

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 758/04

Bilaspur, this the 18th day of March, 2005

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Smt.Girija Gontia
Wife of Shri B.L.Gontia
Forman (N.T.), Vehicle Factory
Jabalpur.

(By advocate Shri M.Sharma)

Versus

1. Union of India through
Secretary
Ministry of Defence
New Delhi.
2. The Chairman/Director General
Ordnance Factories Board
10-A, Shaheed Khudiram Bose Marg
Kolkata.
3. The General Manager
Vehicle Factory
Jabalpur (M.P.)

Respondents

(By advocate Shri P.Shankaran)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) Quash and set aside the impugned order of transfer dated 2.6.04 (Annexure A1) to the extent it affects the applicant and the impugned orders of rejection dated 26.7.04 (Annexure A2) and 20th August, 2004 (Annexure A3).



(ii) Direct the respondents to consider and post the applicant against one of the vacancies of Foreman in the Ordnance Factory, Khamaria.

2. The brief facts of the case are that the applicant is presently working as Foreman (Non-Technical) at Vehicle Factory, Jabalpur and under orders of transfer vide impugned order dated 2.6.04 to Small Arms Factory, Kanpur (U.P.). The husband of the applicant is a Crane Driver in a sister concern of the Vehicle Factory i.e Grey Iron Foundry, Jabalpur. Both the Vehicle Factory and the Grey Iron Foundry come under the Ministry of Defence (Production). The applicant who is aged about 55 years suffered a paralytic stroke in December 2003 and is under medical treatment. The applicant has two children – one studying in class Xth and the other pursuing 2nd year degree course at Jabalpur. The dependent father-in-law of the applicant who is aged about 80 years, is completely bed-ridden. The applicant submitted a representation for her adjustment at Ordnance Factory, Khamaria. However, the request of the applicant has been turn down vide impugned order of transfer dated 2.6.04, without any application of mind on the aspect of retaining spouses at the same station. A policy decision has been taken at the level of the government, which essentially requires that all attempts should be made to ensure posting of spouses at the same station. The applicant approached the Tribunal earlier by filing OA No.620/04 which was disposed of at the admission stage itself, directing the respondents to re-consider the case of the applicant according to the extant policy on the subject. Vide impugned order dated 20.8.04 the so-called reconsideration met with same fate. The action of the respondents is arbitrary and illegal. Hence this OA is filed.

3. Heard the learned counsel for the parties. It is argued on behalf of the applicant that the applicant is 55 years old and is facing certain medical problems following a paralytic stroke she suffered in 2003 and she is undergoing treatment. Her two children are studying and they cannot be shifted now as one of them is facing the Board Examination. The husband of the applicant is also posted at Jabalpur. In the case of spouses, the

Government has taken a decision that all attempts should be made to ensure that spouses are posted at the same station as far as possible. Our attention has been drawn towards the Government Policy dated 20.6.1986 (Annexure A5). The learned counsel further argued that 3 outsiders have been posted at the Ordnance Factory, Khamaria, but only one has joined and two posts are still vacant there. It has also come to the knowledge of the applicant that vide order dated 28.8.04, two persons namely S/Shri G.S.Kostha and R.S.Pathak have been transferred from Vehicle Factory, Jabalpur to Gun Carriage Factory, Jabalpur and from this action, it is clear that there are vacancies available at Jabalpur but the department deliberately wants to throw the applicant out of Jabalpur. Hence the OA deserves to be allowed.

4. In reply, the learned counsel for the respondents argued that while transferring the applicant to Kanpur, the respondents also considered the long pending requests of other employees who are working in hard stations for more than 5 years or earlier moved on transfer but applied for transfer back to choice station. In order to accommodate those employees as per existing policy and on sympathetic view, the employees who have longest stay should move out on transfer. The applicant has got more than 3 years for her retirement and she has never moved out of Jabalpur during her last 33 years of service. Hence her transfer is in keeping with the existing practice being followed in the department. The instruction issued by DoPT for posting of husband and wife at the same station is not mandatory. It is only a policy guideline to be applicable as far as possible. Applicant cannot claim a vested legal right to remain at the same station throughout her service on this ground. It is not within the judicial review to scrutinize if the transfer is causing hardship to an employee. It is for the administration to consider the same and pass appropriate orders. Hence the action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that the arguments advanced on behalf of the respondents that according to the settled view, Courts/Tribunals should not

interfere with transfers made on administrative grounds unless it is malafide or in violation of the statutory rules, seems to be justified. It is also not within the judicial review to scrutinize if transfer is causing hardship to an employee. It is for the administration to consider the same and pass orders. We have perused 1995 (29) ATC page 553 in the case of State of M.P. & others Vs. S.S.Gaurav, decided by the Hon'ble Supreme Court on 19.1.95 in which it is held that Courts/Tribunals are not appellate forums to decide transfer of officers on administrative grounds. It is for the administration to take appropriate decision and such transfers shall stand unless they are vitiated either by malafide or by extraneous reasons without any factual background. In this case, the applicant has not shown any malafide on the part of the respondents. So far as the policy of the Government to accommodate spouses at same station is concerned, in this policy, it is mentioned the word "as far as possible". Hence this policy is not mandatory. The learned counsel for the applicant has pointed out that 3 outsider employees were posted at Ordnance Factory, Khamaria, Jabalpur, out of whom only one has joined and two posts are still vacant and also pointed out that vide order dated 28.8.04, two persons G.S.Kostha and R.S.Pathak have been transferred from Vehicle Factory, Jabalpur to Gun Carriage Factory, Jabalpur. Hence it is absolutely clear that there are vacancies available at Jabalpur. According to the constant view of the Supreme Court, Tribunals/Courts should not interfere with transfer order unless the same is made with malafide intention. However, the respondents have not considered the grounds mentioned in para 5 & 6 of the rejoinder filed on behalf of the applicants.

9

6. In view of the facts and circumstances of the case we are of the considered opinion that this Original Application deserves to be dismissed and the Interim Relief dated 14.9.2004 is liable to be vacated. Accordingly, the OA is dismissed and the interim relief dated 14.9.2004 is vacated. However, before we part we observe that the applicant in her rejoinder has stated that out of three persons who have been posted from outstation to Jabalpur, only one person has joined and the other two posts are still vacant. She also in paragraph 6 of the rejoinder stated that two persons have been transferred from Vehicle Factory, Jabalpur to Gun Carriage Factory, Jabalpur, which means that still there are vacancies at Jabalpur. Hence, the respondents may consider the request of the applicant sympathetically and this judgment will not come in their way if the applicant is considered and accommodated against the vacancy at Jabalpur as stated by her in the rejoinder.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"/aa.

पृष्ठांकन सं ओ/व्या..... जबलपुर, दि.....
 पत्रिलिपि ०२८) रिटार्डः—
 (१) सदिव, उच्च व्यायाम वार्षिकोंग्राम, जबलपुर
 (२) आनेद्यक श्री/श्रीमती/व्या..... के काउंसल
 (३) प्रस्तरी श्री/श्रीमती/व्या..... के काउंसल
 (४) ग्रंथपाल, कोप्रभा, जबलपुर व्यायामीज
 सूचना एवं आवश्यक कार्यकारी देतु

Monaj Sharne
P. Sharne Karan
Dev JBB

Issued 3.05
On 22.3.05
By 82