

RESERVED

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No.330/00372/2021

This the, 16th day of July, 2021

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

Hon'ble Mr. Devendra Chaudhry, Member (A)

Piyush Kumar aged about 44 years s/o late Jawahar Lal, r/o House No. 185/IN/5, Tilak Nagar, Allahpur, Allahabad.

Applicant

By Advocate: Sri S.K. Vishwakarma and Sri Satish Sahu

Versus

1. Union of India through Comptroller & Auditor General of India, 9 Deen Dayal Upadhyay Marg, New Delhi-110124.
2. Principal Director of Audit (Headquarter), 1 A and AD, NR, Baroda House, New Delhi.
3. Principal Director of Audit, NCR,GM Office, Subedarganj, Allahabad.
4. Dy. Director of Audit O/o PDA, NCR, GM, Office Subedarganj, Allahabad.

Respondents

By Advocate: Sri K.P. Singh

ORDER

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

We have heard Sri S.K. Vishwakarma and Sri Satish Sahu, Advocates for the applicant and Sri K.P. Singh, Advocate for the respondent on admission and also on the prayer for interim relief. Perused the records.

2. The applicant is aggrieved due to his transfer from Allahabad to Jhansi and has preferred this O.A., with prayer to quash his transfer order as well as the relieving order.

3. As an interim relief, it has been prayed that the operation of the impugned transfer and relieving order be stayed, during the pendency of this O.A.

4. As the interim relief and final relief prayed by the applicant are the same and short C.A. has already been filed by the respondents, we are disposing of this O.A. finally at the admission stage.

5. The relevant facts, in brief are that the applicant was selected in the respondents department, somewhere in the year 2002 and was posted in the office of PAG Audit (West Bengal). He sought mutual transfer for Allahabad, which was allowed and he was relieved from the office of West Bengal on 17.4.2006 for Allahabad. Since 17.4.2006, the applicant is working at Allahabad.

6. On 8.1.2021, Principal Director of Audit, NCR,GM Office, Subedarganj, Allahabad (respondent No. 3), issued an interim order of transfer, by which, a list of 22 officers, who were to be transferred, was published and objections/ representations were invited from all those transferred officers/officials, within a week. In the interim order, it was mentioned that after disposal of their representations, the final order would be issued. The name of the applicant appeared at Sl. No. 6 in the aforesaid list.

7. The applicant made a representation on 14.1.2021 against the aforesaid interim transfer order dated 8.1.2021. In his representation, the applicant stated about health problems of his parents and some other family problems that his son is studying in class IV and his daughter is studying in class XII at Allahabad. Moreover, his wife is

employed as Assistant Teacher at Phoolpur, Allahabad. Therefore, in view of the transfer policy and on spouse ground, he may not be transferred from Allahabad.

8. As per applicant, the office of respondent No. 3, without considering his representation dated 14.1.2021, issued final order of transfer on 15.2.2021, in an arbitrary manner.

9. The applicant on 1.3.2021, again made a representation and also sent its reminder on 19.4.2021, stating about the heart problem of his old mother and that the applicant being the only son to look after her, should not be transferred and also requested to post husband and wife at the same station, but his second and third representation/reminder were not considered by the respondents.

10. In the meantime, the applicant was promoted in the cadre of Assistant Supervisor (Audit) and was directed to attend online training to be held from 31.5.2021 to 15.6.2021. The applicant successfully completed the training to the promotion cadre and requested the respondents to permit him to work as Assistant Supervisor (Audit) and to accommodate him at Allahabad. The applicant again moved a representation on 21st May, 2021, repeating his family problems, but the same was not considered and on 31.5.2021, the relieving order was passed by which it was directed that the applicant will be deemed to be relieved w.e.f. 1.7.2021.

11. Learned counsel for the applicant has further contended that pandemic of Covid 19 is expected to continue till December, 2021 because the third wave is expected. Therefore, the applicant again

made a representation that his transfer should not be made till December, 2021. But his representation was summarily rejected vide order dated 3.6.2021 by the respondents in the most arbitrary manner.

12. The legality and correctness of impugned transfer/relieving orders has been challenged in the instant O.A. on the ground that the impugned orders have been passed by the respondents without considering the transfer guidelines and transfer and posting policy dated 28.3.2016, issued by the Principal Director, Audit Centre, Lucknow. Copy of the guidelines and transfer policy have been collectively filed by the applicant as Annexure No.A-12 with the O.A. One more ground taken by the applicant to challenge the legality of the impugned transfer order is that the order has not been issued by the competent authority. Therefore, the impugned orders are liable to be set aside.

