

Reserved
On 07.12.2020

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

**Original Application No. 330/00722/2020
Along with
Original Application No. 330/00724/2020**

Allahabad, this the 14th day of December, 2020

**Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A**

O.A. No. 722 of 2020

MES No. 486408, Smt. Ranjana Singh, wife of Sri Nimesh Singh, JE (Civil), JE (AF), Gorakhpur.

Applicant

By Advocate: Shri V.S. Sisodia

Vs.

1. Union of India through Secretary, Ministry of Defense, New Delhi.
2. Directorate General (Pers) HQ Military Engineer Service Engineer-in-Chief's Branch, Kashmir House, New Delhi – 11.
3. HQ Chief Engineer, Central Command, Lucknow Pin 099450 C/o 56 APO.
4. HQ Chief Engineer (AF) Allahabad Zone C/o 56 APO Pin 211012.
5. HQ, CWE (AF) Bamraulee, Allahabad C/o 56 APO Pin 211012.
6. GE (AF) Gorakhpur, C/o 56 APO Pin 273008.

Respondents

By Advocate: Shri Chakrapani Vatsyayan

O.A. No. 724/2020

MES No. 608445, Nimesh Singh, Son of Sri Lal Sahab Singh, JE (E/M), C/O JE (AF), Gorakhpur.

Applicant

By Advocate: Shri V.S. Sisodia

Vs.

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Respondents

By Advocate: Shri Chakrapani Vatsyayan

Delivered by Hon'ble Mr. Devendra Chaudhry, Member (A)

The O.A. No. 722/2020 and O.A. No. 724/2020 have been filed by the applicants namely Smt. Ranjana Singh and Shri Nimesh Singh respectively who are husband and wife and are stationed presently at GE (AF), 56 APO, Gorakhpur.

2. The transfer is from the same current location albiet to different places, but the facts of the case are similar; hence, they are being dealt with jointly, for convenience and avoidance of repetition in arguments and conclusions thereof.

3. Further, arguments have been heard at length from the concerned counsels and so OAs are being disposed of by this common order at the admission stage itself.

4. In the case of O.A. No. 722/2020, the applicant Smt. Ranjana Singh has submitted that she has been transferred vide order dated 06.08.2020 to G.E. (AF) Meerut while her present place of posting is J.E. (Civil)/M.E.S., Gorakhpur where she was posted on 27.11.2014. The transfer order dated 06.08.2020 is in confirmation/continuation of

earlier order dated 21.01.2020 wherein she was transferred to the same place viz. G.E. (AF), Meerut which was apparently temporarily withheld vide order on representation of the applicant Ranjana Singh vide representation dated 21.01.2020. But that now by the impugned order dated 06.08.2020 (Annexure A-1), she has been transferred to G.E. (AF), Meerut against which she has made the latest representation dated 13.08.2020 before the respondent No. 2 on the ground that the transfer order is against the transfer policy dated 18.02.2019.

4.1. Her representation to respondent No. 2 has been returned by the respondent No. 5 on 28.09.2020 and the applicant has thereupon made a representation on 06.10.2020 before respondent No. 4. The representation is still pending and meanwhile vide order dated 03.11.2020, directions have been issued for movement of applicant to the transferred place viz Meerut.

4.2 The transfer order is challenged on the ground of being violative of transfer policy dated 18.02.2019 in which in paragraphs No. (xii) and (xiii), it is stated to be specified that working couples would be posted together at common place of posting. However, in the present instance, it is stated that the applicant Ranjana Singh in OA No. 722/2020 has been posted from Gorakhpur to Meerut while her husband-applicant in O.A. No. 724/2020 has been posted from Gorakhpur to Belgaum, Karnataka which are obviously different places and hence the transfer is violating of said transfer guidelines/policy dated 18.02.2019.

4.3 Learned counsel for the applicant also points out that the applicant in OA No. 722/2020 is pregnant since last six months and, therefore, transferring away from her husband would jeopardize her

health and would cause problem concerning pregnancy. Apart from this, there are health related problems of old aged mother-in-law which require her continued presence at Gorakhpur. Hence, it is prayed that her husband and she may be posted at Gorakhpur / a common place as per the transfer guidelines/policy.

5. In the same way in O.A. No. 724/2020, Shri Nimesh Singh who is the husband of Smt. Ranjana Singh-applicant in OA No. 722/2020 and also working since 18.07.2017 as J.E. in M.E.S. at Gorakhpur has been transferred vide order dated 31.01.2020 from Gorakhpur to Belgaum (Karnataka). Shri Nimesh Singh has submitted various representations like his wife Smt Ranjana Singh seeking stay of his transfer order etc and is thereupon now also requested for quashing of the order of transfer on similar grounds, as stated by Smt. Ranjana Singh in her O.A.

