

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 9th day of September, 2010

O.A. No. 408/2010

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDL.)

Purshottam Srivastava
s/o Shri Har Shiv Narayan Srivastava,
r/o 111/191, Vijay Path Circle,
Madhyam Marg, Mansarovar,
Jaipur, presently posted as
Director, G.S.I. Palaeontology Division,
Jhalana Doongari,
Jaipur.

.. Applicant

(Applicant present in person)

Versus

1. The Union of India through the Secretary, Ministry of Mines, Central Secretariat, New Delhi.
2. The Director General, Geological Survey of India, Central Headquarter, 27, Jawahar Lal Nehru Road, Kolkatta.

.. Respondent

(By Advocate:)



O R D E R (O R A L)

This is second round of litigation. Earlier, the applicant has filed OA No.320/2010 against the impugned order dated 1.6.2010 qua the applicant whereby he was transferred from Jaipur to Nagpur. The said OA was disposed of by this Tribunal at admission stage vide order dated 12.7.2010 thereby directing the applicant to file fresh representation within a period of 7 days failing which respondent No.2 shall consider the representation dated 28.4.2010 in the light of the guidelines issued by the department, particularly the circular dated 14.6.2010 and till the representation is not decided by the respondent No.2 i.e. Director General, Geological Survey of India, status quo qua the applicant was directed to be maintained. Pursuant to the order passed by this Tribunal in the earlier OA, the applicant filed a fresh representation dated 3.8.2010 thereby praying for cancellation of transfer order on the ground that (i) the applicant has a mentally challenged daughter with multiple disabilities, (ii) his wife is a Rajasthan Govt. employee and has sustained injury on account of accident resulting in complications and as such, she cannot be shifted to the new place of posting

and (iii) that the applicant is also having some medical problems which needs support of his family. The representation of the applicant has been rejected by respondent No.2 vide impugned order dated 31.8.2010 (Ann.A/2) on the reasoning given hereinbelow, which thus reads:-

"..... In so far as, the posting of husband and wife in the same station is concerned, it needs to be considered by the appropriate Competent Authority, but the same can not be claimed as a matter of right citing policy guidelines, which are broad and general in nature and can not always strictly be adhered to in the fact of functional requirement. As such, strict adherence to the policy document, which is a general and broad guideline, can not always be resorted to. The Hon'ble Supreme Court, in Civil Appeal No.2348/93 filed by Sh. S.L.Abbas vs. UOI in the matter of transfer-posting of husband and wife as a sequel to Policy Guidelines, observed that such guidelines do not confer an enforceable legal right upon the Government servant unless the order of transfer is vitiated by mala-fide or is made in violation of any statutory provision and court can not interfere with it [1993 (2) SCSLJ 371].

The applicant has himself admitted in his representation dated 28.4.2010, that he is overdue for transfer but has personal difficulties. The fact remains that since his joining at GSI, Jaipur in the year 1981, Shri Srivastava, excepting his brief tenure in NER, has stayed for almost decades in Jaipur. As per the transfer policy, the normal span for an officer to stay in a particular station is eight years, whereas in the present case, the officer has spent more than three time of the stipulated tenure in his present place of posting at Jaipur.

The applicant further prayed that his daughter namely Km. Rupali Srivastava, has some mental disability as per the certificate attached but nowhere

it is mentioned that the child would require super-specialised medical services, which is available only at Jaipur and not at his new place of posting at Nagpur. Like Jaipur, Nagpur is also an advancing and expanding city and has the medical facilities as available at Jaipur. Medical problem, as alleged in the case of his spouse, can not be a ground for the applicant to continue at the same place of nearly three decades.

In so far as circular dtd. 14.6.2010, is concerned the clause-3 stipulates that due consideration will be given to the representation for retention on compassionate medical grounds. It is apparent from the abovementioned emergent factual position that the representation of the applicant was duly considered on the basis of necessary documents/representation by the competent authority, as per direction of the Hon'ble CAT.

Accordingly, after due consideration of the representation of the applicant dtd. 03.08.2010 and other relevant documents, and in view of the emergent fact as above, the prayer of the applicant for retaining him in Jaipur stands rejected.

This issues in compliance of the direction of the Hon'ble CAT, contained in its judgment Order dtd. 12.07.2010 in OA No.320/10."

