

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH, LUCKNOW**

O.A. NO. 414/2010

This, the 24th day of March, 2011

**Hon'ble Justice Alok Kumar Singh, Member (J)
Hon'ble Shri S. P. Singh, Member (A)**

Rishi Nath Behal S/o Late Shri Shiva Nath Behal R/o C-359
Rajendra Nagar, Bareilly.

Applicant

By Advocate Ms. Veena Sinha

Versus

1. Union of India through Secretary, Department of Urban Development, Nirman Bhawan New Delhi.
2. Director General of Works, Central Public Works Department, Norman Bhawan, New Delhi.
3. Additional Director General of Works, (S&P) Central Public Works Department, Nirman Bhawan, New Delhi.
4. The Chief Engineer, (Northern Zone-II), Central Public Works Department, Kendriya Bhawan, Aliganj, Lucknow.

Respondents

By Advocate Shri Pankaj Awasthi for Shri Raghvendra Mishra.

ORDER

By Hon'ble Shri S. P. Singh, Member (A)

This O.A. has been filed seeking following relief(s):-

- (1) To quash the impugned transfer order dated 13.9.2010 passed on behalf of respondent No. 2 as contained in Annexure No. 1 to the O.A. with all consequential benefits.
- (2) To direct the respondent to allow the applicant to continue his posting in Bareilly and pay him salary regularly.



(3) To direct the respondent to decide the representation considering his family situation.

(4). To direct the respondents to pay the cost of this application.

(5) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The facts of the case were recorded by this Tribunal while passing the order dated 21st October, 2010. The interim order passed in this case dated 21st October 2010 is reproduced below:-

"Heard Ms. Veena Sinha, learned counsel for applicant and Shri R. Mishra, Senior Central Government Standing Counsel appearing for the respondents.

2. This O.A has been filed for quashing of the impugned transfer order dated 13.09.2010 (Annexure-1).

3. Besides, seeking the main relief for quashing the transfer order an interim relief has also been sought in the petition itself for staying the operation of the impugned order dated 13.09.2010.

4. The applicant is working as an Assistant Engineer, presently, posted in CPWD, Bareilly. On 23.7.2010, he was transferred to Indo Bengal Border Maintenance Zone, Bihar. He submitted a representation which was considered by the Hard Case Committee constituted as per M. No.18/1/2008 dated 31.5.2010. Besides, the representation made by the applicant few more Assistant Engineers had made representations against their transfers on the ground of lowest stay in NR. The Hard Case Committee decided all those 49 representations and finally vide order dated 13.09.2010 (Annexure-1) was passed in public interest. The name of the applicant finds place at Sl.No.16. Out of 49 representations about 27 were rejected. In the case of the applicant his transfer order was modified and he was finally transferred to Bihar to be allocated to SE (COORD) ER.

5. The learned counsel for applicant drew the attention of the Tribunal towards Annexure-4 (dated 30.09.2009) which says when both spouse are in same central service or working in same department and if posts are available, they may be posted at the same station. The applicant's wife neither belongs to the same central service nor working in same department. She is working in Bank of Baroda, Bareilly which is a public sector Bank. Therefore, applicant's case does not seem to be covered under the aforesaid guideline. In the same OM, it is also provided that on the basis of 6th CPC Recommendations Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. But here, no such question is involved. Certain other

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guidelines have also been laid down in this O.M. But the same do not appear to be of much significance in the case.

6. A Supplementary Affidavit has also been filed saying that some officers who were affected by the transfer order date 13.09.2010 filed an O.A. before the Central Administrative Tribunal, Principal Bench, New Delhi and the Tribunal has been pleased to pass an order of status quo (Annexure-SS-2) on 23.09.2010 which is reproduced herein below:-

"Learned counsel for the applicant submits that the applicant has challenged his transfer order dated 22.07.2010 on the ground that it was issued during mid-academic session and the children of the applicant would be affected. Learned counsel also submit that although the prayer in the application is made to quash and set aside the order dated 22.07.2010, grievance of the applicant will be redressed if it is kept in abeyance till the beginning of the next academic session. He further submits that the employees of the respondents-organization who are similarly circumstanced and approached this tribunal and obtained interim protection in the OANo.3167/2010 and OA No.3106/2010. He submits that the aforesaid OAs are fixed for hearing on 05.10.2010 and requests that this OA may be admitted and kept for hearing on the same date.

2. In the circumstance, issued notice to the respondent for appearing on 05.10.2010. Status quo as of today be maintained.

