

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

**O.A.NO.060/00959/2014 Date of order:- 22.5.2015.**

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)  
Hon'ble Mr. Uday Kumar Varma, Member (A).**

D.K.Sharma son of Sh. L.D.Sharma, working as Senior Auditor in the office Defence Pension Disabusing Officer (DPDO), Chandigarh.

.....Applicant.

( By Advocate :- Mr. D.R.Sharma )

Versus

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.

2. The Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt-110010.

3. Controller Defence Accounts (Pension Disbursing), Meerut Cantt.

4. The Principal Controller of Defence (PCDA), HQ, Western Command, Chandigarh.

5. Defence Pension Disbursing Officer (DPDO), Chandigarh.

...Respondents

(By Advocate: Mr. Deepak Agnihotri).

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**ORDER**

**Hon'ble Mr. Uday Kumar Varma, Member (A):**

By filing the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing impugned letter dated 22.4.2012 ( qua him ) and letter dated 9.10.2014 with further prayer that the respondents may be directed to consider his case for transfer to his choice stations i.e. Jammu, Sambha etc.

2. Facts in brief are that the applicant joined the respondent department as clerk on 11.3.1987. On the basis of his service record, the applicant was promoted as Auditor in February, 1997 and thereafter as Senior Auditor in February, 2002. The applicant remained posted at Leh, Jammu, Subathu. At present, the applicant is posted at Chandigarh since 19.4.2005. The applicant vide his numerous representations made a request to the department for transferring him to Jammu as he was out of his home town since 1996. Respondent no.3 vide its letter dated 26.11.2012 asked Respondent no.5 to furnish the service particulars of the officials with three choice stations. In compliance of letter dated 26.11.2012, respondent no.5 sent the requisite information vide letter dated 5.12.2012 of the applicant and one Shri Baljinder Singh. Respondent

no.2 issued letter in October, 2012 of the eligible individuals for transfer wherein the name of the applicant stands at sr.no.1. After seeing the said list, it clearly goes to show that the applicant submitted his three choice stations like Jammu, Sambha & Jammu. The respondents issued the list on 31.1.2014 of the eligible individuals for transfer wherein the name of the applicant was mentioned at sr.no.1 and the name of the applicant was recommended for transfer to his choice stations like other individuals. However, without considering the request made by the applicant, respondent no.2 vide letter dated 22.4.2014 transferred the applicant to DPDO Srinagar.

3. Feeling aggrieved against the said transfer order dated 22.4.2014, the applicant submitted a representation to respondent no.2 to review his transfer order and that he may be posted at his home town Jammu. The applicant has stated that respondent no.2 issued another transfer order dated 29.4.2014 wherein a number of other individuals have been transferred to Jammu, but his case has not been considered for transfer to his choice station. However, the respondents vide letter dated 9.10.2014 has turned down the request of the applicant for modification of his transfer order from Srinagar to Jammu.

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4. The applicant has relied upon para 4 of the transfer guidelines dated 28.3.2014 wherein it is mentioned that for transfer under tenure the volunteers for stations should be considered and it is thereafter senior/longest stayees should be transferred. But in the case of the applicant, these guidelines have been violated. The applicant has also alleged that the respondents have also failed to abide by the instructions dated 30.9.2009 issued by the DoPT as the wife of the applicant is working at Ambala in the same department. The applicant has also stated that the transfer order has been issued in the middle of the academic session as his son is studying in XIth class. The applicant has also relied upon a judgment passed by the jurisdictional High Court in the case of **Dr. Dev Prakash Chugh versus State of Punjab & Ors** (2005(4) S.C.T. Page 736) wherein the Hon'ble High Court has held that the department is bound to follow the transfer guidelines. Hence the present OA.

5. The operation of the impugned order qua the applicant with regard to the transfer of the applicant was stayed, vide order dated 31.10.2014 and the said interim order was extended from time to time.

6. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated

that the Defence Accounts department entails an all India Transfer liability. They have stated that the posted strength of staff in the department is heading towards continuous decline due to greater attrition rate on account of retirements, promotions to higher grades and eligible staff exploring other avenues outside the department. This rate being much higher than the inflow of new recruits, there is a an acute shortage of staff to the tune of around 35% in the department. The transfer is a part of service condition for all officers/staff in and out of India. The Hon'ble Apex Court has repeatedly held in many cases that "transfer is an exigency of service". They have relied upon the following judgments:-

- i) B.Verda Rao vs. State of Karnataka ( A.I.R. 1986 S.C. Page 1955);
- ii) Shilpi Bose vs. State of Bihar ( A.I.R. 1991 S.C. Page 532);
- iii) Union of India vs. N.P.Thomas ( A.I.R. 1993 S.C. Page 1605);
- iv) Union of India vs. S.L.Abbas ( A.I.R. 1993 S.C. Page 2444);
- v) State of Punjab vs. Joginder Singh Dhatt ( A.I.R. 1993 S.C. Page 2486);
- vi) Abani Kanta Ray vs. State of Orissa (Supp. (4) S.C.C. Page 169);
- vii) Rajendra Rao vs. Union of India ( 1993 (1) S.C.C. Page 148);
- viii) National Hydroelectric Power Corporation Limited vs. Shri Bhagwani ( 2001 (8) S.C.C. Page 574);

ix) State Bank of India vs. Anjaan Sanyal ( 2001 (5) S.C.C. Page 205);

