitioner had to take care of his six years old mentally challenged son.

16. Against the aforesaid order of Hon'ble Single Judge, a special appeal was filed, which was allowed and the order passed by Hon'ble Single Judge was set aside.

17. In reply to the aforementioned objections, learned counsel for the applicant contended that the facts of the case before the Hon'ble High Court were entirely different. Therefore, these two judgments are not applicable to the present case.

18. Having considered the rival contentions advanced by the learned counsel for both the parties and keeping in view the fact that a representation dated 06.10.2020 is pending consideration before the respondents, we are not inclined to enter into the merits of the case at this stage.

19. In view of the above, no useful purpose will be served in keeping this matter pending and it is finally disposed of at the admission stage, with a direction to the competent authority of the respondents, to decide the representation of the applicant dated 06.10.2020, by a reasoned and speaking order, in accordance with law, in the light of comprehensive

transfer policy dated 31.08.2015 and OM dated 08.10.2018, within a period of two months from the date of receipt of certified copy of this order. The order so passed on the representation shall be communicated to the applicant without any delay.

20. Till the disposal of representation, the applicant shall not be relieved from his present place of posting, namely Orai. However, in case, he has already been relieved, we direct the respondents not to force the applicant to join his duty at Prayagraj, till the disposal of his representation.

21. With the aforesaid direction, this OA is disposed of at admission stage.

22. It is made clear that no opinion has been expressed on the merits of the case.

23. There shall be no order as to costs.

(Navin Tandon)
Member (A)
Anand...

(Justice Vijay Lakshmi)
Member (J)