

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2040/2004

* February
New Delhi this the 21st day of January 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Ms. Madhu Bala,
D/o late Shri Harbans Lal,
Quarter No. 1890, Type-III,
NH-IV, Faridabad.

.... Applicant.

(By Advocate Shri K.L. Bhandula)

Versus

1. Union of India through Secretary,
Water Resources,
Ministry of Water Resources,
New Delhi.
2. Chairman, Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi.
3. Superintending Engineer,
Planning Circle, CWC,
NH-IV, Faridabad.
4. Executive Engineer,
Planning and Investigation Division,
CWC, NH-V, Faridabad.

.... Respondents.

(By Advocate Shri D.S. Mahendru)

O R D E R (ORAL)

By this O.A., applicant has sought quashing of the order dated 17.04.2003, as amended vide order dated 05.09.2003 and relieving order dated 13.10.2003. She has further sought a direction to the respondents to allow her to join duties in the office from where she was transferred with all consequential benefits.

2. It is submitted by the applicant that she joined as LDC on 6.1.1971. She was promoted as UDC on 12.9.1979 and was transferred from Northern Regional

* Typographical error corrected
as per order dt: 11/03/05 in OA 525/05
in OA 2040/24. J.Lawellur
11/03/2005

Electricity Authority (CEA), New Delhi to Investigation Circle-II, CWC, Faridabad.

3. That vide order dated 17.04.2003, 17 persons were transferred, out of which three ladies, namely, Smt. Kiran Chawla, Smt. Kamla Kaushal and Smt. N.D. Gera have been accommodated on their representations and even though applicant is also similarly situated, no order has been passed on her representation. Therefore, she had no other option but to file the present O.A. It is submitted by the applicant that she is a divorcee and has no support. Her son suffers from Tuberculosis. She had undergone a surgical operation and could not arrange her final operation because of being wholly dependent on her salary and even her competent authority where she was working had recommended her case for favourable/sympathetic consideration vide their letter dated 23.6.2003 yet her transfer order has not yet been cancelled though the transfer order of Smt. Chawla, who is senior to her in the seniority list, has been cancelled. Smt. Kiran Chawla's transfer has been cancelled, on the ground that she is a widow and is having a son, who is psychiatric patient. Similarly, Smt. N.D. Gera was also accommodated since she had undergone an operation. Applicant is also similarly situated person. Therefore, she cannot be treated in a different manner. Smt. Gera has even been allowed to go on deputation to the office of Controller of Accounts, Ministry of Agriculture on 6.1.2004.

4. Respondents on the other hand have submitted that applicant has transfer liability all over India. She was transferred along with number of other persons as she was one of the longest stayee in Northern Region. This transfer order was made to accede to the request of NER and other Region officials who have completed their tenure and requested for posting to Delhi. Moreover, applicant was transferred earlier also in the year 1990 and 2000 out of Delhi Region but her transfer order was cancelled on receipt of VIP reference. They have further submitted that since her appointment in Government service w.e.f. 6.1.1971, she has never worked outside Delhi Region. She submitted a similar application and requested for cancellation of her transfer order to Shillong. She was informed



that as she is a longest stayee, she has to be shifted from her present place of posting. However, she was asked to give her option for posting to a nearby place to Delhi, as some vacancies were available at Jaipur and Chandigarh. She gave her option for transfer to Chandigarh after one year and requested for retention at Faridabad. The request was considered but her retention at Faridabad could not be acceded to. She was thus transferred to Chandigarh vide modification order dated 5.9.2003. She did not join at Chandigarh for a long time and in the meantime a person on promotion has joined at Chandigarh. Therefore, now applicant can be allowed to join at Jammu. They have thus submitted that competent authority has already considered her request and posted her as per her choice station also but yet she is not willing to join there. She cannot be allowed to remain at one place throughout her life.

5. As far as the other cases are concerned, they have stated that Smt. Kiran Chawla is a widow having a grown up son who is a psychiatric patient. Therefore, it was keeping in view her circumstances that her transfer to Shillong was cancelled vide order dated 9.9.2003. As far as Smt. N.D. Gera is concerned, she initially gave a representation which was not acceded to but later on she submitted a representation for retention at the same place of posting for one year on medical grounds as she was surgically operated for spondylitis and L-4 and L-5 vertebra have been removed and a metallic plate inserted thereon. Moreover, her husband also met with an accident and totally dependent on her. Therefore, it was in these circumstances that her order of transfer was kept in abeyance for one year i.e. upto 31.03.2003 vide order dated 05.09.2003. Later on, she was selected for deputation in PAO, Ministry of Agriculture. She has thus proceeded on deputation. They have thus submitted that each case has to be decided on the given facts and since Smt. Kiran Chawla's case was more serious, she was accommodated whereas in case of applicant earlier also twice on her request, the transfer order was already cancelled. They have thus prayed that the O.A. may be dismissed.

6. I have heard both the counsel and perused the pleadings as well.



7. By now it is too well settled that in transfer matters, courts are not to interfere in a routine matter. It has repeatedly been held by the Hon'ble Supreme Court that if a person has transferable job and transfer is made in the administrative exigency, courts should not interfere. The only ground on which interference can be made by the courts is if the transfer is as a result of mala fides or is contrary to any statutory rules. In fact, in case of State of Madhya Pradesh & Ors. Vs. Sri. S.S. Kourav & Ors. (JT 1995 (2) SC 498), Hon'ble Supreme Court held as follows:

"The courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation".