13. Reliance has been placed on the decision of the Hon'ble Apex Court rendered in the case of **State of U.P. Vs. Gobardhan Lal 2004(3) SLJ 244 (Supreme Court)** and **Suresh Tiwari Vs. Union of India, AIR 2009, page 1390 (Supreme Court)**.

14. In the short Counter Affidavit filed by the respondents, the prayer for setting aside the transfer order has been vehemently opposed and the allegations regarding arbitrariness has been denied. As per the respondents, the headquarter of respondents' office is located at Allahabad and its field offices are located at Ambala, Agra, Lucknow and Jhansi. The officers/officials are liable to be posted at all the offices. With regard to the ground of challenge, that the transfer order has not been passed by a competent authority, it is contended

by Ld. Counsel for the respondents that for the purpose of transfer and posting , a board has been constituted by the competent authority, in compliance of the guidelines and directions of the Hon'ble Supreme Court of India, issued vide order dated 31st October, 2013 in W.P. (Civil) No. 82 /2011. The transfer posting orders are being issued after approval/recommendations of the transfer and posting board by the competent authority. Learned counsel for respondents has contended that in terms of SOO No. 27/NCR/2013-14 dated 4.8.2015, Dy. Director is the accepting authority to accept the recommendations of the transfer and posting for Group 'B' non-gazetted. Copy of the aforesaid SOO has been filed as Annexure No. SCA-1 to the Short C.A.

15. It has been further contended that firstly an interim order dated 8.1.2021, regarding transfer of applicant along with 21 other officials was issued and after considering their representations/objections, on 15.2.2021, final transfer order was issued after approval/recommendations of the transfer and posting board, by the competent authority.

16. It is further contended that the applicant, since his joining at Allahabad office for back in the year 2006, is continuously working at Allahabad. In the year 2016, a transfer order was issued on 18.10.2016, whereby the applicant was transferred to Jhansi, but later on, on the recommendation of the applicant, the transfer order was cancelled.

17. It is further submitted that the representation of the applicant has already been considered, keeping in view the guidelines and

policy. Moreover, the situation of pandemic has also been kept in mind by the respondents and therefore, despite the fact that the final transfer order was issued in the month of February, 2021, a further time till 1st July, 2021 was granted to the applicant before issuing relieving order. Therefore, the statement of applicant that his representation was not considered, is factually incorrect.

18. Learned counsel for the respondents has placed reliance on the land mark judgment of Hon'ble Apex Court in the case of **Union of India and others Vs. S.L.Abbas, 1993 (Supreme Court) page 2444**, wherein the Hon'ble Apex Court has held as under:-

“Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right.”

19. We have considered the rival submissions advanced by he learned counsel for both parties. The law regarding transfer has been well settled by the Hon'ble Apex Court in a catena of judgments.

20. In the case of **S.C. Saxena Vs. Union of India and others (2006) 9 SCC page 583**, it has been held that ***“A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his***

grievances. It is his duty to first report for work where he is transferred and then make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Acceding to such an argument will lead to gross indiscipline in public service."

21. In **Rajendra Roy Vs. Union of India and others 1993 (1) SCC page 148 (Supreme Court)**, in para 7, it has been held that ***" The order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score, the order of transfer is not liable to be struck down. In a transferable post, an order of transfer is a normal consequence and personal difficulties are matter for consideration by the department. The Courts and Tribunals should not interfere with the order of transfer."***

22. It is also well settled legal position that the transfer policy is merely a guideline without having any statutory force.

23. So far as, spouse ground, i.e. the posting of husband and wife at the same station is concerned, there is no dispute that in the instant case, the husband and wife are not posted in the same department. The applicant is continuously working at Allahabad since the year 2006 and has already spent a big span of service at the same station. Transfer being not only an incidence but a necessary condition of Government service, every, government servant should be mentally prepared for it. The Transfer policy and guidelines are only directory in nature and not mandatory. A Govt. servant can be transferred on the

ground of administrative exigencies by the department concerned and the courts/Tribunals should not interfere in the administrative matters, as per the well settled legal position. There is no allegation of malafide against any particular person as no such person has been impleaded in private capacity in this O.A.

24. The challenge to the impugned order on the ground of competency of the authority, who has passed the impugned transfer order, has been satisfactorily replied by the respondents in their short counter Affidavit. Moreover, a perusal of impugned transfer order/relieving order shows that in every order, below the sign of the authority, it is clearly mentioned that ***"This issues with the approval of the competent authority."***

25. In view of the aforesaid discussions, there does not appear any good ground, either to stay the transfer /relieving order or to quash it. The O.A. is without any force and is liable to be dismissed at the admission stage

26. Accordingly, O.A. is dismissed. No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-