

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **30th** day of **July** 2021

Original Application No. 330/00337 of 2021

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Ashwini Kumar Srivastava, a/a 54 Years, S/o Madanji Srivastava, R/o 4-F
SIR P.C. Banerjee Road, Allenganj, District, Allahabad.

. . .Applicant

By Adv : Shri Anil Kumar Srivastava

V E R S U S

1. The Union of India through Secretary, Ministry of Defence, New Delhi – 110001.
2. The Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt-10.
3. The Accounts Officer (Administration), Office of the Controller of Defence Accounts, Allahabad.

. . .Respondents

By Adv: Shri Chakrapani Vatsyayan

O R D E R

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

We have joined this Division Bench online through video conferencing.

2. Shri Anil Kumar Srivastava, learned counsel for the applicant has appeared online through video conferencing whereas, Shri M.K. Sharma holding brief of Shri Chakrapani Vatsyayan, learned counsel for the respondents is present in Court.

3. The applicant is aggrieved with his transfer order dated 09.02.2021 passed by respondent No. 3 whereby, the he has been transferred from Allahabad to Jabalpur. Relieving order dated 09.04.2021 passed in

pursuance of the transfer order dated 09.02.2021 is also under challenge in this OA.

4. We have heard learned counsel for both the parties and perused the record.

5. Earlier, at the time of admission of this OA, a prayer for interim relief by staying the transfer order had been made by learned counsel for the applicant and this Tribunal had directed the learned counsel for the respondents to file a short counter affidavit against the prayer for interim relief.

6. The respondents have filed counter affidavit and learned counsel for the respondents has prayed that his short counter affidavit may be treated as regular counter affidavit and matter may be heard finally at admission stage because the interim relief sought by the applicant i.e. staying the impugned transfer order dated 09.02.2021 and the final relief i.e. to quash the said transfer order are almost the same.

7. With the consent of learned counsel for both the parties, the matter is being heard and decided finally at the admission stage.

8. The brief facts of the case are that the applicant is working as Senior Auditor under the respondents and is presently posted in the office of Controller of Defence Accounts at Allahabad. He has been transferred from Allahabad to Jabalpur vide impugned transfer order dated 09.02.2021 and subsequent to transfer order relieving order dated 09.04.2021 has also been passed whereby, the applicant has been relieved from Allahabad to enable him to join at the transferred place in District Jabalpur.

9. The applicant, in the instant OA, has challenged the legality of impugned transfer order on the following grounds:-

- (i) That the transfer and relieving orders have been passed during Covid – 19 and without considering the personal hardship of the applicant.
- (ii) The applicant's daughter is studying in Class XII in Bishop's Johnson School and College at Allahabad and her examination has been scheduled to be conducted in the month of May 2021. Therefore, the education career of the applicant's daughter will be adversely affected.
- (iii) The applicant is a patient of thyroid, high blood pressure and he is also diabetic. His treatment is going on regular basis in Tej Bahadur Sapru Hospital at Allahabad.
- (iv) The transfer order is against the policy and guidelines.
- (v) The transfer order has been passed without considering the fact that the pandemic of Covid – 19 is increasing day by day.

10. On the aforesaid grounds it has been prayed that the impugned transfer order dated 09.02.2021 and the relieving order dated 09.04.2021 be quashed.

11. The respondents have filed counter affidavit thereby contending that the impugned transfer order is not arbitrary, but it has been passed on administrative exigencies. As per the respondents, the employment in Defence Account Department entails all India transfer liability. The applicant joined the department at Allahabad on 03.04.1986 as clerk. He was promoted as Auditor on 01.04.2005 and Senior Auditor on 30.06.2009, while remained posted at same station/office namely Allahabad. Thus, he has completed more than 25 years of service at Allahabad.

12. It is next contended that, as per transfer policy, a total number of 62 employees were transferred from Allahabad, who had rendered 21 years or more of service at Allahabad. Out of 62 transferred employees, the transfer orders of only two employees, those being single parents, were cancelled and two other employees were not relieved and were to be relieved after completion of task assigned to them. However, 57 employees, including the applicant, have been relieved vide relieving order dated 09.04.2021. The applicant instant of joining the new office has filed the instant OA, which is liable to be dismissed in wake of the legal position, which has been well settled by the Hon'ble Apex Court in catena of judgments.

13. It is lastly contended that in so far as the ground of Covid – 19 is concerned, at present the Covid – 19 pandemic is under control especially in U.P. and M.P., the general public is living normal life, offices are functioning physically and the people are smoothly travelling by public transports.

14. On the aforesaid ground it has been prayed that the OA having no force is liable to be dismissed and be dismissed.

15. We have given our thoughtful consideration to the rival arguments advanced by the learned counsel for both the parties.

16. The Hon'ble Supreme Court in the case of **SC Saxena v. Union of India & Ors** reported in **2006 (9) SCC 583** has deprecated this practice by Government servants of not joining at the transferred place and instead coming to the Court to challenge the transfer order, by observing as under:-

“A Government servant cannot disobey a transfer order by not reporting at the place of posting and going to the Court to challenge it. It is his duty to first report for work where he is transferred and then to make a representation as to what may be his personal problem. This tendency of not reporting at the transferred place of posting and indulging into the litigation needs to be curbed. Acceding to such an argument will lead to gross indiscipline in public service. We are unable to accept such arguments.”

17. In the matter of ***Gujrat Electricity Board v. Atamaram Sungomal Poshani, 1989 (2) SCC 602***, the Hon’ble Apex Court has held that if the transferred employee disobeys the transfer order, he exposes himself to disciplinary action. As per the verdict of Hon’ble Supreme Court:-

“.....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.”

18. As regards interference of the Courts in the matter of transfer, it is trite to observe that the Hon Apex Court has consistently frowned upon 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.*

19. The Hon’ble Allahabad High Court in ***Writ (A) No. 34634 of 2015 - Sachchida Nand Pandey vs. Managing Director U.P. State Bridge Corp. Ltd. & 2 Others*** decided on 10.06.2015, while placing reliance on

several judgments of Hon'ble Apex Court, has held that a Government servant should first join the place where he is transferred. After joining the transferred place, he may make a representation to the higher authorities to ventilate his grievance. If the petitioner files a representation after joining the transferred place before the concerned respondent, the same shall be decided, in accordance with law, expeditiously.

20. It is a matter of common knowledge that at present the situation of pandemic of Covid – 19 in U.P. and M.P. is under control and the people are travelling smoothly and doing their routine work normally. The applicant has been transferred from District Allahabad (U.P.) to District Jabalpur (M.P.) so he should not feel any difficulty in travelling due to Covid – 19 at present.

21. In wake of the above discussed legal and factual position, the OA is disposed of at the admission stage with the direction to the applicant to first go and join his duty at the transferred place i.e. Jabalpur. After joining his duty at Jabalpur, he can make a representation to ventilate his personal grievances before the competent authority. If he does so, the competent authority is directed to decide his representation expeditiously.

22. With the aforesaid direction this OA is disposed off at the admission stage.

23. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)
/pc/

(Justice Vijay Lakshmi)
Member (J)