

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.84/90.

Smt. Saraswathi Ramachandran. ... Applicant.

V/s.

Union of India & Others. ... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,  
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant by Ms.K.U.Nagarkatti.  
Respondents by Mr.V.S.Masurkar.

JUDGMENT:-

(Per Shri T.C.Reddy, Member(J)) Dated: 19-3-1991

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 by the applicant. Though the applicant had asked for many reliefs in the application, the applicant had restricted her relief, when the petition came up for hearing, with regard to the order passed against her, transferring her from Pune to New Delhi.

2. The applicant was appointed as Junior Stenographer Gr.III on 27.12.1972 and posted to the Office of the Controller of Defence Accounts (Officers) (CDA(O) for brief) who is the second respondent herein. From then onwards she had been working at Pune in that post until the year 1988. In the month of March 1979 and August, 1984 the applicant was offered promotion to Stenographer Gr.I and posted to Bombay and Nagpur respectively. The applicant requested not to transfer her and she gave up her right to promotion on those two occasions. The authorities accepted her request and retained her at Pune itself. Again on

(9)

- 2 -

1.8.1986 the applicant was offered promotion to Senior Stenographer Gr.I and posted to Bangalore. Once again she declined the said transfer on promotion and opted to continue at Pune itself as Junior Stenographer Gr.III with the consent of the authorities. In October, 1987 the applicant was once again offered the post of Senior Stenographer Gr.I for posting at the office of the Controller of Accounts (Factories), Kirkee at Ammunition Factory, Kirkee w.e.f. 30.10.1987. The applicant once again declined to accept the promotion and transfer to Kirkee for a period of one year representing to the authorities that due to acute domestic problems she was unable to accept the said transfer and so requested to retain her in the said post of Junior Stenographer Gr.III at Pune itself. Further, two months before the expiry of the one year period, as per the applicant's application dt.20.9.1988 addressed to the Controller General of Defence Accounts, Office of the C.G.D.A., New Delhi, who is first respondent, she expressed her willingness accepting promotion for her transfer to Kirkee as proposed in October, 1987. The said application was forwarded by R-2 to R-1. However, the first respondent chose to transfer the applicant on promotion to Senior Stenographer Gr.I to New Delhi as per the orders dt. 19.12.1988. Actually there is only one post of the Senior Stenographer Gr.I in the Office of the second respondent at Pune. The said post was filled up by promoting another lady who is junior to the applicant herein. It is the case of the applicant that she had then in the year 1988 a baby who was one year old and the said

T - C - n - C

...3.

baby was suffering from Epilepsy and that the applicant had many other domestic problems which required her presence at Pune itself and that her husband was also employed at Pune and so the authorities have not exercised their discretion fairly in transferring her in the said promotional post of Sr. Stenographer Gr.I from Pune to New Delhi, and that she should have been promoted to the said post of Senior Stenographer Gr.I from the said post of Jr. Stenographer and retained at Pune itself. After observing the required formalities, she has filed the present application on 13.2.1990 for the said reliefs as already indicated above. In the said application, she has also prayed to restrain the first respondent from giving any effect to the said transfer order during the pendency of this Original Application. The application when came up for hearing on 8.4.1990 the Bench of this Tribunal on 8.4.1990 ordered status quo till 31.5.1990. On 28.5.1990 this Tribunal ordered that the status quo was to be maintained till 13.6.1990. On 13.6.1990 after hearing the advocate for the applicant Ms.K.U.Nagarkatti and Mr.V.S.Masurkar for the respondents the Tribunal passed the following order:

"However, before we part, we observe that in case the applicant makes a representation to the competent authority for a change of transfer from Pune to Bombay instead of Pune to Delhi against the post of Stenographer Gr.I which is said to exist at Bombay as on date, the competent authority will consider her request and pass speaking order within two weeks of receipt of her representation."

So in view of the said direction given by the Bench of this Tribunal the concerned authorities have passed orders transferring the applicant from Delhi to Bombay and from

then onwards till to-day the applicant is working in Bombay. The said discretion by this Bench obviously should have been given as per the representation made on behalf of the applicant before this Tribunal to give a direction to the respondents to consider the transfer of the applicant from Delhi to Bombay. While passing the said order dt. 13.6.1990, the Bench had observed that the binding nature of the guidelines given to the Department wherein the applicant is working with regard to transfers to be made will be decided at the time of final hearing.

3. The respondents oppose this application on the ground that the said transfer of the applicant is made from Pune in the interest of administration. In B.Vardha Rao v. State of Karnataka 1986(4) S.C.C. 131 the Supreme Court has observed:

"That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post".,

The learned Judges observed:

"It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But it is one thing to say that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers, and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied, to the disadvantage of the concerned government servant.....

.....

