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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1155 of 2007

Wednesday this the 4th day of **June**, 2008

Hon'ble Mr. K.S. Menon, Member (A)

R.C. Malhotra, Son of Sri R.L. Malhotra, Resident of Mohalla-C-589
Rajendra Nagar, District Bareilly.

Applicant

By Advocate Sri Avnish Tripathi

Versus

1. The Indian Council of Agriculture Research, through Secretary (I.C.A.R.) Krishi Bhawan, Dr. Rajendra Prasad Marg, New Delhi.
2. Director, India Veterinary Research Institute Izat Nagar Bareilly. (U.P.)
3. Assistant Administrative Officer Indian Veterinary Research Institute, Izat Nagar, Bareilly.

Respondents

By Advocate Sri N.P. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed challenging the transfer order dated 16.07.2007 passed by respondent No.2 communicated by respondent No.3 by which the applicant has been transferred from Indian Veterinary Research Institute, (for short IVRI) Izzatnagar, Bareilly to IVRI Bhopal in public interest.

2. The applicant is working as an Office Assistant at IVRI Izzatnagar under respondent No. 2 and has only 4 years for superannuation. He has now been transferred to Bhopal vide the impugned order. The applicant is aggrieved by the fact that respondents have not disclosed the public interest. He further submits that neither is any disciplinary action pending against him nor has there been any complaint against him. The transfer is therefore illegal, arbitrary besides being against the rules. Being aggrieved, he submitted representation dated 18.07.2007, 10.08.2007 and 21.10.2007 all these were rejected by the respondent No. 2 vide letters of respondent No. 3 dated 06.08.2007, 29.09.2007 and

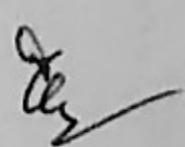
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03.11.2007 respectively. Applicant submits that the letters rejecting his representations are non speaking without discussing the public interest.

3. The applicant alleges that he has been shown as surplus at this Institute, whereas the work is proposed to be outsourced to some retired ministerial staff on contract basis. Instead of transferring the junior most staff in such a situation the applicant who ranks 72 in the seniority list of 127 has been transferred which is in violation of the rules.

4. Several representations as mentioned were submitted for cancellation of the impugned order as he submitted that he is not in a position to join at Bhopal as his wife is working as the Principal in a State Government school besides being a heart patient she is undergoing treatment at Bareilly, in view of this and Government of India's stated policy of posting husband and wife in the same station, respondents should have acceded to his request. Besides this the applicant's son died and his daughter is completing her last semester of the BBA course at Bareilly. All these factors plus the fact that he is the only male member to look after the family makes it problematic for him to move to Bhopal in compliance of the transfer order.

5. It appears that the respondents invited application on 11.10.2007 from among the LDC, UDC and Assistant for expressing their willingness to go to Bhopal but there was no response. Consequently pressure is being applied on the applicant to move to Bhopal as per the transfer order. He contends that the action of the respondents is illegal and arbitrary. He has relied on the Judgment in support of his case i.e. "Y. Kurikesu Vs. Senior Superintendent of P&T Trivandrum Division, in which it has been held that "the expression 'public interest' is not a magic word which can do service for anything in any situation. Nor is it a carpet under which anything can be swept. The expression 'public interest' has a definite purport; and in a particular case such interest must be disclosed or discernible. Since the transfer order is illegal, arbitrary and against the transfer guidelines and the law, it deserves to be quashed and set aside. The Tribunal vide its order dated 23.11.2007 directed the respondents to file a short counter within 2 weeks pending that status quo with regard to the applicant was to be maintained. This interim order is still continuing.



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6. The respondents have filed a short counter on the question of stay/status quo ordered by this Tribunal as well as parawise comments on the O.A.

7. The respondents state that the applicant has an All India Transfer liability as per ICAR Rules and he is liable to be transferred anywhere in India where an ICAR Institute is located. This is the first time the applicant is being transferred in his career of 33 years which has been spent entirely in IVRI Bareilly. This point has been corroborated by the applicant vide para 4.1 of the O.A. The order has been passed in public interest to meet administrative exigencies. The applicant while challenging the transfer order has not alleged any malafide or violation of any statutory provisions. The respondents have relied on the Supreme Court judgment in the Union of India Vs. S.L. Abbas's case in support of their contention, wherein it has been held that unless an order is malafide or is made in violation of statutory provisions Court/Tribunals cannot interfere.

8. Respondents refute the applicant's argument that he was declared surplus. They maintain that the applicant was transferred after expiry of 33 years service in IVRI Bareilly, in public interest to meet Administrative exigencies. The question of juniors to be transferred first when staff are declared surplus, therefore, does not arise. They further submit that after issue of transfer order on 16.07.2007 the applicant submitted representations on 18.07.2007, 10.08.2007 and 20.10.2007, all of which were rejected vide speaking orders and he has finally approached the Tribunal four months after the issue of the transfer order. Respondents submit in paragraph No. 18 of their short counter affidavit that in the wake of the Bird Flu epidemic the workload at IVRI Bhopal increased considerably so the applicant and another officer Shri S.N. More were transferred to Bhopal to cope with the increased workload. Shri S.N. More has joined his new place of posting.