6. Shri Chakrapani Vatsyayan, learned Senior Standing Counsel for Government of India appearing for respondents in both the cases has submitted that the Hon'ble Apex Court, in catena of Judgments, has observed that no interference is required in the matter of transfer from the Courts/Tribunals as transfer is incident of service. He further submitted that the transfer policy/ guidelines are not statutory in nature and are at best executive instruction guidelines efficient deployment through transfer and posting of the officers as per the needs of employer, namely the Government. Further that the respondents have indicated that the applicants must join at the directed place of posting before any representation of theirs is to be considered. It is, therefore, prayed that there is no reason for quashing the transfer orders and the OAs need to be dismissed.

7. We have heard learned counsel for the applicant at length and perused the submitted records in PDF carefully.

8. It is clear from the arguments of learned counsel for the applicant, in both the OAs, that the grounds for quashing of the transfer order are: -

- (i) Smt. Ranjana Singh-applicant in OA No. 722 of 2020 is pregnant of six months and hence disturbance causes health problems;
- (ii) Concessions are available to women employees as per guideline para (xii) of the guidelines dated 18.02.2019 (Annexure-XI)
- (iii) As per para (xiii) of the transfer policy/guidelines, couples need to be posted together at a common place of posting

Clearly the entire argument rests on the three grounds above. On the issue of pregnancy it is notable that Mrs Ranjana Singh was first transferred in January 2020 and that as per her statement, she is six months pregnant which implies that her incidence of pregnancy is at least five months post transfer in January 2020 and there is no change in location of the transfer even by the subsequent order of August 2020. So the pregnancy is much after the issue of the transfer order in the first instance and so this plea is on a weak wicket.

9. As regards the other two issues, in order to examine the force of the arguments, we would straight away turn to rulings of the Hon Apex court in matters of transfer. Thus, in the matter of **Sukhdev Singh Vs. Bhagat Ram Sardar Singh Raghuwanshi, 1975 (1) SCC 421**, a clear

distinction has been made between **statutory rules and executive instructions**. Thus, it has been stated that the distinction between the rules and regulations on one hand and on administrative instructions on the other hand is that, the rules and regulations can be made only after reciting the source of powers. It follows from this that the transfer instructions and guidelines are mere office instructions as they do not derive directly from the Article 309 of the Constitution – the source of power directly so -which empowers the legislature to regulate the recruitment and condition of service of persons to appointed in public service posts. Again, in the matter of **Satyaveer Singh v. Union of India, 1985 (4) SCC 252**, the relative scope of executive instructions and statutory rules is dealt with and it has been held that both are different and the executive instructions stands at a lower footing than statutory rules. It is trite to observe that the Rule making power derives from Article 309 of the Constitution in the manner of subordinate legislation whereas the executive instructions do not have such force and cannot be elevated to the level of subordinate legislation. The executive instructions/guidelines etc pertaining to transfer either in the said transfer policy of 2019 are not pieces of subordinate legislation and cannot therefore be agreed to be statutory rules as asserted by the Ld Applicant Counsel. The sanctity that the statutory Rules/Regulations being higher than the executive instructions is further held in the matter of **State of Maharashtra Vs. Jagannath Achyout Karandikar, AIR 1989, SC 1133**. Other similar citations include: **Paluru Ramakrishanaiah v. Union of India, 1989 (2) SLR 202**, **Birndeshwari Ram v. State of Bihar, 1989 (4) SCC 465**, **Dr. Rajinder Singh v. State of Punjab, 2001 (5) SCC 482**.

10. On examination of the facts in the instant case closely qua the cited rulings, it is quite clear that the impugned transfer policy is changeable by executive instructions. They can, therefore, not acquire the authority of the statutory rules because the rules cannot be amended by executive orders. This is further fortified in the matter of **K.A. Nagamani v. Indian Airlines, 2009 (5) SCC 550** in which it has been held that

*“....mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to Parliamentary approval stand on entirely different footing. The administrative rules are always considered and have repeatedly been held to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. **Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure**(emphasis supplied). There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.,,”*

11. In fact, it has also been held quite clearly in the matter of **Ajaya Kumar Das v. State of Orissa, 2011 (11) SCC 136** that whatever may be the efficacy of the executive orders or circulars or instructions, statutory rules cannot be altered or amended by executive orders or circulars or instructions nor can they replace the statutory rules. Such being the distinction between rules and executive instructions, it is quite clear that the impugned transfer orders are at best by way of executive instructions, which can be amended from time to time by competent executive authority who need not to refer the legislature for

framing Transfer Policy or any such authority which concerns Rule making power required under the Constitution such as w.r.t. conditions of the service of the applicant. Thus the plea that the impugned transfer orders are statutory rules and regulations to be followed at the pain of disregard to the Constitution or the Legislature or such Rule making body is not tenable. In fact the transfer orders are executive instructions and source of guidance only in view of the several Apex court rulings which we shall analyse shortly.

