

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE TH DAY OF AUGUST 1998

CORAM : HON'BLE MR. S.K.AGRAWAL, J.M.

ORIGINAL APPLICATION NO. 1378 OF 1997

Dinesh Panwar, aged about 55 years
son of Late I.S.Panwar, Resident of
C/o Smt. Aruna Panwar, Room No.3 N.H.
Maharani Laxmibai Medical College,
Jhansi.

..... **Applicant**

C/A Shri R.K.Nigam, Adv.
Shri O.P.Gupta, Adv.

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.
2. Canteen Stores Department, through its General Manager, 119 M.K.Road, ADEIFHI" Mumbai.
3. Area Manager, Canteen Stores Department Shivaji Lines, Jhansi Cantt.

.... Respondents

C/R Km. Sadhana Srivastava, Adv.

ORDER

BY HON'BLE MR. S.K.AGRAWA L. J.M.-

This is an application under section 19 of the Administrative Tribunals Act 1985. The applicant has prayed to quash the impugned orders dated 25.2.97 and 24.11.97 at Annexures- A1 and A2.

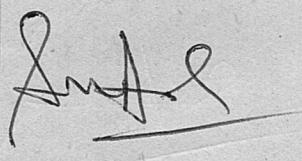
2. In brief, the facts of the case as stated by the applicant are that the applicant is in service with Central Government under the Ministry of Defence, New Delhi in Canteen Store Department, Jhansi Cantt since 1989 and the wife of the applicant Smt. Aruna Panwar is a State Government employee presently as Staff Nurse in in Maharani Laxmibai Medical College, Jhansi. She is working on the aforesaid post since 22.4.82. The applicant has two daughters, namely, Nidhi Panwar aged about 5 years and Vidhi Panwar aged about 3 years. The eldest daughter of the applicant is the student of Upper K.G. in St. Francis Convent High School, Jhansi. It is also submitted that the applicant's mother is ill and is under medical treatment at Dehradun but inspite of this, the applicant was transferred from Jhansi to Pune. It is stated that impugned order of transfer passed by the respondent is against the Government order issued by the Ministry of Home Affairs which clearly states that husband and wife should be posted at the same station. It is also stated that impugned order of transfer has been passed by the respondents in mid-session which is against the principles of natural justice and liable to be set aside. It is also stated that the impugned order of transfer by the respondents has been issued with a view to harass the applicant and his family and action of the respondents in transferring the applicant from Jhansi to R.M(S) Pune is ~~unconstitutional~~ against the guide-lines framed by the Ministry of Defence issued from time to time. It is, therefore, requested that the impugned orders dated 25.2.97 and 24.11.97 (Annexures A1 & A2) be quashed. The counter has been filed by the respondents.



3. It is stated in the counter that the Tribunal while disposing of the original application finally has given direction to the respondents to dispose of the representation in view of the observations made in the fore-going paragraph within a period of one month. The petitioner submitted the

representation dated 27.10.97 which has been disposed of by the respondents vide order dated 24.11.97. The petitioner's representation dated 27.10.97 was considered by the authorities and was rejected. The transfer order was passed due to administrative exigencies and administration has taken a view that in the interest of the administration that the petitioner should be transferred from Jhansi. The petitioner's representation was considered by the respondents in pursuance of the order dated 31.10.97 the petitioner has taken leave without obtaining sanction. It is also said that the transfer is the incident of the service and Court/Tribunal should not interfere unless it is arbitrary. The transfer of the petitioner was done in view of the administrative exigencies by the appropriate authority and the petitioner should have joined immediately but the petitioner has not complied the said direction. Therefore, the petitioner is not entitled to any relief sought for. Therefore on the basis of the averments made in the counter respondents have prayed to dismiss this application with cost. Heard the learned lawyer for the applicant and the learned lawyer for the respondents and perused the whole record.