9. Responding to the applicant's plea that his wife is a heart patient and is undergoing treatment at Bareilly, the respondents argue that the applicant's wife continues to attend to her job daily as the Principal of a School at Bhojipura which is 26 km. away from Bareilly, therefore, her heart condition could not be that serious to warrant cancellation of the applicant's transfer order. The transfer was ordered because of the shortage of staff and increased workload at Bhopal and

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the applicant and Sri More being experienced Assistants were posted there. There was therefore no need to disclose the public interest and no reliever was required before the said transfer was to be effected. The applicant's conduct has also not been proper as he refused to receive the transfer order on 16.07.2007 and asked for it to be served the next day i.e. on 17.07.2007, but he did not report for duty on that date and remained absent. As per the respondents the applicant was relieved on 16.07.2007 at IVRI Bareilly as such he is not on the strength of IVRI Bareilly and he has neither joined at IVRI Bhopal nor applied for leave during the period of his absence. Respondents also maintain that they have abided by the status quo order of this Tribunal. The respondents have passed all orders as per rules and laws in force whereas the applicant has been deliberately flouting the transfer order dated 16.07.2007 on one pretext or the other. They therefore urge that the O.A. is without any merit and is liable to be dismissed with costs.

10. Heard the learned counsel for the applicant Sri Avnish Tripathi and the learned counsel for the respondents Sri N.P. Singh and perused the pleadings.

11. There appears to be no dispute that the applicant has an All India Transfer liability and therefore he can be posted anywhere in India where an ICAR Institute is located. Despite this the respondents have allowed him to continue in IVRI Bareilly for the past 33 years and only when exigencies of service and administrative reasons demanded, his transfer to Bhopal was ordered. By periodic representations and filing of this O.A., the applicant has been able to ^{still in} state the transfer for more than ten months. The Supreme Court in S.C. Saxena Vs. U.O.I. & Ors. 2006 SCC (L&S) 1890 has held as under: -

"We find that no case for our interference whatsoever has been made out. In the first place 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 makes 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."

Having accepted an All India Transfer liability when he was first appointed to government service, the applicant cannot expect to

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stay in one station through his career. The respondents have been more than considerate in allowing him to stay on at Bareilly for more than 33 years. He should have therefore complied with the transfer order instead of litigating and frustrating administration.

12. The applicant has argued that the respondents have not disclosed what public interest is and in support have relied on the Judgment of Central Administrative Tribunal Ernakulam Bench, mentioned in paragraph No. 5 above. I respectfully note the observations of the Tribunal in the aforesaid case which also observes that in a particular case such interest must be disclosed or discernible. I would like to reproduce here extracts of the Calcutta High Court Judgment in the case of ^{anw} Shyam Sunder Chakraborty Vs. Union of India (CR 7848- W/15) which reads as under: -

"There is no statutory obligation to record in writing the very special reasons. If reasons are recorded, obviously it would be disputed in every case. It would be impossible for the administration to pass any order of transfer. Powers conferred by rule 37 are to be exercised in the interest of the service and the authority, who exercises such powers is the best judge to consider administrative convenience and also the convenience of the transferees. Unless the court is satisfied that the order is made for collateral purposes or it is passed malafide, a writ court should not ordinarily interfere with such administrative order passed in the interest of service."

A bare reading of the impugned transfer order which contains the name of another Assistant besides the applicant does not indicate any malafide or violation of any statutory provisions or any evidence that the order is punitive in nature. On the other hand as per the respondents own submission the transfer was necessitated due to increased workload and shortage of manpower at IVRI Bhopal. There is no reason to disbelieve this stand of the respondents.

13. The applicant's plea that his daughter is in the final semester of the BBA is now no longer relevant due to passage of time. On the issue of his wife's heart ailment while I am in full sympathy I have to admit that in the context of the applicant's transfer this argument lacks force as his wife is attending to her duties as a Principal of the Prathamik Vidyalaya at Bhojipura, a distance of 26 km. on a daily basis, which shows that the ailment is not coming in the way of discharging her duties. The applicant has not taken into account that

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perhaps better medical facilities are available at Bhopal as compared to Bareilly. So this argument of the applicant cannot be accepted. In so far as the applicant's reference to D.O.P & T O.M. dated 03.04.1986 (by which Cadre Controlling authorities should try to see if the husband and wife are posted together at the same station to the extent possible) is concerned the OM also states⁹ within the constraints of administrative feasibility. In this connection the relevant para of the Supreme Court Judgment in Bank of India Vs. Jagjit Singh Mehta (1992) 1 SCC 306, reads as under: -

"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. After giving preference to the career prospects by accepting such a promotion or any appointment in an All India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, 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. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

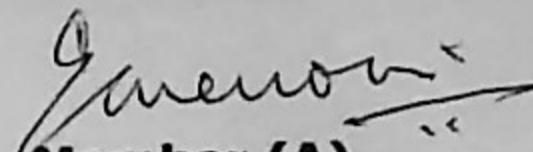
⁹ *clearly shows*
This clearly shows that the guidelines say that as far as possible a husband and wife must be posted at the same place. The said

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guideline, however, does not confer upon the government employee a legally enforceable right. The applicant's contention therefore lacks force and is rejected.

14. In conclusion I have to observe that as per the above analysis the applicant has not made out a strong case which calls for any interference with the transfer order by this Court. I am also conscious of the fact that the employer is the best judge regarding administrative requirements and the requirement and posting of its employees and scope for judicial review is very limited specially when neither malafides have been established nor statutory provisions violated.

15. The O.A. therefore fails and is accordingly dismissed. No costs.


Member (A)

/M.M/