

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 517 of 2003

Jabalpur, this the 26<sup>th</sup> day of September, 2003.

Hon'ble Mr. G. Shanthappa, Judicial Member

Smt. Pushpa Anil  
W/o Shri T.G. Anil Kumar  
Aged 38 years R/o 78, Vrindavan Nagar,  
By-pas Road, P.O. Piplani  
Bhopal (M.P.)

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Deleted.
2. Comptroller & Auditor  
General of India,  
10, Bahadur Shah Zafar Marg,  
Indraprastha, New Delhi 110002
3. Principal Accountant General  
(A & E),  
Lekha Bhawan,  
Gwalior (M.P.)
4. Shri Sanjay Paranjpe,  
Sr. Accountant, Office of  
of the Accountant General (M.P.)  
A & E-1, Bhopal (M.P.)

RESPONDENTS

(By Advocate - Shri P. Shankaran)

List of cases referred :- (i) 2002 SCC (L&S) 21 ---  
(ii) 2001 SCC (L&S) 858 ---  
(iii) 1992 (1) SLR 426 ---

O R D E R

The applicant has filed this application seeking relief :-

- (i) To quash the order dated 9.7.2003 (Annexure A-38) as also the relieving order dated 25.7.2003 entire action intended to be taken in pursuance thereof and hold it as illegal ;
- (ii) To quash the order dated 4.6.02 (Annexure A-4) (to the extent the applicant is concerned) as also quash the entire action intended to be taken in pursuance thereof and
- (ii-a) To quash the transfer policy dated nil, Annexure R-5 and it as unconstitutional and illegal.



2. The advocate for the applicant submits that the applicant was initially appointed as Accounts Clerk under the third respondent on 1.7.1998 and she got transferred to Bhopal at her own request where her husband is an employee and working in an organisation of the State Government i.e. Bhopal Sahkari Dugdha Sangh, Bhopal. Subsequently the applicant was promoted in the year 1991 as Accountant and thereafter she was promoted in the month January 2000 as Sr. Accountant.

3. The office of the Accountant General, Chattisgarh will come into existence w.e.f. 6.8.2001. The Accountant General Chhattisgarh, Raipur has issued an office order dated 2.9.2001, in exercise of power vested him vide Rule 14 of Delegation of Financial Powers Rules, 1978, read with Rule-2(XVII) Dy. Accountant General (Audit & Accounts) is hereby declared as Head of the office for the office of the Accountant General, Chhattisgarh with effect from 12 September 2001. For all purposes the office of the Accountant General (Audit & Account) has been established at Raipur.

4. The respondents called for option, whether those who want to remain in the State of Madhya Pradesh or Chhattisgarh in pursuance of vide office order dated 7.12.2000. The advocate for the applicant has submitted that the applicant had given option to be retain in Madhya Pradesh. The respondents have published guidelines in respect of the transfer of woman employees to Chhattisgarh State. Principal Accountant General (A & E) Gwalior has published the list of posting order dated 4.8.2002 as per Annexure-A-4 and also asked for option from the employees of the respondents to retaining in Madhya Pradesh or Chhattisgarh. The applicant is at serial No. 45, she did not opt to go out side Madhya Pradesh State.

5. The applicant has submitted representation dated 17.6.2002 as per Annexure-A-5 requesting the third respondent to retain her services at Bhopal on the ground that her husband is



working at Bhopal in co-operative organisation and his services can not be transfer to Raipur. On the basis of the said representation the Principal Accountant General (A & E) Gwalior has kept the order of transfer of the applicant in abeyance for 6 months as per (Annexure-A-6) dated 9.7.2002.

6. Against the said order the applicant has preferred an appeal to the Comptroller & Auditor General of India New Delhi as per Annexure-A-8. In the said appeal she has requested the authority to allow her service continue at Bhopal when she could not get reply on her request, she asked for appointment to meet the 3rd respondents. Again on 4.12.2002 the applicant has submitted one more representation alongwith medical certificate on the ground that she has no good health, she is taking medical treatment and she has requested to cancel her transfer on medical ground.

7. The Comptroller and Auditor General New Delhi had issued the order dated 27.8.97 in respect of unilateral transfer and the said scheme of unilateral transfer in all cases within IA & AO and from Ministries/Departments to IA & AD has been dispensed with. The applicant has produced addtional guidelines for final allocation-Reorganization of States i.e., circular dated 21.11.2001. In the said schemes para 3 speaks about the woman employees belongs to the State Services having all State transfer liability or any working against post which are not exclusively relatable to an area falling in one of the successor State, should be allocated to the successor States on the basis of their option only. The applicant centended that since she did not opt for transfer to Chhattisgarh and her transfer shall not be affected.