4. Learned lawyer for the applicant has submitted that the impugned order of transfer is issued in colourable exercise of powers and not in public interest. It is also argued that the applicant and his wife both are in service and post is still lying vacant. Therefore, looking to the circumstances of the applicant, the applicant can be adjusted anywhere in the State of U.P. In support of his contentions learned lawyer for the applicant has referred -



- (i) 1998(38) ATC 106 P.E.Kesavan v. Director General, Doordarshan, Delhi.
- (ii) (1998) 37 ATC 138 G.M.Chawla v. Union of India and other

5. On the other hand, learned lawyer for the respondents has objected to these arguments and submitted that the applicant was transferred in public interest and there is no basis to say that the applicant was transferred in colourable exercise of powers. The representation of the applicant filed by him was considered after taking into all the aspects as submitted by the applicant and thereafter it was rejected. Therefore, there exists no ground to interfere in the impugned order of transfer. In support of his contentions he has referred -

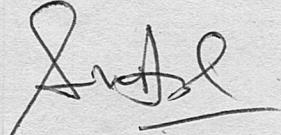
- (i) (1997) 35 ATC G.B.Pandit (Dr.) v. Union of India and others.
- (ii) 1994 S.C.C. (L & S) 230 Union of India and others v. S.L.Abbas.
- (iii) (1993) 24 ATC 38 Nirmal Kumar Nath v. Union of India and others.

6. I have ~~given thought~~ ^{given} ~~full~~ consideration to rival contentions of both the parties and perused the whole record and the legal submissions made by the learned lawyer of both the parties. In the case if Silpi Bose v. State of Bihar (1993) Supplementary (II) SCC 261, it is held that transfer order issued by the competent authority do not violate any of his legal right.

7. In State of Punjab v. Joginder Singh Dhatt A.I.R. 1993 SCC 2486 it is held by the Supreme Court that it is entirely for the employers to decide when, where and at what point of time the public servant is transferred from his present posting. In Union of India v. S.L.Abbas SCC 357 the court held that the authority should keep in mind the guide-lines issued by the Government on the subject but the said guide-lines do not confer upon the employee a legal enforceable right. In union of India v. N.P.Thomas (1993) Supplementary-I, SCC 404 the transfer is upheld even though it is against the policy of the Government



posting the husband and wife in the same station. In N.K.Singh v. Union of India (1994) 6 SCC 981 it was held that only realistic approach is to leave it to the wisdom of the hierarchical authorities to take decision on transfer because they have to consider several factors including suitability of the person for a particular post and exigencies of administration. In Bank of India v. J.S.Mehta (1992) 1 SCC 306, the Supreme Court held that the guidelines issued by the Government for posting husband and wife at one station do not give legal right to claim posting at one station if authorities consider such posting as not feasible. In the case of J.K.Dave v. State of Gujarat 30(1) GLR 571 it was held that transfer is not to be made on the basis of seniority of employees or on the basis of a serial order to be arranged according to length of service at a particular place. Transfer of employee is a matter of adjustment and accommodation to be made by the administrative authorities concerned. It is within the powers of the executive and it is not to be interfered with by the courts.

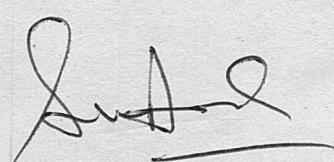

8. On the basis of the above legal proposition it emerges that Tribunal should not interfere in the impugned order of transfer unless it is shown that it is vitiated by malafides or infraction of any professed norms or principles governing the transfer. Guidelines to post the husband and wife together do not give any legal right to claim the posting together if the authorities considered such transfer as not feasible.

9. No doubt, respondents have got every right to transfer a public servant at the place of their choice in a public interest. But this discretion should be exercised judicially and not arbitrarily.

Lord Halsbury has observed that "Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion. The expression of judicial review is to be .. according to law and not on humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself ..."

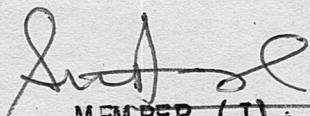
10. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that authority, after according fair treatment, reaches, on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court.

11. It is the duty of the courts and Tribunal that the discretionary powers conferred on the administration may not be abused and the administration should exercise them properly. In the instant case it could not be established that the impugned order of transfer was based upon mala-fides merely that the applicant has been transferred and because of this transfer husband and wife cannot live together is no ground to cancel the impugned order. However, it will be proper and in the interest of justice if the applicant may be considered for his adjustment within the State of U.P. at any place on filing the representation by the applicant because the wife of the applicant is State Government employee and she cannot be transferred beyond the limits of State of U.P. Therefore, to keep better harmony and better life of the applicant and his family the respondents must give a



sympathetic thought to the request of the applicant if he makes any request to be adjusted at any place within the State of U.P.

12. Therefore, this application is dismissed with the observation that in case applicant files representation for consideration of his transfer at any place feasible within the State of U.P, ^{his} ~~his~~ case may be considered sympathetically. No order as to cost.


MEMBER (J) 17/8/98

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