

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1265 of 1997

Allahabad this the 22nd day of April 1999

Hon'ble Mr. S.L. Jain, Member (J)

1. Dr, A.K. Roy, aged about 53 years, Son of Late P.K. Roy, Resident of Qr.No.DT/7, Armapur Estate, Kanpur-208009, presently employed as Principal Medical Officer (Selection Grade), Field Gun Factory, Kanpur-208009.
2. Smt. Jaya Bardhan Roy, aged about 43 years, Wife of Dr. A.K. Roy, Resident of Qr.No.DT/7, Armapur Estate, Kanpur, presently employed as Scientist 'C', Defence Materials & Stores Research & Development Establishment (DMSRDE), G.T. Road, Kanpur-208013.

Applicants

By Advocates Shri N.K. Nair
Shri M.K. Upadhyaya

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A, Shahid Khudi Ram Bose Road, Calcutta-1.
3. Scientific Adviser to Minister of Defence & Director General Research & Development Organisation, B-Wing, Sena Bhawan, DHQ PO, New Delhi-110011.
4. General Manager, Field Gun Factory, Kanpur.

Respondents

By Advocate Shri Ashok Mohiley

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O R D E RBy Hon'ble Mr.S.L. Jain, Judicial Member

This is an application under Section 19 of the Administrative Tribunal Act, 1985 to quash the order of Director General, Ordnance Factory, Calcutta transferring the applicant no.1 from P.M.O. Field Gun Factory to P.M.O. Ordnance Clothing Factory, Shahjahanpur, as communicated to the applicant no.1 vide copy of letter no.254/PMO/Transfer/A/M dated 06.10.1997, issued on behalf of Director General, Ordnance Factories, Calcutta to the General Manager, Field Gun Factory, Kanpur with a copy endorsed to the applicant no.1. A mandamus to the effect that the applicant no.1 be transferred to the Ordnance Factory, Murad Nagar near Delhi and the applicant no.2 be transferred to any establishment in or around Delhi. In the alternative, applicant no.1 be transferred to the Ordnance Equipment Factory, Cantt. Kanpur or the Ordnance Parachute Factory, Cantt., Kanpur with the applicant no.2 remaining posted at the D.M.S.R.D.E. Cantt. Kanpur or in the alternative they be transferred and posted in any Establishment in or around Calcutta..

2. The applicant no.2 is the wife of applicant no.1. The applicant no.1 was posted as P.M.O./F.G., Kanpur and applicant no.2 is presently posted as Scientist 'C' in the D.M.S.R.D.E., Kanpur. They were posted on the request made by them to the respective employer for posting them together at one station, consequent upon their marriage which took place in March, 1991.

3. The applicants case in brief is that on 12.12.1996 at about 6.30 p.m. while the applicant no.2

S.L.J. pg.3/-

was returning home from her office driving her Car, some goondas stopped her Car, dragged her out of the Car, snatched the keys of the Car after physically assaulting her and tried to take away the Car, but fortunately the Car fell into a roadside Nala and the miscreants fled away seeing some people approaching the scene. The report was lodged to the Police Station, Armapur, Kanpur. On 05th May, 1997, at about 11.30 p.m. some armed dacoits broke into the residence of the applicant, the dacoits brutally assaulted the applicants with iron rod, used ^hfire arms and looted the entire valuables of the applicants, including money, ornaments clothes, wrist watches and ransacked the entire house upto 4.00 a.m. Both the applicants sustained injury and had to be hospitalised. A threatening letter was also left by the Dacoits in their house. A report was lodged at the Police Station, Armapur (annexure A-8) on 05.5.97. In the above circumstances, the applicant got frightened and have become very scared. They have got genuine apprehension about danger to their lives and property. The applicant no.2 thereupon sought a transfer back to Delhi vide representation dated 30.6.97, which was forwarded on behalf of the Director, D.M.S.R.-D.E., Kanpur to the Director General, Research and Development, Ministry of Defence, Government of India, New Delhi. The applicant no.1 also applied for transfer to the Ordnance Factory, Muradnagar, New Delhi so that they can live together, in or around Delhi vide application dated 01.7.97 addressed to the Chairman, Ordnance Factory Board, Calcutta, annexure A-12 on consideration of the said representation of applicant no.1, he was transferred to P.MO/O.C.F., Shahjahanpur vide impugned order annexure A-1.

PC-81 -

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4. The grievance of the applicants is that as both the applicants are husband and wife, they must be posted at one station in view of Ministry of Defence circular dated 13.4.1986, transfer of the applicant no.1 to Shahjahanpur create further problems as applicant no.2 is still continuing at Kanpur and there is no post at Shahjahanpur in which applicant no.2 can be accommodated there. There is distance about 300 km.s between Shahjahanpur and Delhi. The applicant no.2 deserves to be transferred to Delhi and applicant no.1 to Ordnance Factory, Muradnagar, near Delhi so that they can live together. Hence, this O.A. for the above said reliefs.

5. The facts are not very much in dispute. The impugned transfer order is passed by the respondents on a representation made by the applicant no.1 facing the situation at the earlier station but said impugned transfer order does not suit to him for the reason that there is no post for the applicant no.2 at the such station and the distance between Shahjahanpur and Delhi is about 300 km.s.

6. The said transfer order is said to be in violation of government circular keeping husband and wife together.

7. 1992 S.C.C.(I&S) 268 Bank of India Vs. Jagjit Singh Mehta, decided by the Apex Court on November 22nd, 1991 lays down the following preposition;

"The guidelines do not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect alongwith the exigencies

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of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. 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 doing to different services and one then 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. After giving preference to the career prospects by accepting such a promotions or any appointment in an All India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, 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. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he seeks to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at a different place. The High Court on a writ petition filed by the respondent erred in directing the applicant Bank to transfer him and post him some where near the place of posting of his wife."

8. 1992 S.C.C.(I&S) 974 Smt. Devi Vs. Union of India and Others is relied by the applicant. On perusal of the same, I find that in a case of compassionate appointment, it was ordered that the widow be posted

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at the place of residence where also her husband had died in harness. It was not a case of transfer. The transfer policy was not considered. The transfer guide lines were not the subject matter for decision. Hence, the said authority do not help the applicant in any way.

9. The applicant no.1 has also represented the matter before the departmental authorities vide annexure A-13 but the said representation is not decided probably the reason is, pendency of this O.A. The guide lines are to be followed as far as possible looking to the administrative exigencies and in the circumstances only it can be observed that the representation of the applicants no.1 and 2 be decided keeping in view the law laid down by the Apex Court of the Land.

10. In the circumstances stated above, the O.A. deserves to be dismissed and is dismissed accordingly with no order as to costs.

P. C. Datta
Member (J)

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