8. The applicant had approached this Tribunal in OA No. 861/02 seeking, quashing the order of the respondents dated 4.6.2002. This Tribunal has disposed of the said OA with an observation " directing the applicant to submit a fresh representation, the respondents are directed to decide the



said representation within a period of 15 days from the date of receipt of this order". It is further observed that "interim relief already granted to the applicant shall remain operative till the final disposal of the appeal". On the basis of the said observation the applicant had submitted her representation dated 27.1.2003, on the same grounds mentioned in the earlier representation and also junior of the applicant is retained in Madhya Pradesh State which amounts to discrimination, shown to the applicant. The applicant had also mentioned her personal difficulties i.e. medical grounds, her mother-in-law is aged and ailing from heart disease and also her husband is working in a co-operative organization at Bhopal. The respondents have disposed of the said representation as directed by the Tribunal vide order dated 17.3.2003. The authority has not considered all aspects and disposed of <sup>the</sup> representation and rejected the same ~~representation~~.

9. The applicant had also filed an application for amendment of OA, the MA No. 1294/03/ was allowed and the amendment was incorporated. The applicant has also filed MA No. 1236/03 for production of additional documents. The additional documents relates to posting of husband and wife at the same station which was issued by the Government of India Ministry of Finance Department of Revenue. According to the said instructions/ circular the case of the applicant is that the transfer of the applicant shall not be implemented. The relevant para of the said circular are extracted as follows :-

(vi) Where one spouse belongs to a Central Service and the other spouse belongs to a PSU :

The spouse employee under the PSU may apply to the competent authority and the said authority may post the officer to the station, or if there is no post under the PSU in that station to the State where the other spouse is posted. If, however, the request cannot be granted because the PSU has no post in the said station.

7. In so far as persons serving in Indian Audit and Accounts Department are concerned, those orders issue in consultation with the Comptroller and Auditor General of India.

10. The applicant had filed Contempt Petition No. 9/03 on the ground that the authority, the Assistant Comptroller & Auditor General(N) has not considered the representation as per direction of this Tribunal. Subsequently, the Comptroller of Auditor General of India has passed the order in pursuance to the direction of this Tribunal and also on the basis of the fresh representation dated 27.1.2003 submitted by the applicant while rejecting the said representation of the applicant for cancellation of her transfer, a non-speaking order was passed. The relevant paras extracted below :-

2. Pursuant to the direction of the Hon'ble Tribunal Smt. Pushpa Anil submitted a fresh representation dated 27.1.2003. received in the office of Comptroller and Auditor General on 19.2.2003. The representation alongwith her earlier representation dated 2.8.2002 were considered by Deputy Comptroller and Auditor General of India, who exercises administrative functions on behalf of Comptroller and Auditor General of India, and a speaking order under the signature of Asstt. Comptroller and Auditor General(N) was issued on 17.3.2003.

3. Now in reference to the directions of the Hon'ble Tribunal dated 27.3.2003 and 24.6.2003 passed in C.P. No. 9/03 in OA No. 861/2002, the representations made by Smt. Pushpa Anil regarding her transfer to the office of Accountant General, Chhattisgarh have been carefully considered.

4..... Under the transfer policy, willing optees were first considered and for the shortfall, one senior and one junior in each cadre were to be transferred from Gwalior/ Bhopal to Raipur for a period of 18 months excluding those who had attained the age of 57 years and also those who were disabled. After expiry of this period, the transfers were to be reviewed.

5. Smt Pushpa Anil her representation has requested for cancellation of her transfer order mainly on domestic grounds, like, having a permanent residence in Bhopal, self illness and illness of her mother-in-law and school going children. She had earlier made a representation on 17.6.02 which was considered by the competent authority and was allowed to stay in Bhopal for a period of 6 months on the ground of education of children.

Subsequently the Sr. Accountant, officer of the Accountant General A&E-1 M.P. 53 Arera Hills, Hoshangabad Road, Bhopal 462001 has issued the relieving order dated 25.7.03 for relieving the applicant. Hence the impugned orders are illegal , and allow this C.A.



