

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JA BALPUR

Original Application No.436 of 2006

Date of Decision 10 .11. 2006.

Kawaljeet Singh **-Applicant**

Shri V.Tripathi **- Advocate for the applicant**

V E R S U S

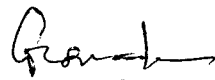
UOI & ors **- Respondents**

**Shri S.K.Mishra on behalf
of Shri R.S.Siddiqui** **-Advocate for the respondents**

Coram:

Hon'ble Dr.G.C.Srivastava, Vice Chairman(A)

1. **Whether Reporters of local papers may be allowed to see the order? - Yes / ~~No~~**
2. **To be referred to the Reporter or Not? Yes / ~~No~~**
3. **Whether it needs to be sent to the Principal Bench for circulation to other Benches of the Tribunal ? ~~Yes~~ / No.**


(Dr.G.C.Srivastava)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.436 of 2006

Jabalpur, this the 10th day of November, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman

Kawaljeet Singh Sachdeva, S/o P.S.Sachdeva, Aged about 38 years, R/o House No.1853/7, Azad Nagar, Ranjhi, Jabalpur.

-Applicant

(By Advocate – Shri V.Tripathi)

VERSUS

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Controller General of Defence Account, West Block-V, RK Puram, New Delhi.
3. The Controller of Defence Account, Ridge Road, Jabalpur.
4. The Joint Controller of Defence Accounts PAO (ORS), Corps of Signals (Pay Account Office) Ridge Road, Jabalpur.
5. Smt. Archana Khatri, DEO'B", Pay Accounts Office, GRC, Jabalpur.
6. Ku.Nivedita Banerjee, DEO 'B', C/o CDA, Ridge Road, Jabalpur.

-Respondents

(By Advocate – Shri S.K.Mishra on behalf of Shri R.S.Siddiqui)

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ORDER

This Original Application, has been filed against the order dated 19.6.2006 (annexure A-1) whereby the applicant has been transferred from Jabalpur to Sagar, and order dated 30.6.2006 (annexure A-2) whereby his representation against this transfer order was rejected. Through this Original Application, the applicant has prayed for the following main relief :-

“7(ii) Set aside the transfer order and relieving order dated 19.6.2006 Annexure A-1.

7(ii-A) Upon holding that the so called unwritten policy which gives immunity for lady employees for transfer is unconstitutional or ultra vires, set aside quash the same and also the transfer order of Smt.Archana Khatri whereby she brought from Sagar to Jabalpur at the cost of applicant. In the result, respondents be directed to effect the transfer policy and as per the station-wise seniority of the employees irrespective of any gender”.

(iii) Command the respondents to continue the applicants (sic – applicant) at the present place of posting i.e. Jabalpur”.

2. The main contention of the applicant is that he has been transferred ignoring the transfer policy guidelines contained in paragraph 370 which reads as follows:-

“370. Transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at those stations, barring compassionate cases, cases where the CDA considers the retention of an individual to be essential in the interest of work etc., to the extent necessary to accommodate members who have a legitimate claim to serve at such stations and those who are being repatriated, after a spell of service, at difficult stations.”.

The applicant claims that two persons senior to him in terms of stay, namely, Ku.Nivedita Banerjee and Vishwajit Ghosh, have not been transferred, although, as per this policy, they should have been transferred before he could be considered for transfer. The



applicant has also contended that he has been transferred to accommodate the request of a lady employee Smt. Archana Khatri, who has been transferred from Sagar to Jabalpur. Thus, he is suffering because of discriminatory attitude of the authorities in favour of lady employees. The applicant has further submitted that he has ailing parents and school going children who will suffer because of mid academic session transfer.

