

(P3)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1621/93.
MA No.1373/94.

New Delhi, this the second day of June, 1994.

SHRI J.P. SHARMA, MEMBER(J).

Shri S.K. Bajaj,
S/o Late Shri Chandar Bhan,
Welfare Officer, Central Social Welfare Board,
presently posted in Chandigarh Social Welfare Advisory Board,
Chandigarh.

R/o: Sector VII/285, R.K. Puram,
New Delhi.

...Applicant

By advocate : Shri B.B. Srivastava.

VERSUS

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

...Respondent

By advocate : Shri P.H. Ramchandani.

ORDER (ORAL)

The petitioner by the order dated 25-4-94 has been transferred from Chandigarh to Jaipur. In the Original Application-1621/93, the grievance of the applicant was regarding an order of transfer dated 27-5-92 where the applicant was transferred from Central Social Welfare Board, New Delhi to Social Welfare Advisory Board, Chandigarh. he has also assailed the earlier order dated 22-6-92 whereby the earlier order of 27-5-92 was partially modified and he was allowed to retain the official accommodation in New Delhi. He has also assailed the order dated 28-12-92 regarding certain T.A. claims. The relief claimed by the applicant in the O.A. was that the order of transferring the applicant to Chandigarh be quashed and that direction be issued to the respondents to transfer the applicant back to Delhi or in the alternative the wife of the applicant be transferred from Delhi to Chandigarh. The applicant also claims for getting the T.A. etc. for shifting household things to Chandigarh. The application was

finally heard on 26-4-94 but before the judgment could be delivered, M.A. has been moved praying that the order of 25-4-94 is in violation of sub-clause (4) of Section 19 of the Administrative Tribunals Act, 1985 inasmuch as during the pendency of Original Application-1621/93, the respondents cannot issue any further order of transfer. I heard the learned counsel for the parties on this M.A. The perception drawn by the learned counsel for the applicant is wider enough to restrict the respondents not to touch the applicant for any number of years till Original Application is pending. This is not the spirit and meaning of the provisions referred to and read out by the learned counsel at the time of hearing. The respondents are free to alter or modify their own orders. This is not a case where a particular relief sought by the applicant is otherwise dealt with by the respondents. The challenge of the applicant is to the order of transfer from Delhi to Chandigarh or in the alternative the wife be transferred from Delhi to Chandigarh. The applicant has also since joined at Chandigarh and has also claimed T.A. In view of this, the M.A. is totally devoid of merit and is dismissed.

2. In the Original Application, the order under challenge was from Delhi to Chandigarh. Since the applicant has already been transferred from Chandigarh to Jaipur by the order dated 25-4-94, this order stands superseded. However, regarding the matter of transfer, the applicant belongs to All-India service. The matter has come before the Hon'ble Supreme Court regarding the posting of spouses at one station if both are working in Central Government either in the same organisation or different units. The Supreme Court in the case of Bank of India vs. Jagjit Singh Mehta reported in 1992(1) S.C.C. p.306 referred to this issue and in the recent decision of Union of India and Others v. S.L.Abbas reported in 1993(25) ATC p.844 decided on 24-4-93 considered the same matter. S.L.Abbas was ~~posted~~ in Shillong in the Office of Scientists SC and his wife was working in Shillong as a

teacher in Central Government approached the Guwahati Bench challenging the order of transfer from Shillong to Pohri in Uttar Pradesh. The Guwahati Bench presided over by Vice-Chairman Hon'ble Mr. Justice Haque granted the relief quashing the transfer order. The Hon'ble Supreme Court interfered in the matter observing that the constraints and norms which the High Court observed while exercising the said jurisdiction apply equally to the Tribunal created under Article 323(A). It is further observed "We find it all the more surprising that the learned Single Member who passed the impugned order is a former judge of the High Court and is aware of ~~other~~ norms and constraints of the jurisdiction." It is further observed that the Administrative Tribunal is not appellate authority sitting in the judgment over the order of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. The Tribunal has clearly exceeded its jurisdiction in interfering the order of transfer. The order of Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority). I think the present case is fully covered by the above ratio. The application, therefore, is totally devoid of merit as regards the matter of transfer of the applicant is concerned.

3. 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 various O.M. issued by Ministry from time to time.

4. Regarding the payment of T.A. to the applicant, it is expected that the respondents should pay the same according to the rules. It needs no further directions. The application is, therefore, disposed of, accordingly, leaving the parties to bear their own costs.

J.P. SHARMA
(J.P.SHARMA)
MEMBER(J)