

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 279/2010

Reserved on 26.5.2014

Pronounced on 18/07/2014

Hon'ble Sri Navneet Kumar, Member (J)

Ashok Kumar Agrawal aged about 54 years son of late Sri Hira Lal Agrawal r/o Flat No. 17, Type V, Akansha Parisar, Pocket 'B' Sector 'F' Jankipuram, Lucknow-226021.

Applicant

By advocate: Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Means, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata-700016.
3. Deputy Director General, Northern Region, Geological Survey of India, Sector F, Aliganj, Lucknow-226026.

Respondents

By Advocate; Sri Pankaj Awasthi for Sri R. Mishra

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- i) to quash the impugned transfer order dated 4/8-6-2010 passed by the respondent No.2, as contained in Annexure No. A-1 to the O.A. with all consequential benefits.
- ii) to direct the respondents to pay the cost of the application.
- iii) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant was initially appointed as Mechanical Engineer (Junior) on a Group 'A' post in 1981 in Geological Survey of India (GSI). Thereafter, he was transferred to Coal Wing in 1982. In 1987, he was transferred to Jaipur and then to New Delhi in 1994 and again to Jaipur in 1996 and since 2000, the applicant is working in Lucknow. The learned counsel for the applicant has also pointed out that the transfers of Group 'A' and 'B' officers in GSI is governed by Human Resource Development and Deployment Policy w.e.f. 1.1.2010. By means of order dated 4/8.6.2010, the applicant was transferred from Lucknow to Jaipur w.e.f. 15th June, 2010 in the interest of public service. The applicant submitted

representation on 11.6.2010 and as per the averments made in the list of date of events, the applicant was allowed to retain at Lucknow till 15.7.2010. Prior to that date, the applicant preferred the present O.A. and by means of the order dated 14.7.2010, the Tribunal directed the respondents to maintain status quo as of today till the next date of listing. The ground of challenge of the present O.A. is that the impugned order is in gross violation of transfer policy and also the impugned order is patently non-judicious and discriminatory in the eyes of law as much as none of the other 32 Group 'a' and B officers whose names find place in the anticipated list of transfers are transferred and only the applicant is singled out. Apart from this, the learned counsel for the applicant has also alleged that the impugned order is passed just to retain another employee who has served for more period at Northern Region than the applicant and the applicant has been transferred. It is also pointed out by the learned counsel for the applicant that the applicant was appointed on promotion to the post of Director ME on 24.10.2008 and accordingly he has still not completed his tenure of 5 years at NR, Lucknow as such it is only in a emergency or on emergent eventuality, the applicant could have been transferred out but the same has not done. The learned counsel for the applicant has also relied upon a decision of the Tribunal passed in O.A. No. 385/2008 and has pointed out that since in the above mentioned O.A., the transfer order is set aside with liberty to the respondents to pass fresh order in public interest, as such the present transfer order is also liable to be quashed and the applicant be treated similarly as orders passed in O.A.No. 385/2008.

3. Learned counsel for the respondents filed their reply as well as Supple. Counter reply and through reply and Supple. Counter reply, it is indicated by the respondents that considering the operational and functional requirement of department, the applicant has been transferred in the interest of public service from North Region, Lucknow to West Region, Jaipur w.e.f. 15.6.2010 vide order dated 4.6.2010. The applicant submitted the representation and in the representation, the applicant quoted clause 14.1 of the transfer policy of GSI, which is being given effect to from 1st January, 2010 and has taken a ground that Sri A.K. Johari, Executive Engineer has a longer tenure at N.R., Lucknow as such he may be given benefit of the same.

In reply to this, it is indicated by the respondents that Sri A.K. Johari is posted at N.R., Lucknow since 10.9.1999 while the applicant is posted since 21.2.2000 and Sri A.K. Johari has been transferred from Drilling Division , NR, Lucknow to Drilling Division Eastern Region, Kolkata vide order dated 31.12.2010 which was deferred till 28.2.2011. Not only this, it is also pointed out that the transfer of the applicant was affected on the basis of functional requirement and as a policy matter, one Director with Mechanical Engineering background from E&T Division while the other Director is being retained from the Drilling Division with the same Mechanical Engineering Background to look after drilling operation. Since one Sri R.P. Verma, Director ME was shifted to Lucknow and it was not possible to keep two directors from ME and E&T background at Lucknow. It is again reiterated by the learned counsel for the respondents that the transfer of the applicant has been affected on the basis of functional requirement keeping in view his request for home town posting. Not only this, it is also vehemently argued by the learned counsel for the respondents that the applicant is serving in a Department with all India transfer liability where the question of problem of children education cannot be taken into account for deciding the place of transfer. It is also not possible for the office to address all the personal problems of an officer. The learned counsel for respondents has also relied upon certain decisions of the Hon'ble Apex Court :-

- i. **State of Punjab Vs. Joginder Singh reported in AIR 1993 SC 2486**
- ii. **State of M.P. Vs. S.S. Kourav reported in AIR 1995 SC 1056.**
- iii. **Mrs. Shilpi Bose Vs. State of Bihar reported in AIR 1991 SC 532**
- iv. **State of U.P. Vs. Gobardhan Das reported in 2005 SCC (L&S) 55**
- v. **Rajendra Singh and others Vs. State of U.P. and others reported in 2010(1) SC (L&S) 503.**
- vi. **Union of India and others Vs. N.K. Kirtaniya reported in 1989 (11) ATC 269**
- vii. **Kerala Solvent Extraction Limited Vs. A . Unnikrishnan reported in 2008 SCC (2) (L&S) 155.**

viii. S.L.Abbas Vs. Union of India and others reported in 1993(2)

SSSLJ 371

and has pointed out that court should not normally interfere in transfer matters except when it is shown to be mala fide or in violation of statutory rules and allegations of mala fide must be based on concrete material.