3. Issued dasti."

7. In the present case the emphasis has been laid on the point that the applicant and his wife both are working. There is no pleadings to the effect that the children are in the mid academic session. From the perusal of the record, it appears that the wife of the applicant has also made a representation on 21.09.2010 to the Cabinet Minister, Urban Development, Nirman Bhawan, New Delhi saying that they have three children and out of them one daughter is studying in Sultanpur and other is studying in Bareilly while son aged about 9 years is studying in Class-IV. But nowhere the point of mid-academic session has been emphasized. In another representation dated 14.09.2010 made by the applicant himself addressed to Director General, CPWD, New Delhi (Annexure-6) also no such ground has been taken. It is also not ascertainable from the record as to what happened to both the above representations. Be that as it may. But in our view the applicant is not entitled to get any benefit from the aforesaid interim order passed by Central Administrative Tribunal, Principal Bench, New Delhi mainly because, the interim protection which has been granted by the Principal Bench is mainly based on the ground that the transfer order was issued during the mid academic session due to which children would be affected. It is also worthwhile to mention that the impugned transfer order is dated 13.09.2010 which, as said above has been passed on the recommendation of Hard Case Committee whereas, the transfer order which has been challenged before the Principal Bench is altogether different which is dated 22.07.2010. Moreover, before the Principal Bench, it was submitted on behalf of the

applicant that though the quashing of the order has been sought but the grievance will be redressed if it is kept in abeyance till the beginning of next academic session. But in the present case no such prayer/ request has been made before us. Therefore, in our view the applicant cannot derive any benefit from the aforesaid order of the Principal Bench.

8. In view of the above, no interim relief can be granted. Let this OA be listed for admission on 2.12.10."

3. It was submitted by the respondents that the transfer is not only incidence but is condition of service. Who would be transferred and where is the matter for the appropriate authority to decide as was held by the **Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others (AIR 1991 SC-532.**

4. The Learned counsel for the respondents has further relied on following judgments of Apex Court:

In the case of **State of Punjab Vs. Ram Lubhya Bagga & Ors (1998 (2) JT page 136)**, it has been held that the Govt. can change its policy from time to time under the changing circumstances. Similar findings were given in the case of **Technical Executive (Anti-Pollution) Welfare Association Vs. Commissioner of Transport Department & Another. ;(1997 (1) SCSLJ Page 633 and 1997 (4) JT page 172**, wherein, it was held that it is a matter within the purview of the appropriate Govt. to issue direction to lay down the policy.

In the case of **Indian Railway Service of Mechanical Engineering Association & others Vs. Indian Railway Traffic Service Association & Another, (1993 (3) JT page 424**, it has been held by the Apex Court that the Court cannot compel the Govt. to change its policy.

In the case of **Union of India and other Vs. S.L. Abbas AIR 1993 SC 2444**, it was held by the Apex court

"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 provision, the court cannot interfere with it. 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.

Similar view has been taken in *National Hydroelectric Power Corporation Ltd. Vs. Shir Bhagwan and another Government Servant or employee of a public undertaking has any legal right to be posted forever at anyone particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest is shown to be an outcome of malafide exercise of power or stated to, be in violation of statutory provision s prohibiting any such order, as though they were the appellate authorities substituting their own decision for that of the management."*

5. With regard to the applicant's contention that the impugned transfer order dated 13.9.2010 passed on the recommendation of Hard Case Committee was challenged before the Principal Bench, it was pointed out by the respondents that the controversy in question has been set at rest by the Principal Bench of this Tribunal in its detailed and comprehensive judgment passed in Bunch of OAs. which is annexed as Annexure A-1 in the Supplementary Counter Affidavit filed by the respondents on 13.12.2010. The operative portion of the said order is reproduced below:-

"In view of the above discussions, it must be held that there is no legal infirmity or illegality in the orders challenged in these OAs. Keeping this and the well settled position of law in mind that transfer orders issued on administrative grounds/public interest cannot be interfered with except if they are issued by an incompetent authority, which is not the case here, or if they are established to be on clear malafides, which again is not the case here, the OAs. under consideration shall stand dismissed. Interim orders passed in the above OAs. also stand vacated. No costs."

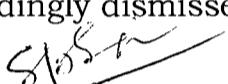
6. We have heard both the counsels for the parties and perused the material on record to assess the rival contentions.

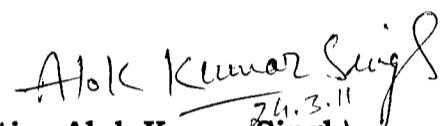
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7. For the reasons recorded above and also order of this Tribunal dated 21.10.2010 and in the light of discussions recorded by the Principal Bench while delivering its detailed and comprehensive judgment and order dated 13.12.2010 passed in a Bunch of OAs. settling the controversy in question, it must be held that there is no legal infirmity or illegality in the order challenged in the OA. In view of the well settled position of law regarding transfer orders issued on administrative grounds/public interest, we do not find any scope of interference with this transfer order issued in respect of the applicant.

8. The O.A. has no merit. It is liable to be dismissed and is accordingly dismissed. No costs.


(S. P. Singh)
Member (A)


Justice Alok Kumar Singh
Member (J)

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