11. The respondents have filed their detailed reply, contending that, the transfer was made under the policy of transfer of the respondents and also in the interest of public. The relevant para of the reply is extracted below :-

13. The transfer of the applicant is to meet the administrative requirements. It is not a case of permanent allocation to office of Accountant General, Chhattisgarh. Neither is the applicant the only official transferred to Raipur office. The applicant has been transferred as per the transfer policy followed for all other officials in like circumstances. The applicant has been transferred for a limited period of 18 months, excluding period of leave as per transfer policy of one senior and one junior, in order to have a judicious mix of experience in the new office.

Along with the reply the respondents have filed <sup>an</sup> order of this Tribunal in OA No. 90/2002, on the same ground the said OA was dismissed. Para <sup>14</sup> of the said order extracted as below:-

13. Althouth we do not find any merit in the contentions of the applicant but keeping in view the facts and circumstances of the family of the applicant we would like to observe that earlier the husband of the applicant on mutual agreement was transferred to Raipur and having been declared medically unfit he has not complied with the orders. But as the applicant's husband has been declared medically fit the respondents shall consider to depute him to Raipur in her place and to this effect they shall re-consider their action by passing a detailed and speaking order within a period of 15 days from the date of receipt of a copy of this order. Till then the applicant shall not be insisted to join at Raipur.

14. With this observation the OA is dismissed. No Costs.

12. The respondents have also annexed an order of the Hon'ble High Court of Madhya Pradesh Jabalpur Bench at Gwalior, in the said Writ Petition the order of the Central Administrative Tribunal in respect of the order of transfer has been challenged. The above Writ Petition was dismissed confirming the order of the Central Administrative Tribunal. The respondents have filed MA No. 1280/03 for production of additional documents

Annexure-R-5 which is transfer policy. Para 7 of the said policy is as follows:-

7. This office also feels that exceptions may be made with regard to prospective retirees who have attained the age of 57 years and physically handicapped officials. As for the spouse working in this office. If one of the spouse wants to remain at Gwalior, he/she should be allowed to do so.

10. As per Govt. of India, Ministry of Home Affairs, O.M. No. 26/3/69-Estt(B), dated the 8th April 1969, General Secretary/Chief Executive of all the recognised Associations will be excluded from the ambit of this transfer policy.

The advocate for the respondents argued for rejection of the OA on the ground, the applicant has not made out her case.

13. I heard the arguments of the learned counsel for the applicant Smt. S. Menon and learned counsel for the respondents Shri P. Shankaran. The applicant has submitted her case on the points which are as follows :-

(1) The impugned order of transfer and also the policy of transfer are discriminatory nature and also vindictive nature.

(2) The present guidelines relating to transfer of the employees is issued without considering the earlier guidelines for transfer issued from time to time and also ignored.

(3) In the additional guidelines for final allocation of Reorganization of State-as per Annexure-A-33, there is an observation regarding service of the woman employees. Para-3 of the said guidelines are not considered in respect of woman employees particularly the applicant.

(4) The respondents have mentioned the order dated 3-12-2002 in the relieving order dated 25.7.03 as per Annexure-A-39, the said order was not known to be applicant.

(5) The representation submitted by the applicant was not properly considered by the respondents while rejecting the said representation.

14. The respondents have submitted, that this Tribunal has rejected the earlier application relating the transfer of an employee in OA No. 90/2002 Mrs. Saroj Sharma vs. UOI & ors. The said application was filed by co-employee of the applicant against the respondents, the said application was rejected. This Tribunal has also dealt with in the matter of -

Unless the malafide or ~~violation~~ of Rules are violated, there shall not be judicial interference in administrative matters. Admittedly the transfer order is under <sup>a</sup> policy, which has no legal force. The Hon'ble High Court of Madhya Pradesh Jabalpur Bench at Gwalior has confirmed the order of the Central Administrative Tribunal, hence this application is liable to be dismissed on the basis of the observations and principles and law laid down by the Hon'ble Supreme Court. The learned counsel for the respondents further submitted that, on the basis of the decision of Hon'ble Supreme Court reported in 1992(1) SLR 426 SBI vs. Jagjit Singh Mehta, the applicant has no legal right to challenge the order of transfer and also the policy decision of the State. Though , the applicant has submitted some citations, but copies of the decisions are not supplied to the Tribunal.

14. On the basis of the pleadings and arguments, the undisputed facts are as follows :-

- (1) Relation of Master and servant between the respondents and applicant.
- (2) Policy matters/decisions shall not be challenged in a court of law.
- (3) Transfer is a incident to the service.
- (4) Transfer of an iemployee is not a punishment.
- (5) There is no condition, to work in a particular place of the employee.
- (6) The transfer is in the interest of public.
- (7) order dated 13.12.2002 referred in Annexure A-9 was not known to applicant.
- (8) Guidelines and instructions have no force of law and which are administrative in nature.