4. Learned counsel applicant has also filed Rejoinder reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated. It is also to be indicated that the applicant has filed Supple. Rejoinder reply to the Supple. Counter reply filed by the respondents.

5. Heard the learned counsel for the parties and perused the record.

6. Certain points are undisputed to the extent that the applicant joined the respondents organization and was transferred to different places and finally came to Lucknow on transfer in January, 2000. Since then, the applicant is working in Lucknow. By means of impugned order, dated 4/8.6.2010, the applicant is transferred from N.R., Lucknow to Western Region, Jaipur and the said order was given effect on 15th June, 2010. The applicant submitted the representation to the authorities on 11.6.2010 and on the said representation, the respondents have passed an order on 14.6.2010. He was retained in NR Lucknow for additional one month i.e. upto 15.7.2010. During this period, the applicant preferred O.A. before this Tribunal and Tribunal passed an order of maintaining status quo on 14.7.2010. Since then, the applicant is continuing on the basis of interim relief. The applicant has annexed Transfer Policy dated 7.1.2010. It is also to be pointed out that as per the Transfer Policy, Geological Survey of India is an All India Organisation. All Group 'A' and 'B' officers of GSI must expect to be transferred and posted any where in India as per the requirement, in public interest. GSI's endeavour must be that this is done in the best interest of the organization and its employees and in a planned and transparent manner. Apart from this, it is also pointed out in the said Transfer policy that the officers of GSI need to be groomed and prepared for taking up higher responsibilities (on the basis of seniority and expertise) by giving the officers concerned an opportunity to acquire and further increase expertise. Postings and deployments will be made so as to promote specialization as well as

appropriate multi-disciplinary expertise. The said policy also provides as under:-

10 Compassionate postings and transfers:-

10.1 Every officer is expected to serve anywhere in India in the public interest. However, in case it is possible to reasonably make alternative arrangements within the framework of this Policy, personal circumstances of the officers and their families will be given utmost consideration, and for this purpose,

(i) Where both husband and wife are in Central Government employment, posting to the same station shall be given due weightage subject to considerations of maximum tenure as per the Policy. This has to be in accordance with the DoPT OM No.F.No.2804/9/2009-Estt.(A) dated 30.09.2009 (Appendix-II)

(ii) Where the officer or his spouse or minor children require to be at allocation on account of availability of super-specialized medical services not available at present place of posting, posting to a station of choice (in order of priority) shall be given due weightage.

(iii) Physically challenged employees shall be considered for transfer under this clause based on nature and extent of the disability..Definitions of Categories of Disabilities have been given in Para 8 of DoPT OM No. 36035/3/2004-Estt (Res.) dated 29th December 2005 on the subject 'Reservation for the Persons with Disabilities'

(iv) DoPT guidelines issued vide their O.M.No.AB-14017/49/90 Estt (RR)dated 15.02.1991 and O.M. No. AB14017/41/90 Estt.(RR) (Vol.II)dated 05.01.1993 in respect of the employees having mentally challenged child/spouse shall be followed.

(v) In case of an officer due to superannuate within 2 years, posting to a station of choice (in order of priority) shall be given due weightage. Provided ,in case an officer seeks a posting to a particular station on medical grounds or on grounds of Disabilities, the Placement Committee may send its recommendation to the Director General, GSI after referring the case to a Medical Board for its opinion.

10.2 Applications for posting on compassionate grounds shall be sent on proforma (Annexure-I) along with documents in support and shall be approved by the Director General for consideration during the next General Transfer.

10.3 The list of approved cases for compassionate transfers shall be published in GSI's Portal/Internet.

10.4 Where on grounds of extreme urgency, it is not possible to wait till the next General Transfer; a transfer on compassionate grounds may be made with the prior approval of the Secretary (Mines).

7. As the applicant himself admitted this fact that he joined the NR region at Lucknow in 2000 as such he has already spent about 14 years in Lucknow since he jointed in Lucknow.

8. The other grounds taken by the applicant in regard to that the transfer order is patently non-judicious and is discriminatory and bad in the eyes of law and is not maintainable. The applicant has already served a long

period of about 14 years and the applicant having All India transfer liability. The decision cited by the applicant in O.A. No. 385/2008 passed by this Tribunal is in regard to that the considerable time was passed when the transfer order was issued but remained ineffective/inoperative and status quo was granted and the applicant continued to work at Lucknow, as such the decision cited by the applicant is not applicable in the present case.