It was no doubt true that the Government has power to transfer its employees employed in a

transferable post but this power has to be exercised bona fide to meet the exigencies of the administration. If the power is exercised mala fide, then obviously the order of transfer is liable to be struck down."

Therefore, when an order of transfer is attacked as ~~a~~ penal, it must be considered from the basic postulate that no Government servant is entitled to be retained at a particular place, that transfer is an incident of service and the Government has the power and authority to transfer in the exigencies of administration. However, any transfer must be ordered in public interest. As seen from the reply filed by the respondents it is clear that the said transfer of the applicant from Pune is in public interest. So even though her shifting from Pune for administrative convenience might have caused some inconvenience to her, the applicant has no alternative except to bear the said inconvenience. Transfer is an incident of service and not a condition of service. The employer himself is the best judge in the matter of transfers. It cannot be denied that the government has the right to transfer ~~a person~~ <sup>its employees employed on</sup> including a transferable post. No motives or mala fides are attributed to the respondents in effecting the said transfer and so we see no reason to interfere with the said order transferring her originally from Pune to Delhi and as per the direction of this Tribunal from Delhi to Bombay. The distance from Bombay to Pune is not far off and it is a well known fact that many of the employees daily make their trips from Pune to Bombay after attending to their office work in

...6.

T - C: *m*

Bombay, back to Pune. So for the said reasons we are not prepared to interfere with the said order of transfer. There is one more factor which comes in her way from granting the relief that the applicant seeks for in this application. We have already made it clear that there is only one post of Senior Stenographer Gr.I in the office of the 2nd respondent at Pune. To the said post another female seems to have been promoted and posted. So if we are to accede to the request of the applicant then naturally the other female who is working as Stenographer Gr.I in the office of the 2nd respondent has to be shifted. She may also be having similar problems like that of the applicant or might be having more serious problems than the applicant. The said Gr.I Stenographer who is also a female working at Pune in the office of the second respondent is not a party before us. So without actually hearing the said Senior Stenographer Gr.I working in the office of the second respondent at Pune it may not be proper to interfere with the said order of transfer as ultimately the said transfer may likely cause inconvenience to her. So bearing this aspect also in mind we refrain from interfering with the said transfer order.

5. The learned counsel appearing for the applicant took us through the departmental guidelines wherein it is laid down that where husband and wife both are working in the department of the respondents, efforts are to be made to post them to or retain them at the same station, for periods and to the extent administratively feasible. The

said guideline does not make mandatory on the part of the respondents to keep both spouses working in the same department at one place for ever. It is only for certain periods and to the extent of administratively feasible, that the couples who are both employees can be accommodated. As a matter of fact the applicant herein had worked from the year 1972 up to the year 1989 i.e. roughly for a period of 17 years at Pune. So there should be no grumbling on her part for her transfer to Bombay.

6. Another guideline is also brought to our notice wherein it is laid down that transfer of individuals serving at popular stations will be regulated generally on the basis of seniority of stay at those stations, barring compassionate cases, where the CDA considers the retention of the individuals to be essential in the interest of work. On the basis of the said guidelines, it is contended that the other Stenographer (lady) who at present is working in the second respondent's office as Stenographer Gr.I ought to have been transferred instead of the present applicant. But the case of the respondents is in the interest of work and for administrative convenience that they have taken the decision of transferring the applicant herein in preference to the other lady working as Stenographer Gr.I in the second respondent's office. The decision taken by the respondents in the said circumstances cannot be said to

be as either motivated or ~~is~~ actuated with malice. It may be pointed out that administrative instructions in the nature of guidelines as to the timing of transfers etc. are not enforceable provisions, so even though the said guidelines are not strictly observed by the respondents the same would not result in our interference in the said transfer orders. The learned counsel for the applicant cited the following decisions in support of the applicant:

1. Cherian Jacob v. Government of India (1990) 12 ATC 382.
2. Sivasankara Pillai, P. v. Union of India & Others (1989) 10 ATC 132
3. D.R. Sengal v. Chief Postmaster-General & Ors. (1991) 15 ATC 36.

to Bombay to convince us that the said transfer of the applicant is bad. We have gone through the said decisions. The said decisions are not applicable to the facts of this case. On the other hand the Supreme Court decision referred to above and the observations that are extracted <sup>therein</sup> (supra) would govern the case on hand. So we see no merit in this application and hence the same is liable to be dismissed.

7. In the result the order of transfer of the applicant dt. 18.12.1988 from Pune to Delhi and the transfer of the applicant made from Delhi to Bombay during the pendency of this application as per direction of the Tribunal are upheld and the application is dismissed. The parties shall bear their own costs.

.....  
(T.C. REDDY)  
MEMBER (J)

.....  
(M.Y. PRIOLKAR) 8-29  
MEMBER (A).