

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 62/569/2020



Pronounced on: This the 02nd day of July 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Raja Musadiq, Age: 38 years, S/o Raja Ahmadullah, R/o Teetwal, Karnah.
2. Bilal Ahmad Mir, Age: 37 years, S/o Ali Mohd. Mir, R/o Beerwah, Budgam.
3. Zahoor Ahmad Bhat Age: 40 years, S/o Sonaulah Bhat, R/o Bijbehara, Anantnag.
4. Farooq Ahmad Bhat, Age: 50 years, S/o Kamal-din-Bhat, R/o Munghar, Anantnag.
5. Shakoor Ahmad Sheikh, Age: 35 years, S/o Mohd Yousuf Sheikh, R/o Tangdar, Kupwara.a
6. Mubarak Ahmad Bhat, Age 50 years, S/o Late Abdul Ahad, R/o Kulgam.
7. Vikas Ahmad Bhat, Age: 45 years, S/o Mohd Maqbool Bhat, R/o Natipora, Srinagar.
8. Mohd Yousuf Age: 50 years, S/o Ghulam Mohiuddin, R/o Arigam, Bandipora.



9. Mohd Younis Mir, Age: 34 years, S/o Ghulam Qadir Mir, R/o Magrapora.
10. Farooq Ahmad Bhat, Age: 45 years, S/o Abdul Aziz Bhat, R/o Dooru, Anantnag.
11. Nisar Ahmad Bhat, Age: 38 years, S/o Abdul Samad Bhat, R/o Tarigam, Kulgam.
12. Waseem Ahmad Mir, Age: 30 years, S/o Abdul Rashid Mir, R/o Mujgund, Srinagar.
13. Nisar Nazir Wani, Age: 34 years, S/o Nazir Ahmnad Wani, R/o Bicherari, Kralgund, Kupwara.a
14. Tanveer Ahmad Sofi, Age: 36 years, S/o Mohd Yousuf SOfi, R/o Mazhama, Budgam.
15. Mohd Ayoub Bhat, Age: 49 years, S/o Gh. Ahmad Bhat, R/o Nunmia, Kulgam.
16. Gh. Mohd Rther, Age: 50 years, S/o Mohd Ramzan Rather, R/o Zuloora, Chadoora, Budgam.
17. Gh. Nabi Khoja, Age: 48 years, S/o Ab Aziz Khoja, R/o Tangdhar, Kupwara.a
18. Hilal Ahmad Lone, Age: 35 years, S/o Gh. Mohiuddin Lone, R/o Pattan, Baramulla.
19. Ishtiyahq Ahmad Sheikh, Age 37 years, S/o Ab Rashid Sheikh, R/o Khee, Kulgam.
20. Mukhtair Mehraj Bazaz, Age: 40 years, S/o Mehraj Ahmad Bhat, R/o Lalbazar, Srinagar.
21. Shabir Ahmad Mir, Age: 38 years, S/o Gh. Mohd. Mir, R/o Babapora, Shopian.



22. Shahid-ul-Islam, Age: 40 years, S/o Wali Mohd, R/o Bandipora.
23. Mod. Shafi Khan, Age: 38 years, So Mohd. Ismail, R/o Tangdhar, Kupwara.
24. Ab. Jabbar Wani, Age: 38 years, S/o: Gh. Qadir Wani, R/o Wagora, Baramulla.
25. Altaf Hussain Khan, Age 47 years, S/o Late Bashir aHmad Khan, R/o Pahanipora, Uri, Baramulla.
26. Nasir Ahmad Dar, Age: 37 years, S/o Mohd Yousuf Dar, R/o Kripalpora, Pattan, Baramulla.
27. Javid Ahmad Dar, Age: 37 years, S/o Habibullah Dar, R/o Makhama, Magam, Budgam.
28. Gulzar Hussain Dar, Age: 37 years, S/o Ghulam Hussain Dar, R/o Gund Lawaypora, Srinagar.
29. Javaid Iqbal Ganie, Age: 37 years, S/o Gh. Mohi-ud-Din Ganie, R/o Sahipora, Handwara.
30. Nazir Ahmad Bhat, Age: 45 years, S/o Ab. Salam Bhat, R/o Shahgund Rafiabad, Baramulla.