7. The respondents have stated that the Hon'ble Apex Court in the case of **S.C.Saxena versus Union of India & Ors.** (2006 (9) S.C.C. Page 583) has held that in the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and go to a Court to ventilate his grievances. It is his duty to first report for work where he is transferred and makes a representation as to what may be his personal problems. The Apex Court has further held that this tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. The transfer order was issued strictly as per the transfer policy for northern policy of the department. They have denied that the transfer order was issued in between the academic session as the same starts in April and the transfer order was issued on 22.4.2014. They have also relied upon a judgment passed by the Hon'ble Apex Court in the case of State of U.P. versus Siya Ram & Ors. ( A.I.R. 2004 S.C. Page 4121) wherein it was held that no government servant or employee of public undertaking has any legal right to be posted for ever at anyone particular place or place of his choice, since transfer of a particular employee appointed to the class or category of transferable post from one place to other is not only an incidence, but a condition of service,

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necessary too in public interest and efficiency in the public administration. Unless an order of transfer as shown to be a outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine.

8. The applicant has filed a rejoinder by generally reiterating the averments made in the O.A.

9. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

10. The applicant joined the service on 11.3.1987 and in his career so far, has been posted as follows:-

- i) Leh From 11.3.1987 to 1.4.1989;
- ii) Jammu From 13.4.1989 to July, 1996;
- iii) Subathu From 15.7.1996 to 5.4.2005
- iv) Chandigarh From 19.4.2005 till date.

Now, the applicant is resisting his transfer to Srinagar on the ground that he has been away from home town since 1996; that his wife who is also in the same department is posted in Ambala; that his daughter is studying in Class XI; that the transfer order has come in the mid

academic session which will affect studies of his daughter and that the employees who had a longer stay at Chandigarh have not been transferred, which is contravention of the transfer guidelines. He has taken recourse to the violation of provisions contained in para 4 of the guidelines issued on 28.3.2014. Para 4 of the transfer policy is quoted herein below:-

**"4. Manning of vacancies at hard/tenure stations:**

Selection of staff for manning vacancies at hard/tenure stations will be made from amongst the following:-

- (i) Volunteers for that station;
- (ii) Station seniors who have never served at hard/tenure stations on inter-se seniority basis determined on the basis of length of service at present station(s) beyond the minimum tenure prescribed;
- (iii) Individuals who have completed their tenure at other stations, and had served earlier at a hard/tenure station for the prescribed period. The criterion for selection will be same as laid down above, except that the person, who had served earliest at a hard/tenure station, will be moved first.

However, transfer to five centrally controlled hard stations of J&K region will be carried out as per policy for the region so specified by the CGDA's office from time to time".

It is the applicant's contention that the people who have longer stay have not been transferred outside Chandigarh, while he has been transferred.

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11. During the course of arguments when the above issue was raised before us, we asked the respondents to file an affidavit with respect to the individuals who according to the applicant had longer stay, but were not transferred. The respondents have filed an affidavit and they have explained that in respect of Shri Avinash Kant Verma and Shri Rajesh Kumar, exemption have been granted on age ground and medical ground respectively, while anybody else who had longer stay has also been transferred.

12. We have gone through this affidavit and while the applicant did express reservations about the veracity of the contents of the affidavit, we are not convinced that his objections are valid. In administrative matters, which all transfers indeed are, there could be specific situations where the guidelines, which do not ordinarily have the force of law, may not be strictly adhered to. We find no reason to dis-believe or doubt the bonafide of the respondents in granting exemptions to the persons reportedly senior to the applicant. There has been no evidence to suggest that this discretion of granting exemption is malafide, or bad in law. Therefore, the applicant's plea of getting relief under this provision remains unsubstantiated.

13. As regards Para 4 of the guidelines itself, which the applicant has made the basis for his objection, the last lines mentions

'however, transfer to five centrally controlled hard stations of J&K region will be carried out as per policy for the region so specific by the CGDA's office from time to time.' The applicant's case is silent about the applicability of this caveat to the contents of Para 4 of the guidelines. The applicant must in order to establish the violation of the provisions of Para 4 should have also demonstrated how his transfer is not in accordance with the above proviso of para 4.

14. Now with regard to his argument that he should be posted in Jammu because his wife who is in the same service is in Ambala in the light of the office memorandum dated 30.9.2009. However, to appreciate the case of the posting of the couple in the light of circular dated 30.9.2009 which stipulates various situations, the details that attract the violation of this circular are necessary to be placed before us. This has not been done by the applicant. This circular deals with transfer cases of couples in large no of scenarios. It is not clear from the application nor from his arguments, as to under which particular part of this office memorandum, the applicant is seeking relief. In any case, it is not clear to us as to how his posting in Jammu that he is seeking, with his wife posted in Ambala will really make a difference. Since, they will still be posted at two different stations. We also cannot give much credence to his plea that his posting to Jammu will help him look after his old parents in the light of the fact

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that he has been successfully looking after them from other stations in the last nearly 20 years. He has been looking after his old parents from various other stations since 1996. The urgency and desperation to be with his old parents appear to be more of an intelligent excuse rather than a legitimate reason.

