

(Reserved on 23.03.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **12th** day of **April, 2018**

Present:

**HON'BLE MR. JUSTICE DINESH GUPTA, CHAIRMAN.
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A.**

**STAY VACATION APPLICATION NO. 330/2318/2017
IN
ORIGINAL APPLICATION NO. 330/1414/2017**

Hamim AhmadApplicant.

V E R S U S

Union of India and others. Respondents

Present for the Applicant : Shri Ashish Mohan Srivastava

Present for the Respondents: Shri L.M. Singh

ORDER ON STAY VACATION APPLICATION

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

Heard Shri Ashish Mohan Srivastava, counsel for the applicant and Shri L.M. Singh, counsel for respondents on stay vacation application No. 2318/17 filed on 27.11.2017 alongwith Short Counter Affidavit for vacating the interim order dated 16.11.2017 passed by this Tribunal wherein the following directions were given: -

“6. Considering the facts and circumstances, a prima facie case for interim relief is made out in favour of the applicant. The respondent No. 2 is directed to consider the representation of the applicant dated 2.11.2017 (Annexure A-5)

sympathetically and dispose it of in terms of DOPT OM dated 30.09.2009 (Annexure A-2) and transfer policy dated 31.8.2015 (Annexure A-6) by reasoned and speaking order. The applicant is also directed to send a copy of this order along with a copy of his representation dated 2.11.2017 to the respondent No. 2 within a period of 2 weeks. Meanwhile the respondents are directed not to take any coercive measure to force the applicant to join at Varanasi till the academic session ends in March 2018.”.

3. Learned counsel for respondents has filed Stay Vacation Application alongwith Short Counter Affidavit and pressed for vacating the interim order dated 16.11.2017. It is stated in the Short Counter that the applicant who is a Group ‘A’ officer of the Railway Electrification is remain posted at Allahabad since 2003 except for a short period between 03.11.2015 to 07.09.2016 when he was posted at Rae Bareilly. The applicant was transferred from Allahabad to Varanasi vide order dated 01.11.2017 in administrative exigencies and he was relieved vide order dated 03.11.2017 and in his place new incumbent Shri M.K. Gupta has joined on 06.11.2017. It is also stated that this Tribunal has not stayed the transfer order and had only directed the respondents not to take any coercive measure to force the applicant to join at Varanasi till the academic session ends in March 2018. Learned counsel for the respondents argued that scope of judicial review in transfer matters is very

limited. Counsel for the applicant further submitted that it is a settled principle of law that the competent authority is to decide when, where and what point of time a public servant is to be transferred from his present posting. The employee does not have any vested right to be posted to a particular place. In this regard, counsel for the respondents cited the judgment of Hon'ble Apex Court in a number of cases including the following cases in support of his stand: -

- i. B. Varadha Rao Vs. State of Karnataka – AIR 1986 SC 1955;
- ii. Shilpi Bose Vs. State of Bihar – AIR 1991 SC 532;
- iii. Union of India Vs. S.L. Abbas – AIR 1993 SC 2444;
- iv. S.C. Saxena Vs. U.O.I and Ors reported in 2006 (9) SCC page 583.
- v. Somesh Tiwari Vs. U.O.I & Ors – (2009) 2(SCC 592.

4. The applicant has filed Rejoinder to the Short Counter stating therein that the action of the respondents in transferring the applicant after 13 months of posting at Allahabad even though his spouse is working at Allahabad under the State Government amounts to malafide in law because several railway officers equivalent to the applicant are continuing at Allahabad for unbroken spell. It is stated that the applicant was transferred to Allahabad only around one year ago as per the