.....Applicants

(Advocate: Mr. Parvai Nazir)

Versus

1. Union Territory of J&K through Principal Secretary to Home Department, Civil Secretariat, Jammu/Srinagar.
2. Director General of Police, PHQ, J&K, Jammu/Srinagar.
3. Additional Director General of Police, Security, J&K Jammu/Srinagar.

4. Inspector General of Police, Personal PHQ, J&K, Jammu/Srinagar.
5. AIGP, Personal PHQ, J&K Jammu/Srinagar.

.....Respondents

(Advocate: Mr. Sudesh Magotra, learned D.A.G. for Mr. Amit Gupta,
learned A.A.G.)



(ORDER)

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))

1. Applicant Raja Musadiq and 29 other applicants have filed the present O.A. seeking the following reliefs:

“In the premises, it is, therefore, prayed that this Hon'ble Tribunal may kindly be pleased to issue an order or direction to quash/set aside the impugned order of bearing No. 824 of 2020 dated; 25.02.2020 forming Annexure-“I” to the instant original application.

Further, non-applicants may be directed to back the applicants to wing SHQ Srinagar as per earlier orders in pursuance whereof the applicants had been brought to the wing i.e., AHJ Airport, in the interest of justice.

Any other relief which this Hon'ble Tribunal deems fit and proper in the attending circumstances of the case may also be passed in favour of the applicants.”

2. Case of applicants is that in the year 2019 they were transferred to Anti Hi-jacking Airport, Srinagar. By way of impugned order dated 25.02.2020, the applicants have been prematurely and in violation of transfer policy dated 06.07.2017 transferred from AHJ to postings in various places whereas other persons with longer tenures have not

been disturbed and the applicants have been discriminated against in the matter of their transfers. Hence, the present O.A. seeking quashment of impugned order of transfer.



3.

In the counter affidavit, respondents have averred that there can be no challenge to the impugned transfer order and it is within the competence of the Government to transfer its employees as the exigencies of service and administration require and the transfer order has been passed in interest of administration and is not visited with mala fides or issued in violation of statutory provisions and the O.A. deserves dismissal.

4. It has been argued by learned counsel for the applicants that the impugned transfer order have been made in violation of the transfer policy and that the applicants have been discriminated against since other persons with longer tenure at the Airport have not been disturbed. Therefore, the impugned order deserves to be set aside.
5. On the other hand, learned counsel for respondents submitted that the applicants were transferred in accordance with rules and policy of the respondent-department. It was argued by learned counsel that the applicants have neither vested right to remain posted at one place of choice nor can he insist to be posted at a particular place. The service benefits, status, seniority, pay scale of the applicants has been protected and it is the employer who is best judge as in what manner the capability of an employee has to be utilized. It was submitted that the transfer of the applicants was made purely in the exigencies of

work, as per, the transfer policy of the respondent-department. Therefore, the impugned order does not violate any right of the applicants, as such, the OA is not maintainable and be dismissed. It was also argued by learned counsel that the impugned order is not vitiated with malafides, or issued in violation of any statutory provision or passed by an authority not competent to pass such order.



6. The guidelines issued by the Hon'ble Apex Court shows that the transfer policy or guidelines issued by the State or employer does not have any statutory force and there is very little scope of judicial review by the Courts and the same is restricted only if the transfer order is found to be in contravention of some statutory rules and if the malafides are established.
7. The law regarding interference by Courts in transfer/posting of an employee is well settled. The Hon'ble Apex Court and various Hon'ble High Courts in a catena of judgments have issued guidelines on this aspect. The Hon'ble Apex Court in U.O.I. v/s S.L. Abbas, (1993) 4 SCC 357, Mrs. Shilpi Bose v/s. State of Bihar, AIR 1991 SC 532, State of Uttar Pradesh v/s Gobardhan Lal, (2004) 11 SCC 402, State of Madhya Pradesh v/s. S.S. Kourav, AIR 1995 SC 1056 and M. Sankaranarayanan v/s State of Karnataka, AIR 1993 SC 763, has thrown light on the subject and the conclusions may be summarized as under:-

- 1) Transfer is a condition of service.



