

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No.332/00640/2019

Order reserved on: 06.01.2020

Order pronounced on: 05.03.2020

Hon'ble Ms. Jasmine Ahmed, Member - J

Hon'ble Mr. Devendra Chaudhry, Member - A

Ajaz Ahmad, aged about 53 years, son of- Shri Matloob Ahmad,
Resident of- C/O- Jawahar Navodaya Vidyalaya, Pipersand,
Lucknow.

..... Applicant

By Advocate: Sri Praveen Kumar.

VERSUS

1. The Commissioner, Navodaya Vidyalaya Samiti, B-15, Industrial Area, Sector-62, Noida - 201309.
2. The Deputy Commissioner (P), Navodaya Vidyalaya Samiti, B-15, Industrial Area, Sector-62, Noida-201309.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Lucknow.
4. The Principal, Navodaya Vidyalaya Samiti, Pipersand, Lucknow.
5. The Ashok Kumar Moga, Presently posted as PET (Male), Navodaya Vidyalaya, Bareilly.

..... Respondents

By Advocate: Sri Alok Shukla.

ORDER

Delivered by:

Hon'ble Mr. Devendra Chaudhry, Member - A

The present Original Application (OA) has challenged the order dated 16.12.2019 whereby one Shri Ashok Kumar Moga, Physical Education Teacher (PET) has been transferred from Jawahar Navodaya Vidyalaya (JNV), Bareilly to Jawahar Navodaya Vidyalaya (JNV), Lucknow. In consequence thereof, the Applicant submits that he is being transferred to JNV, Sitapur-II.

2. Being the matter of transfer, we heard the Learned Counsel for both the parties at the admission stage itself and with the consent of

both the parties matter is being disposed of finally.

3. The brief facts of the case, as per the Applicant, are that Applicant was appointed as Physical Education Teacher (PET) in the year 1998 and was posted in Sehore, Bhopal Region (MP). That, the wife of the Applicant namely Ms. Shahin Fatima is posted as Inspector in the office of CGST, Commissionerate at Lucknow. That, the applicant had sought transfer in the year 2003 on spouse ground, and was accordingly posted at Lucknow in the year 2003. That, the applicant has continued since then and is still posted at Lucknow since 23.05.2003 (Annexure No. A-3). That, for Annual Transfer, he had submitted that he did not wish to be transferred from Lucknow on spouse ground, but however vide order dated 16.12.2019 (impugned order), he has been transferred to JNV, Sitapur-II and in his place one Shri Ashok Kumar Moga has been posted at JNV, Lucknow. The applicant has sought quashing of the impugned transfer on grounds of being issued in mid-session and in order to accommodate another employee as also against the spirit of the DOPT circular requiring the spouses to be posted at one station only. Moreover he is physical handicapped category and that his son is studying in Class- IX and hence on the basis of aforesaid grounds, the impugned order needs to be quashed.

4. Per contra, the Respondents have submitted that the Authority, who has issued the transfer order, is the Competent Authority. That, there is no malafide in the issuance of the transfer order dated 16.12.2019 of Shri Ashok Kumar Moga to JNV, Lucknow, as also the Applicant to Sitapur as the applicant has been posted in the current station for more than 16 years and is overdue for transfer. That, while the policy does exist w.r.t. consideration of employees on ground of spouse posting and other medical grounds, the Applicant has already been given this benefit in the year 2003 itself as per Applicant own admission, which is substantiated by Annexure No. A-3. That, the Applicant cannot stay indefinitely till the end of his career at Lucknow which would be against the

Transfer Policy and the spirit of employment granted by the Respondents. That, there are other employees who would also be entitled or otherwise for postings at appropriate station permissible under the Transfer Policy. That, since transfer of the Applicant as well as Sri Moga is within the guidelines dated 07th May 2019 and as well as 30.09.2009, hence there is no reason for the Applicant to be aggrieved against the said order and hence the OA is liable to be dismissed and should be dismissed.

5. We have heard the parties at length and examined the records carefully. On consent of both parties as stated at the outset, the matter has been heard finally.

6. It is quite clear that the Applicant is working on a transferable post and it is admitted that the Applicant has been stationed at Lucknow for more than 16 years. This is also evident from the documents filed by the Applicant himself (Annexure No. A-3), extracts of which are reproduced herein below for ready reference:

"SERVICE RECORDS"						
NO.	DESIGNATION	REGION	SCHOOL	FROM	TO	REASON
1.	PET-MALE	Bhopal	Sehore	29-07-1998	22-05-2003	Initial Posting on Recruitment
2.	PET-Male	Lucknow	Lucknow	23-05-2003	PRESENT	Transfer on request"

It is also clear that, as per Transfer Guidelines providing for the facility of having the spouses together at one station including on physical handicapped etc. grounds, the respondents have, as far as possible has been complied with as the Applicant who has been accommodated since 2003 for the last more than 16 years at only one station, viz that of his spouse, namely, Lucknow. Also, admittedly Sitapur is not a hard and difficult station as per classification, therefore, there is no ground available to the Applicant for not being transferred to Sitapur which is hardly 90 kms from Lucknow. It is also clear that support cannot be taken with regards to Para 6 of the Transfer Guideline dated 07th May

2017 concerning completion of minimum two years service at any station . For clarity Para 6 is reproduced herein below:

"6. Provision for completion of minimum 02 years at a station (for new recruittee as well as old employee) with regard to cut-off date shall continue to remain in effect to avoid misuse of priority clause for availing transfer in consecutive years. This is adopted with a view to maintain/improve the academic/ administrative atmosphere of Vidyalaya."