12. It would be well to begin this interesting task by appreciating that the whole business of transfer, based on the universe of rulings on the matter, can be looked at from some key view-points namely (i) nature of Transfer (ii) competent authority issuing the order (iii) rights of the concerned public servant or employee against a said transfer (iv) transfer as being exigencies of service, (v) transfer on grounds of malafide / by way of punishment / victimization/ with malice etc., (vi) representations challenging transfers (vii) issues of natural justice (viii) protection under Article 14 and 16 of the Constitution (ix) nature and force of transfer Guidelines/Instructions (x) Consequences of non-compliance with transfer order and (xi) interferences of the Courts in the matter of transfers

13. With respect to the nature of transfer, it is laid down again and again that the transfer is always understood and construed as incident of service (**B.Varadha Rao v. State of Karnataka, 1986 (4) SCC 624.** That, transfer is not a change in the conditions of service and it is to be well understood that the transfer of a government servant who is appointed at a particular cadre of transferable posts from one place to

other place is an ordinary incident of service and therefore, does not result in any alternation of any of the condition of service to government servant's disadvantage.

14. Similarly, in the matter of **Gujrat Electricity Board v. Atamaram Sungomal Poshani, 1989 (2) SCC 602**, it has been held that

*".....Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. **If the order of transfer is not stayed, modified, or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules** (emphasis supplied), as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.."*

15. This position is further buttressed by another bunch of rulings concerning the transfer as an exigency of service. These include: **T.D. Subramanian v. Union of India, 1981 (4) SCC 150** and **Laxmi Narain Mehar v. Union of India, AIR 1997 SC 1347**.

16. On the issues of malafide, should there be one, as no such allegation is made in the instant OA hence this aspect of transfer grounds is not being dealt herewith.

17. On the issue of husband and wife being posted together, the judgment and ruling in the matter of **Bank of India v Jagjit Singh Mehta, AIR 1992 SC 519**, is important. Here, it has been held that

*".....There can be no doubt that ordinarily and 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. The desirability of such a course is obvious. However, this does not mean that their place of posting 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 the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, **the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life.***

".....they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places.

"...No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible (emphasis supplied)...."

We would also cite the recent Division Bench judgment of the **Hon High Court Allahabad** wherein the order passed by the single judge in **Writ A No. 4226 of 2020** staying the transfer on humanitarian grounds, has been set aside in this special appeal by the DB comprising the Hon Chief Justice and it has been observed on the aspect of humanitarian grounds in the order dated 01.09.2020 that:

.." yet for reasons best known to him, his wife joined a two year Post Graduate course at Gorakhpur in that year itself. Perhaps it is only upon the respondent-petitioner's wife having joined the Post Graduate course that he made the representation seeking accommodation.

9. For the reasons noted above, present special appeal is allowed. The order dated 08.07.2020 passed by the learned Single Judge is set aside and the writ petition is dismissed...”

18. On the issue of transfer violating Constitutional rights under Article 14 and 16, it has also been held in the matter of **E.P. Royappa v. State of Tamil Nadu, 1974 (4) SCC 3** that so long as the transfer has been made on account of exigencies of administration it would not be open to attract under Article 14 and 16. In fact, in the matter of **Sreedam Chandra Ghosh v State of Assam, 1996 (10) SCC 567**, it has been held that when the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officers and when the person complains of the non-compliance to the court, **the court necessarily have to give effect to the order and give directions from enforcement thereof** (emphasis supplied). **Even dismissal on account of refusal to join at the place of transfer has been held valid as State of Punjab v Baldev Singh, Conductor, 1998 (9) SCC 325**(emphasis supplied).

19. As regards interference of the Courts in the matter of transfer, it is trite to observe that the Hon Apex Court has consistently frowned often on stays granted by lower courts. Here also there is a bunch of rulings on the matter such as in the matter of **Shanti Kumari v Regional Deputy Director, Health Services, Patna, 1981 SCC (L & S) 285, Union of India v. H.N. Kirtania, 1989 (3) SCC 447** etc. In fact to go a step further, the courts have been advised not interfere with the matter of transfer **even in the writ jurisdiction - State of Punjab v. Joginder Singh Dhatt, AIR 1993 SC 2486** and also on administrative

grounds as in the matter of State of M.P. v. S SKourav, 1995 (3) SCC 270, Union of India v. Ganesh Dass Singh, 1995 SCC (L&S) 1142 etc.

20. Thus, as it may be seen that while few judgments do exist and cited w.r.t. interference by the courts in the matter of transfer on the grounds of malice and competent authority, since no such grounds exist in the present case, we cannot give the benefit to the applicant w.r.t them. The comprehensive analysis heretofore qua the rulings of the Hon'ble Apex Court and various courts weigh heavily in, in the favour of non-interference in transfer matters except in very exceptional circumstances. Here we do not find the same as analysed above in sufficient detail. Hence, we find it difficult to interfere with the impugned transfer orders.

21. In conclusion, therefore, after covering the length and breadth as well as depth of the incisive arguments as well as due respect to the rulings cited by the Ld applicant counsel, we cannot but conclude that there are no cogent grounds available to interfere with the impugned transfer orders. Therefore, relief sought is liable to fail and fails. Original Applications are accordingly dismissed.

22. No costs.

(Devendra Chaudhry)
Member – A

(Justice Vijay Lakshmi)
Member – J

/M.M/