It is this order as well as original order of transfer dated 1.6.2010 which is under challenge in this OA.

2. When the matter was listed before the Bench on 7.9.2010, this Tribunal was not inclined to interfere with the order passed by the authorities in view of the law laid down by the Apex Court as the scope of judicial review in transfer matter is very limited and the Apex Court has repeatedly held that court should always be reluctant to interfere with transfer of an employee unless such transfer

is vitiated by mala-fide or is made in violation of the statutory provisions. Further, this Tribunal was also reluctant to issue notices to the respondents in this case in view of the law laid down by the Apex Court in the case of State of U.P. and Others vs. Gobardhan Lal, [2004 (11)SCC 402] whereby the Apex Court in para-7 has made the following observations:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequences of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

be

3. As can be seen from the order dated 31.8.2010, which has been reproduced in the earlier part of this judgment, the respondents have categorically stated that as per the transfer policy normal tenure of an officer to stay in a particular station is eight years, whereas the applicant has spent more than three times of the stipulated tenure in his present place of posting at Jaipur. The respondents have also categorically stated that the applicant has been transferred to Nagpur where advance medical facilities like Jaipur are available and the applicant can undertake medical services in respect of his mentally challenged daughter at the new place of posting. In exercise of power of judicial review and in view of the law laid down by the Apex Court, it was not legally permissible for this Tribunal to interfere with the order of transfer. From the facts as stated above, it is evident that the applicant is living at Jaipur with his spouse for the last 25 years at the same station, as such, no direction could have been granted in the facts and circumstances of this case to post the applicant at Jaipur through out entire career of his service, more particularly, when the applicant is still having about 5 years to retire. However, in view of the

R

circumstances mentioned by the applicant in para 4(XII) of the OA that applicant's wife who met with a serious accident about six months ago is still under recovery face and had to undergo one more operation in about 2 months from now to free her jammed knee and to remove 3 rods from her leg, this Tribunal suggested the applicant whether he is willing to reconsider his request for his posting at Jaipur for a reasonable period so that her wife can undergo fresh operation and if so, the applicant should file additional affidavit in that behalf and the matter was adjourned to 14.9.2010. The applicant has filed additional affidavit along with MA No.244/2010 thereby praying for ^{& per} ~~post~~ponement of the case for taking additional affidavit on record. The said MA was listed today which has been allowed by passing separate order and the additional affidavit has been taken on record. In the additional affidavit, the applicant has made the following averments:-

1. That my wife who had met with the accident and thereafter operated for knee surgery has been advised to undergo fresh operation for bone grafting by her doctor Dr. Vinay Goyal.

2. That the operation would be carried after two months. My wife is patient of

by

diabetes and blood pressure and doctor has advised that it will take not less than 6 to 8 months of time for her to recover after the bone grafting surgery.

3. That I need at least one year of deferment of my transfer on account of my wife's ailment apart from our difficulty of taking care of a mentally challenged child with physical disability."

4. Thus, in view of the submissions made by the applicant in the additional affidavit, as reproduced above, and the fact that now the applicant is only seeking deferment of the transfer order dated 1.6.2010 by one year, I am of the view that it is a case where the matter is required to be reconsidered by respondent No.2 i.e. the Director General, Geological Survey of India in the light of the submissions made in the additional affidavit, as reproduced above, as the applicant's wife has undergone knee operation and has been advised to undergo fresh operation under the advice of Dr. Vinay Goyal and it is not possible for wife of the applicant to take fresh treatment at the new place of posting.

5. Accordingly, the OA is disposed of with direction to reconsider case of the applicant in the light of the additional pleas taken by the applicant in his additional affidavit as reproduced above and consider feasibility of

62

retaining the applicant at Jaipur for a reasonable period. Till such decision is not taken by respondent No.2, the applicant shall be permitted to perform his duties at Jaipur. The Registry is directed to send copy of this order to respondent No.2 who shall take decision in the light of observations made in this order without insisting for filing of fresh representation by the applicant. The applicant shall also make available copy of this order to respondent No.2.

6. Needless to add that in case the applicant is still aggrieved by not accommodating the applicant for a limited period as prayed for in the additional affidavit, it will be open for him to file fresh OA.

7. With these observations, the OA stands disposed of at admission stage.


(M.L. CHAUHAN)
Judl. Member

R/