15. On the basis of the admitted facts, the applicant has no right to challenged the order of transfer and her service is an incident to the service, which is not a punishment. The advocate for the applicant urged only, the impugned order of transfer is vindictive and discriminatory nature and the representations of the applicant are not properly consider.



I perused the impugned order and considered the undisputed facts. The authority has passed ~~the~~ <sup>an</sup> order and who is the competent authority and also has assigned all the reasons considering the facts mentioned in the representation and passed considered order. I consider, that there is no infirmity or illegality in passing ~~the~~ <sup>impugned</sup> order.

Yours,

16. The Hon'ble Supreme Court has dealt with the cases of transfer of an employee. The applicant has no legal right to challenge the impugned order of transfer and she has no legal right to work in a particular place where her husband is working. Admittedly all the policies, decisions, circulars and instructions have no legal force and which are issued for administrative purpose.

17. It is relevant to mention some judgments of the Hon'ble Supreme Court of India for the purpose of deciding the said OA.

18. (a) 2002 SCC(L&S) 21-National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan & Anr. The said judgment relates to the transfer of employee :-

Nature of, and scope of judicial review of such transfer- Transfer of employee, held, is not only an incident but a condition of service-Unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision, held, not subject to judicial interference as matter of routine- Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management-Hence, transfer of employee from corporate office of the employer Corporation to its project with protection of his seniority, held, quite valid-

5..... It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of

: 10 :

(b) 2001 SCC (L&S) 858- State Bank of India vs. Anjan Sanyal & ors. The head note of the said judgment which is as follows:-

A. Transfer- Transfer order- scope of judicial review of- Unless mala fide, or prohibited by service rules, or passed by an incompetent authority, held, should not be lightly interfered with, in exercise of a court's discretionary jurisdiction-Constitution of India, Art.226- Judicial review- Transfer of employee- Order of- Scope of judicial review.

B. Transfer-Service of transfer order on the employee. Proof of- Transferred employee making representations against the transfer order-Omission on his part to deny the existence of the transfer order, held, sufficient to prove its existence- Admission of having seen the order or of having been served with the order, held, not necessary Moreover without cancelling the transfer order, merely temporarily accommodating at the existing place an employee who was not willing to join at the new place, held, could not lead to an inference of non-existence of the transfer order- Constitution of India, Art.226- Interference- Drawing conclusions contrary to relevant materials and on the basis of surmises and conjectures.

Para-4 page-859 is as follows:-

An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities who issued the order, had not the competence to pass the order. Keeping in view Rules 47,49,50(1),66 and 67 of the State Bank of India Officers' Service Rules, when one considers the legality of an order of transfer, allegedly passed on 14.6.1986, after the employee had continued in Calcutta for more than a decade and the said order had not been held by the High Court either to be mala fide or incompetent, it is not possible to come to a conclusion that the said order had not been passed nor had been communicated to the employee concerned. The correspondence between the Bank and the respondent and the entire fact situation unerringly points out to one fact, namely, that the respondent flouted the order of transfer.

(c) 1992(1) SLR 426- Bank of India vs. Jagjit Singh Mehta. The said judgement relates to the transfer couple case-posting on the same place cannot be claimed, as of right. The relevant portion of the said judgment is as follows para 5 :-

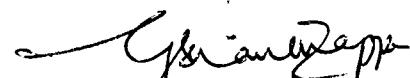
5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different s

stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in any all-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station they cannot as of right claim to be relieved of the ordinary incidents of all India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave undertaking that he was prepared to be posted at any place in India and on that basis got promotion relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.

19. After perusal of the pleadings and the submissions of the learned counsel for the applicant and respondents and also applying the principles laid down by the Hon'ble Supreme Court of India. I come to the conclusion that the applicant has not made out her case for grant of relief as prayed in the application.

20. When the order of transfer is only for a particular period, the appropriate authority is at liberty to consider the case of the applicant sympathetically and pass an appropriate order. Even at this stage, on the facts and circumstances of the case, it is open for the respondents to take an appropriate, independent decision and to issue suitable orders to the applicant. This order will not ~~interference~~ <sup>have any binding effect</sup> on the respondents to take their own decision, since the transfer policy is an administrative matter.

19. With this observation the OA is dismissed. No costs.

  
(G. Shantahappa) 26/9