policy of Railway Board for the employees who have working spouse under the State of the Central Government. As per the Transfer Policy dated 31.08.2015 issued by the Railway Board, total stay at a stretch should not be more than 10 years and cumulative stay should not be more than 15 years. The applicant was transferred to Allahabad only 13 months ago on his own request on the ground of posting of his spouse at Allahabad in State Government and having two small school going daughters. It is further stated that since the respondents did not comply the order of the Tribunal dated 16.11.2017, the applicant filed CCP No. 192/2017 and only when the order dated 28.11.2017 was passed in the CCP, the respondents have temporarily accommodated him at zonal office, Allahabad. It is further stated that the posting of the applicant has not been done on administrative ground as no such fact has been mentioned in the impugned transfer order dated 01.11.2017. It is a transfer for accommodating another officer. It is also contended that the transfer policy issued by the Railway Board as a statutory force in view of the judgment of Hon'ble Apex Court in the case of Vadera Vs. U.O.I & ors – AIR 1969 SC 118.

5. We have considered the submissions made by the learned counsel for both parties regarding stay vacation application and are not able to accept the arguments of learned

counsel for the applicant in view of the judgment of Hon'ble Apex court in number of cases, as cited by the counsel for respondents.

6. In the case of Shilpi Bose (Supra) Hon'ble Supreme Court has held that even if transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the Department.

7. Further, it is also well recognized law that the transfer is a prerogative of the employer and court/Tribunal should not interfere unless it is alleged and proved that the transfer is an act of malice. In the case of Union of India and Ors. v. S.L. Abbas (Supra), the Hon'ble Apex Court has held that the transfer is an incident of service and in para-7 their Lordships held as under: -

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.”.

7. Hon'ble Apex Court in the case of **S.C. Saxena (Supra)** has held as follows: -

“6.In the first place, a Government Servant cannot disobey a transfer order by not reporting at the place of posting and then go to court to ventilate his grievances. It is his duty first to report for work, where he is transferred and make representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”.

8. Recently, in **Rajendra Singh & others Vs. State of U.P. & others JT 2009 (10) SC 187**, the Court observed that a Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to other. In the said case, the Court also observed that the transfer orders issued by the competent authority do not violate any of the legal rights of the concerned employee. If a transfer order is passed in violation of a executive instruction or order, the Court ordinarily should not interfere with the order and the affected party should approach the higher authority in the department.

9. In the case of **State of U.P Vs. Siya Ram and others – AIR 2004 SC 4121**, the Hon'ble Apex Court has held as under: -

“No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Unless an order of transfer as shown to be an 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 .

9. The main ground on which the applicant has resisted the stay vacation application is that he has been transferred to Allahabad before 13 months ago and his wife is working at Allahabad and as per the policy of the Railway Board, he has the claim to be posted at Allahabad. All these points were considered by this Tribunal while passing the order dated 16.11.2017 by which the respondents were directed not to take any coercive measure to post the applicant at Varanasi is taken till academic session end in March 2018. This order did not imply that the applicant should continue at Allahabad. However, this interim order continued as per the submission of the applicant after March, 2018 till date and the applicant is continuing to stay at Allahabad virtually negating the transfer order. It is noted that the applicant is continuing at Allahabad since 2003 except for a short period from 03.11.2015 to

07.09.2016. In another words, the applicant is in Allahabad for more than 14 years in two spells. It is noted that since he was not allowed to join at Allahabad after passing of the interim order dated 16.11.2017, the applicant filed a CCP, after which the respondents allowed the applicant to continue in Allahabad till date. Thus the applicant has continued to stay in Allahabad even after he was relieved, which was not the intention of the order dated 16.11.2017.

10. In view of above and in the light of the judgment of Hon'ble Supreme Court in catena of cases, we allow the stay vacation application No. 2318/2017 and vacate the interim order dated 16.11.2017. As per the ratio laid down by the Hon'ble Supreme court in the case of S.C. Saxena (Supra), the applicant is at liberty to join at transferred place and then make a representation, if not made, to the respondents / competent authority for his transfer in pursuance to the policy of the Railway Board alongwith other grounds as the applicant would like to mention in the representation.

11. List the O.A on 02.05.2018.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Chairman

Anand...