3. In their reply, the official respondents have submitted that Smt. Archana Khatri, who has been serving at Sagar since 6.9.2004 has been transferred to Jabalpur, at her own request, on the ground that her husband is serving in Jabalpur and as per para 374 of the transfer policy guidelines, husband and wife even when one of them is serving outside, have to be considered "as far as possible and within the constraints of administrative convenience" for posting at the same station. Since at Sagar the authorized strength is four, against which there are only two employees in position, both of whom are ladies and one of them having been transferred to Jabalpur, it was necessary to send a replacement. It was further averred that the applicant had to be transferred ignoring the seniority in terms of stay as the senior most is a lady officer and the second one is a chronic cancer patient. As per the policy of the department, as far as possible ladies holding posts up to group-B level are generally exempted from transfer considering their family commitments and as part of social justice even though there is no written policy or rule to that effect. It has also been submitted by the respondents that this decision has been taken by the department in accordance with the authority vested in the departmental heads to frame local policy for effecting transfers between different offices in accordance with the guidelines laid down in paragraphs 369 and 379.



been transferred from Jabalpur to Sagar because of transfer of Smt.Archana Khatri, on request, from Sagar to Jabalpur. It has also been admitted that the applicant has been transferred despite not being the senior most according to the period of stay because of a lady employee being senior most and a cancer patient – the other senior employee. The learned counsel for the applicant argued that this discrimination in favour of lady employees is against the Constitutional provisions and, therefore, any order passed in violation of the Constitution has to be struck down.

5. I have considered the arguments carefully. The policy guideline laid down in para 370 mandates transfer on the basis of seniority in stay but it has specifically been mentioned that such transfers will be effected generally “barring compassionate cases, cases where the CDA considers the retention of an individual to be essential in the interests of work etc., to the extent necessary to accommodate persons who have a legitimate claim”. I find that the applicant has been transferred from Jabalpur to Sagar because of shortage of man power at Sagar accentuated further by transfer of Smt.Archana Khatri to Jabalpur. Smt.Archana Khatri has been transferred to Jabalpur so that she and her husband could be at the same place of posting. This is a legitimate ground and this transfer cannot be termed as discrimination in favour of a lady employee. So far as over-looking Ku.Nivedita Banerjee for transfer from Jabalpur to Sagar is concerned, para 370 does not place the authority of the department in respect of transfers in a strait-jacket from which there cannot be any departure. It has been mentioned



that generally this policy will be followed but there could be cases where there could be departure. The facts that Ku.Nivedita Banerji is a single lady, that Shri Vishwajeet Ghosh is suffering from cancer and that there is a very little difference in the station-wise seniority of the three employees inasmuch as Ku.Nivedita Banerji has been in Jabalpur since 11.7.1988, Vishwajeet Gohsh from 26.10.1988 and the applicant since 10.2.1989, give a legitimate ground to the authorities to exercise their discretion. I do not think any injustice has been caused to the applicant by this transfer order. Unwritten policy of the department to exempt ladies holding post up to group-B level from transfer in general considering their family commitment and as part of social justice appears to be a sound policy and does not in any way violate any of the Constitutional provisions.

6. In view of these facts, I do not find any ground to interfere with the impugned orders and this OA is liable to be dismissed. It is accordingly dismissed with no order as to costs.

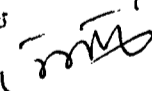

(Dr. G.C. Srivastava)
 Vice Chairman

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पृष्ठांकन सं ओ/ज्या.....जबलपुर, दि.....
 प्रतिदिनपि अचो रितः--

- (1) सचिव, उच्च न्यायालय का कार्यालय, जबलपुर
- (2) आवेक को/की/की/की/की.....के कार्यालय
- (3) प्रत्यक्ष को/की/की/की/की.....के कार्यालय
- (4) वास्तव्य, को.प्र.अ., जबलपुर.....के कार्यालय एवं आवश्यक कार्यालयों हेतु

V. Tripathi Adu 23P
 S.K. Mishra Adu 23P


 उप रजिस्ट्रार

ISSUED
 on 16/11/06