- 2) It does not adversely affect the status or emoluments or seniority of the employee.
- 3) The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
- 4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
- 5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
- 6) There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.
- 7) In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.
- 8) The person against whom allegations of malafide is made should be impleaded as a party by name.
- 9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

10) The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11) If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.



8. Further in State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405, the Hon'ble Apex Court has observed that:

“transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. The courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were Appellate Authorities substituting their own decision for that of the employer.”

In Shilpi Bose v/s. State of Bihar, 1991 Supp (2) SCC 659, the Hon'ble Apex Court while setting aside the order passed by the Hon'ble High Court, has observed that:

“Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order; instead affected party should

approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.”



9. It is settled law that a transfer guideline does not create any right in favour of a person holding a rank or a post under the State. It is a settled law that an employee has no vested right to get a posting at a particular place for a particular time. Transfer is an essential condition of service and it is within the exclusive domain of the employer to determine as to at what place and for how long services of a particular employee are required more so, in case of police personnel.

10. In Registrar General, High Court of Judicature of Madras versus R. Perachi & Others, (2011) 12 SCC 137, the Hon’ble Supreme Court has observed that in transfer matters of a government employee, scope of judicial review is limited. In N.K. Singh v. Union of India this Court reiterated that: “6.....the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision.....”



11. The law on transfer has been clearly and unambiguously laid down by the Hon'ble Supreme Court. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. The employee does not have any vested right to be posted at a particular place. It is equally well settled that the transfer policy does not create any legal right in favour of the employee. There must be a judicially enforceable legal right for the enforcement of which legal proceedings can be resorted to which is not so, in the present case.
12. In the present case, admittedly, the impugned circular/transfer order is not vitiated with any malafides. No such claim or particulars of malafides have been made in the pleadings by the applicants. There is no evidence to demonstrate that any statutory provisions have been violated. In addition to that, no claim has been made that person who has issued this transfer order was not competent to pass such transfer order.
13. It is a well recognised law that the transfer is a prerogative of the employer and the Court/Tribunal should not interfere unless it is alleged and proved that the transfer is an act of malice or in violation of any statutory rules. For any person who joins the service of the Government or its agencies, transfer is a concomitant part thereof. It is only when the transfer results in serious hardship to the employee or is made as a punitive measure, that a scrutiny can be undertaken by the Courts or Tribunals. The guidelines stipulated for effecting transfers



apply to the routine transfers. There, again, the courts have permitted latitude to the employers to work out the transfers in such a way that efficiency of the administration does not suffer. No right as such accrues to the employee from the guidelines. Added to that, the administrative transfers and those which are ordered in public interest, are not, by and large, governed by the policy guidelines, exigency of service and efficiency of administration become paramount considerations.

14. We also note the arguments of respondents that the airports are very security sensitive installations prone to attacks from terrorists and are required to be guarded very securely. What is the policy to guard such installations is exclusively in the realm of the security administration and the courts have no role to interfere with security related policies of the Government which is the job of security experts. It is the sole prerogative of the Government as to which organisation, personnel etc are to be deployed at the airports. If the Government wants to make the airport more secure by transferring security personnel to and from the airport, it is the exclusive function of the Government subject to order not being malafide or in violation of specific provisions of law. This Tribunal does not have expertise in security related measures to give instructions to the Government as to how the vital installations of the Government are to be secured and therefore, we would not interfere with security measures put in place to secure the vital installations necessary for defence of the Court. The applicants will do well to remember that they are part of belt force meant to secure the

country from external and internal threats and liable to be posted at a place thought appropriate by the Government.



15. In view of the case laws as discussed above, there is a limited scope for this Tribunal to interfere in the transfer order which is the prerogative of the employer as per the rules. In this instant case, there is nothing on record to prove that the impugned transfer order has been issued as a punitive measure or in violation of any statutory rule. In view of the above discussions, we are unable to interfere in the impugned order No. 824 of 2020 dated 25.02.2020.

16. In view of the above discussion, we are of the firm view that the present O.A. is devoid of any merit and is liable to be dismissed because the impugned transfer order neither suffers from any illegality or vitiated by mala fides. Accordingly, the OA is dismissed. No order as to costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-