In case of National Hydroelectric Power Corporation Ltd. Vs. Shiv Bhagwan and Shiv Prakash (2001 (8) SCC 574), Hon'ble Supreme Court held as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable post from one place to other 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 of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders....."

In the latest judgment given by Hon'ble Supreme Court in the case of State of U.P. Vs. Goverdhan Lal (2004 (2) SCSLJ 42), Hon'ble Supreme Court observed as under:

"Whether courts or tribunals can substitute their own decisions in the matter of transfer for that of competent authority – No – Even challenge to transfer on account of mala fide must be such as to inspire confidence in the court or based on concrete materials - Mere allegations of mala fide or on consideration borne out of conjecture or surmises without any strong and convincing reasons cannot be a ground to interfere with the order of transfer".



There are many other judgments on the question of transfer given by the Hon'ble Supreme Court. It is not necessary to quote all of them because in all the judgments, it has been insisted and reiterated by Hon'ble Supreme Court that who should be posted where are the matters which are to be left to the administration to decide and so long their actions are based on justifiable reasons, it cannot be interfered with.

8. If the facts of the present case are seen in the backdrop of the judgments, as referred to above, it cannot be said that the order of transfer passed by the respondents is either mala fide or is contrary to the statutory rules because by the order dated 17.4.2003, as many as 17 persons were transferred in public interest. Respondents have explained that applicant has been in Delhi Region right from the date of her appointment i.e. 6.1.1971 and has never worked outside Delhi Region. She was earlier also transferred twice out of Delhi Region but the transfer order was cancelled on a reference by a VIP. Even this time her transfer was done because she was the longest stayee at Delhi Region but in spite of it on a representation, she was offered to go ^{to} a nearby place i.e. Chandigarh as per her own option. So an effort was made to accommodate her in a nearby place which shows bona fides of the respondents but applicant did not join even at Chandigarh. Naturally, the post cannot be kept vacant at the whims of an employee. In the meantime that post has already been filled on promotion from another employee. Therefore, now the only place, according to the respondents, left is at Jammu where applicant can join. They have also explained the circumstances under which the transfer of Smt. Kiran Chawla was cancelled as she was a widow and was having a grown up son who is a psychiatric patient whereas in case of Smt. N.D. Gera she had undergone a surgical operation for spondylitis and L-4 and L-5 vertebra had been removed and her husband had also met with an accident who was totally dependent on the wife. It was in these circumstances that her transfer order was kept in abeyance for a period of one year only. She was, however, selected for deputation and has since proceeded on deputation.



9. The documents which have been annexed by the applicant along with the O.A. show the certificate with regard to her son was issued on 9.6.1998 wherein it was stated that he was suffering from Tuberculosis and he will need treatment for at least five more months, meaning thereby that the disease was in 1998. There is no subsequent certificate on record to suggest that he is still suffering from Tuberculosis, in the absence of which it has to be presumed that presently applicant's son is alright. Otherwise, she would have annexed those certificates as well. As far as applicant is concerned, her prescription is also of the year 1997 when she was operated for patella (page 28). The prescription of 19.2.2004 shows that the only problem she has is limitation of extreme of movement in left knee. If the circumstances of applicant are compared with that of Smt. Kiran Chawla and Smt. N.D. Gera, naturally their circumstances were more pressing than that of applicant. Therefore, they have been accommodated for a short while whereas in case of applicant, her transfer had already been cancelled twice earlier and even this time also she has been accommodated by modifying her transfer from Shillong to Chandigarh which was much nearer to Delhi. She has ^{however} ~~further~~ lost the opportunity of joining at Chandigarh for reasons best known to her. Therefore, the only option now is to join at Jammu as stated by the respondents. In these circumstances, it cannot be said that applicant is being discriminated against. After all in matters of transfer, each case has to be decided on the given facts which have to be supported by the relevant documents. I hasten to add that it should not be construed as if applicant's problems are not existing. She might be having some difficulties due to her knee problem but that by itself cannot give a right to the applicant to remain at Delhi throughout her life. After all, she has a transferable liability and can be transferred anywhere in India. If that be so, it is an ^{region of} incidence of service. In such circumstances, Hon'ble Supreme Court has held that whenever a person is transferred, he or she must join at the place of transfer and then give a representation. Once transfer orders are issued, employee cannot sit at home only on the ground that either she or he gave a representation or has

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filed a case in the court of law. After all, administration has to run. Therefore, in the given circumstances, the relief as prayed for by the applicant cannot be given to her but at the same time since applicant has stated in the rejoinder that Girdhari Lal who was transferred in her place has not reported or joined in Planning and Investigation Division where the applicant was working. She may after joining at Jammu give a representation to the authorities concerned by pointing out the places where vacancies of UDC are available and where she can be accommodated. In case, she gives such a representation, I am sure that competent authority would apply his mind and try to adjust the applicant in any nearby station in case administrative exigency so permits and the vacancy is available. Therefore, applicant may give representation within two weeks after joining at Jammu which may be considered by the competent authority and disposed of by a speaking order under intimation to the applicant within four weeks thereafter.

10. With the above direction, this O.A. is disposed of. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'