15. At the time of hearing of interim-stay, we had taken into consideration that the transfer orders were issued in the middle of the academic session and had accordingly stayed the same. However, since the academic session is over, there is no difficulty in shifting his children.

16. The applicant has emphatically argued, invoking the case of Dr. Dev Parkash Chugh (supra) that the guidelines must be adhered to in case of transfers. We have gone through the judgment. The facts of this case are quite different. In this case, there has been very frequent transfer of the petitioner in complete violation of the transfer guidelines. In fact, to bring clarity the first two paragraph of this judgment are reproduced below:-

"The petitioner had been appointed as Veterinary Assistant Surgeon on March 29, 1972. He had been posted as Veterinary Officer at different places from time to time. ON June 9, 2000, he had been given the current duty charge of the post of Assistant Director, Animal Husbandry and was posted at Ferozepur. Thereafter, on May 31, 2001, he was transferred as Senior Veterinary

Officer, Jagraon. Subsequently, on June 28, 2002, he was transferred to Faridkot as Assistant Director, Animal Husbandry with Headquarters at Moga. On October 30, 2003, he had been shifted to Faridkot as Assistant Director with additional charge of Deputy Director, Animal Husbandry at Faridkot. Then on April 1, 2004, he had been shifted back to Moga as Assistant Director. It is on July 30, 2004, he was transferred to the post of Senior Veterinary Officer Moga, he joined at the place of posting on August 5, 2004. Now again on June 20, 2005, he has been transferred as Assistant Director, Animal Husbandry, Ferozepur. The petitioner had not raised any objection for being posted from time to time on various posts as aforesaid.

2. The last transfer i.e. 20.6.2005 has been made the subject-matter of challenge in the present petition on the premises that the petitioner is to retire on April 30, 2007 meaning thereby that only a period of 1-1/2 years of service remains to the date of superannuation".

The same judgment in para 10 refers to judgment of the Hon'ble Supreme Court rendered in **Union of India & Ors. vs. S.L.Abbas** (1995(4) S.C.T. Page 455 attributed to the respondents, and observes "unless the order of transfer is violated by mala fides or is made in violation of the statutory provision, the Courts should not interfere with it". The jurisdictional High Court in para 19 of the judgment has further recorded that "We are conscious of the fact that transfer orders are not to be set aside at the drop of the hat and that the power to be exercised by the employer has also to be given due weight unless the exercise of such power is clearly opicised by virtue of colourable exercise".

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17. The present case is distinguishable, inter-alia, firstly because this is not a case where the applicant has been transferred very frequently, and secondly that there is no accusation of malafide against the respondents. Here, the applicant has enjoyed stable and long stays in only four stations in last 28 years and his transfer is clearly not in violation of the transfer guidelines.

18. In a large number of judgments, the Hon'ble Apex Court has defined the scope of interference by the Tribunals/High Courts in transfer cases and has held in numerous cases that this scope is very limited. The general principle that can be culled out from such judgments is that effecting transfer is an administrative exigency which is the prerogative of the executive. The employees when they join the government service do not qualify on their joining that they will not accept any transfers during the course of their service and ordinarily should abide by such transfers. However, if there is gross violation and blatant disregard of any guidelines/rules laid down for the purpose of transfer and the principles of natural justice are violated, there could be a legitimate scope for interference in such transfers.

19. Our view find support from the law laid down by the Hon'ble Supreme Court in the cases of Shilpi Bose and others. Vs.

**State of Bihar and others**, (1991) 2 SCC(Supp.) 659); **State of Madhya Pradesh and another** vs. **Shri S.S.Kourav & Ors** (1995(3) S.C.C. Page 270); **National Hydro Electric Power Corporation Ltd.** Vs. **Shri Bhagwan & Another** (2001(8) S.C.C. Page 574) and **Kendriya Vidyalaya Sangathan** versus **Damodar Prasad Pandey and others** (2005(1) R.S.J. Page 328). The Hon'ble Supreme Court in the case of **Airports Authority of India** versus **Rajeev Ratan Pandey & Ors.** ( 2009(10) S.C. Page 472) has held that 'in a matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer". Again, the Hon'ble Apex Court has again reiterated in the case of **State of Haryana & Others** versus **Kashmir Singh & Another** (2010(4) R.S.J. Page 766) that "transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal."

20. In our view, in the instant case the respondents have neither violated guidelines nor acted in a malafide manner nor have indulged in colourable exercise of their power in transferring the applicant to Srinagar.

21. We, therefore, do not find it necessary to interfere in the impugned order. The OA is accordingly dismissed. No costs. Interim order granted on 31.10.2014 automatically stands vacated with immediate effect.

**(UDAY KUMAR VARMA)**  
**MEMBER (A).**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Dated:- May 22, 2015.

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