9. The case laws relied upon by the learned counsel for respondents deals with the authority of courts to deal with the transfer matters. Not only this, it is also indicated in one of the judgment of the Hon'ble Apex Court that there is no vested right to remain posted at one place or the other and transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any indication to the contrary, held that Courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fide.

10. The Hon'ble Apex court not only in one but in number of cases such as in the case of **B. Vardharao Vs. State of Karnataka , AIR 1986 SC 1955, Shilpi Bose and others Vs. State of Bihar , 1991 SC 532, Union of India Vs. S.L. Abbas AIR 1993 SC 2444**, has been pleased to observe that the transfer is an incidence of Government service and the courts should not normally interfere with it unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions. Apart from this, it is also observed that the court should not interfere with the purely administrative matters like transfer and postings except it is warranted and is passed against the statutory provisions.

11. In the case of **National Hydroelectric Power Corporation Limited Vs. Sri Bhagwan and another reported in (2001) 8 SCC 574** , the Hon'ble Apex Court has been pleased to observe that Govt. servant has no vested legal right to be remained posted forever on a particular place.

12. In the case of **State of U.P. Vs. Govardhan Lal reported in 2004 11 SCC 402**, it is once again observed by the Hon'ble Apex Court that transfer of employee is purely discretion of the authority and court should not interfere in it except :-

i) malafide is shown

- ii) in violation of statutory rules;
- iii) passed by authority not competent

13. As can be seen that the impugned transfer order is neither passed in any malafide intention nor it has been passed in violation of statutory provision because the tenure not fixed tenure whereas a person can be transferred subject to exigency of service and as regard the authority not competent to pass order is also not there because the authority who has passed the transfer order is competent to pass the impugned transfer order.

14. The Hon'ble Apex Court in the case of **S.L. Abbas (supra)** has been pleased to observe as under:-

"7. 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 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 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."

"An order of transfer is an incident of Government service. 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 as possible, husband and wife must be posted at the same place. The same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force."

15. Further, the Hon'ble Apex Court in the case of **Shilpi Bose(Mrs.) (supra)** has been pleased to observe as under:-

"4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. 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.”

“ The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide . A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. 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 overlooked these aspects in interfering with the transfer orders.”

16. A Division Bench of the Hon'ble Mumbai High Court in **S.N. Umap v. State of Maharashtra (Bom.)** reported in 1984 (2) SLR 328 has held as under:-

“It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfer, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even the administrative actions should be just and fair. Frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to the employee and drive him to desperation. It disrupts the education of the children and leads to numerous other inconveniences and problems and results in hardship and demoralization. Therefore, the policy of transfer should be reasonable and fair and should apply to everybody equally.”

17. That the scope of judicial review in transfer of an employee is not warranted and the transfer is not only an incident but a condition of service and it should not be interfered with unless shown to be an outcome of malafide exercise of power or violative of any statutory provisions.

18. The Hon'ble Apex Court in the case of **State of U.P. & Others v. Gobardhan Lal** (Supra) observed that the transfer is prerogative of the authorities concerned and court should not normally interfere therewith.


While deciding the said case the Hon'ble Apex Court further pleased to observe as under:-

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

19. In another matter of transfer which came up before the Hon'ble Apex Court i.e. the case of **Rajendra Singh & Others v. State of U.P & Others (supra)**, it has been observed by the Apex Court that the scope of judicial review in transfer matters is very limited and the courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide. The Hon'ble Apex Court further observed as under:-

“9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. 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 overlooked these aspects in interfering with the transfer orders.



10. 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.....”

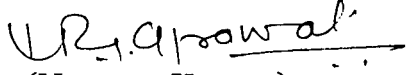
20. Again in 2010 in the case of **State of Haryana & Ors. v. Kashmir Singh & Another (supra)** the Hon'ble Supreme Court emphasized in regard to the judicial review in transfer matters. It has been observed that it is a policy matter which is purely an administrative matter and in transfer and posting the scope of interference by the courts is very limited. The Hon'ble Apex Court further observed that the State Administration cannot function with its hands tied by judiciary behind its back. The Hon'ble Apex Court while deciding the issue of transfer has been pleased to observe as under :-

“12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular v. Union of India*.”

21. The bare perusal of the aforesaid observations of the Hon'ble Apex Court, it is absolutely clear that the transfer ordinarily is an incidence of service and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. Apart from this, as observed by the Hon'ble Apex Court in the case of **Aravali Gold Club Vs. Chander Hass reported in (2008) 1 SCC 683** and in the case of **Common cause Vs. Union of India reported in (2008) 5 SCC 511**, that judges must observe judicial restraint and must not ordinarily encroach into the domain of the legislature or the executive. Undoubtedly, the transfer is domain of an executive and it should only be interfered with where absolutely necessary on account of violation of any fundamental or other legal right of the citizen.

The State administration cannot function with its hands tied by judiciary behind its back.

22. On the basis of observations of the Hon'ble Apex Court as well as submissions made by the learned counsel for the parties, I do not find any justified ground to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-