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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 299/2005

Date of order: 30.01.2006

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri M.R. Menghani, S/o Shri R.S. Menghani, aged 46 years, resident of 18, Extension 106, Chopasani Housing Board, Jodhpur (Raj) at present posted as AAO, (Assistant Accounts Officer) at LAO (A) Jodhpur Office, Jodhpur (Raj)

: Applicant.

Rep. by Mr. Hemant Shrimali: Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Controller General of Defence Accounts, R.K. Puram, New Delhi.
3. P.C.D.A. (Principal & Controller of Defence Accounts) (Southern Command) Pune 01, Finance Road, Pune 411001
4. Local Audit Office (Army) Prem Niwas, Polo II, Mandore, Road, Jodhpur (Rajasthan).

: Respondents.

Rep. by Mr. Kuldeep Mathur: Counsel for the respondents.

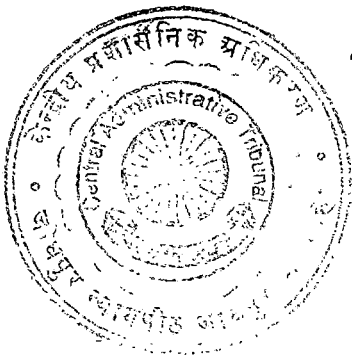
ORDER

Mr. J.K. Kaushik, Judicial Member.

Shri M R Menghani has assailed the order dt. 09.09.2005 (Annexure A/1) and has prayed for quashing and setting aside the same, amongst other consequential reliefs.

2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission; keeping in view, the urgency and short controversy involved in this case. I have accordingly heard the arguments





advanced at the Bar by the learned counsel and anxiously considered the pleadings as well as the records of this case.

3. The factual score of this case falls within a narrow compass. The applicant is presently holding the post of Assistant Accounts Officer at Jodhpur. He served at Pune during the period from Sep 2000 to Nov. 2003 and thereafter he came to be posted at Jodhpur. His wife is also a Central Government employee serving in Postal Department at Jodhpur. There is a well-established policy to normally post husband and wife at same place. The applicant's son is studying in 10th class in Kendriya Vidhyalaya at Jodhpur. He has been ordered to be transferred from Jodhpur to Udaipur vide impugned order dated 9.9.2005, just on completion of 22 months despite the fact that there are number of persons having longer stay at Jodhpur being continued. The impugned order has been assailed on various grounds indicated in succeeding paras.



4. The respondents have resisted the claim of applicant and filed a comprehensive counter reply. The applicant has been transferred in the interest of administration. Certain longest stayees are not being transferred because of prohibition to transfer the employees who have crossed the age of 55 years. The applicant has remained at Jodhpur for about 13 years out of his total service of 21 years. The grounds raised in the OA have been denied. The same is followed by a short rejoinder.

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5. Both the learned counsel representing the parties, have reiterated the facts and grounds as noticed above. The learned counsel for the applicant has contended that the applicant has not been given any option as per policy in vogue prior to ordering his transfer. Applicant's son is studying in 10th class and the transfer is a mid academic session transfer. The policy to keep husband and wife together has been given go-by. Per contra, the defence version has been that applicant has been transferred in the interest of administration and there is no policy to provide any option to the employees before issuing transfer orders. The policy to keep husband and wife is not a sacrosanct and is subject to the exigencies of service.



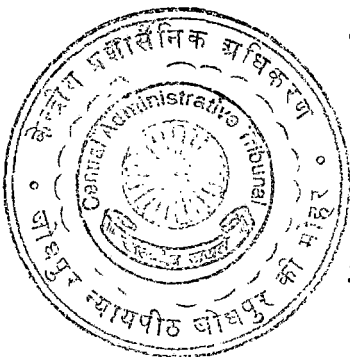
6. I have considered the rival contentions put forth on behalf of both the parties. There is hardly any quarrel on the factual aspect. As regards the policy of keeping husband and wife together, the issue has been lucidly dealt with by Hon'ble High Court Calcutta in case of **The Registrar General of High Court, Calcutta and Anr vs. Smt Chitra Biswas and Others** 2005(4) SLR 740 CAL HC and there is hardly any scope to interfere on this count. Their Lordships have observed as under:

"10.5 Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, 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

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as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right. The jurisdiction of the High Court under Article 226 of the Constitution of India in service matters is not that of an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer."

7. There is no plea of any mala fide and the transfer has been made in the interest of administration. There is also no violation of any statutory rules. I have also not been shown any policy laying down that option about place of posting, should be called prior to issuing any transfer order. However, I find that there was no emergent requirement or such an urgency that the applicant cannot be kept at Jodhpur until the end of academic session. The respondents can very well wait joining of the applicant at new place of transfer at the end of the school academic session. In such cases the transfer order should be kept in abeyance and I am fortified of this view from the verdict of the Apex Court in case of **Director of School Education vs. O. Karuppa Thevan** reported in 1996(1) SLR 225(SC).



8. In the premises, the respondents are directed to keep the transfer order dt. 9.9.2005 at Annexure A/1 in abeyance until the end of the school academic session i.e. upto 15 April 2006. The interim order passed earlier is merged in this order. The Original Application stands disposed of accordingly but with no order as to costs.


(J.K. Kaushik)
Judicial Member

jsv

RIC
Section
14-2-06
Per - [Signature]

Copy Received
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16/2/06
P. H. Shrivastava

Part II and III destroyed
in my presence on 03/11/14
under the supervision of
Section officer (b) as per
order dated 31/1/14

[Signature]
Section officer (Records)
31/1/14