The Applicant has been stationed at Lucknow for more than 16 years and hence we cannot uphold contention of support of the above circular as argued by the applicant which provides for only two years posting at a station. The applicant has also been given the benefit of the DOPT circular dated 30.09.2009 w.r.t. spouse posting, wherein it is specified that where adjustment is not possible, posting to a nearby station may be considered. Para 4 (IV) of the above circular dated 30.09.2009 is extracted herein below for clarity:

"4. (iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:

The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists."

Keeping in line with the above circular, the Applicant has been transferred to JNV, Sitapur- II which is barely 90 kms away from Lucknow and as such it is nearest station available where the post also exists. Thus, the applicant has been already accommodated in the spirit of the above circular after having been accommodated earlier also and for last 16 years being posted at Lucknow.

7. The Hon'ble Apex Court in a catena of judgment has clearly laid

down that the Courts shall not intervene in the matter of transfer. This has been dealt with at length in several judgments and orders of this Tribunal. Thus, in the matter of B.Varadha Rao v. State of Karnataka, 1986 (4) SCC 624, it is laid down that the transfer of a government servant who is appointed at a particular cadre of transferable posts from one place to other place is an ordinary incident of service and therefore, does not result in any alternation of any of the condition of service to government servant's disadvantage. Similarly, in the matter of Gujrat Electricity Board v. Atamaram Sungomal Poshani, 1989 (2) SCC 602, it has been held that

*".....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** (emphasis supplied), as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.."*

This position is further buttressed by another bunch of rulings concerning the transfer as an exigency of service. These include: T.D. Subramanian v. Union of India, 1981 (4) SCC 150 and Laxmi Narain Mehar v. Union of India, AIR 1997 SC 1347.

8. On the issue of husband and wife being posted together, the judgment and ruling in the matter of Bank of India v Jagjit Singh Mehta, AIR 1992 SC 519, is important. Here, it has been held that:

".....There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. 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 belong to different services and one of them 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.**

".....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.

"...No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible (emphasis supplied)...."

In the present case the applicant has already enjoyed posting at Lucknow for more than sixteen years. An employee cannot stay all life at one station on any ground, spouse or otherwise. To extend this benefit would be distorting the hands of law to help the applicant. Courts cannot be more charitable than law.

9. The Hon'ble Apex Court has also gone into the issue of a transfer violating Constitutional rights under Article 14 and 16 and it has been held in the matter of E.P. Royappa v. State of Tamil Nadu, 1974 (4) SCC 3 that so long as the transfer has been made on account of exigencies of administration it would not be open to attract under Article 14 and 16. In fact, in the matter of Sreedam Chandra Ghosh v State of Assam, 1996 (10) SCC 567, it has been held that when the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officers and when the person complains of the non-compliance to the court, **the court necessarily have to give effect to the order and give directions from enforcement thereof** (emphasis supplied). **Even dismissal on account of refusal to join at the place of transfer has been held valid as State of Punjab v Baldev Singh, Conductor, 1998 (9) SCC 325(emphasis supplied).**

10. The grounds of malafide are also not established on the basis of above reasoning qua the compliance of all the concerned circulars and the efforts made heretofore by the respondents to accommodate the applicant to the maximum extent possible in the past 16 years. Needless to say, on the other hand, a number of other rulings forbid interference of the Courts in the matter of transfer. Thus, 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. non-interference in the guiding light. 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 S. Kourav, 1995 (3) SCC 270, Union of India v. Ganesh Dass Singh, 1995 SCC (L&S) 1142 etc.

11. Thus, the facts of the case as well as the rulings of the Hon'ble Apex Court and various courts weigh heavily in, in the favour of non-interference in transfer matters. We do not find any exceptional circumstance to disregard the law laid down by the Hon Apex Court as per above analysis. Hence, in our considered opinion, the transfer order does not call for any interference.

12. In conclusion, therefore, after covering the length and breadth as well as depth of the incisive arguments as well as due respect to the rulings cited by the Ld. counsels, we cannot but finally conclude, that there are no grounds available to interfere with the impugned transfer orders. Therefore, as the matter is agreed to decided finally at the admission stage itself, we are of the firm view that the OA is liable to be dismissed finally and is dismissed. No costs.

Member (A)

(Jasmine Ahmed)
Member (J)

JNS