

Central Administrative Tribunal
Principal Bench
New Delhi

OA 1488/2015
MA 1822/2015

Order Reserved on: 03.09.2015
Order pronounced on 08.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)

Smt. Uma Sharma
w/o Sh. Girish Sharma
r/o 899, Z-Type, Timarpur, Delhi-110 054.
Presently Posted as Office Superintendent at the Office
Of Project Manager (Priyojna Prandhank), Fly over Priyojna
Primmandal F-11, Lok Nirman Bhibhag, Lajpat Nagar-IV
Bhai Nihal Singh Marg, P.W.D. New Delhi. ... Applicant

(By Advocate: Shri H.R.Jha with Sh. Subhash Chander)

Versus

1. Director General (Works)
C.P.W.D., Nirman Bhawan
New Delhi.
2. Chief Engineer Govt. Of Delhi
Public Works Department
Flyover Project Zone F-1
12th Floor, Police Headquarters
I.P.Estate, New Delhi – 110 002.
3. Executive Engineer (Planning)
Civil Bhawan, Anurakshan PrimandalM-32
Public Works Department
Govt. Of Delhi, Below, I.S.B.T. Flyover
Kasmiri Gate
Delhi.
4. Deputy Director, North Zone
C.P.W.D. East Block-I, Level-7

R.K.Puram, New Delhi.

5. Project Manager
F-11, P.W.D.
Lajpat Nagar-IV
Near Bhai Nihal Singh Marg
New Delhi. ... Respondents

(By Advocate: Shri Hanu Bhaskar)

ORDER

The applicant, who is working as Office Superintendent, under the 5th Respondent, filed the OA questioning the impugned Annexure A1- transfer order, dated 25.02.2014, in transferring her from Delhi to Jaipur.

2. This Tribunal, while issuing notices, directed the respondents to maintain status quo regarding posting of the applicant on 21.04.2015.

3. Shri H.R.Jha, the learned counsel for the applicant in support of the OA averments submitted as under:

i) Impugned transfer order is violative of Annexure-3 - transfer policy guidelines, inasmuch as those employees who have attained the age of 57 years need not be transferred from existing station unless individual wants a change on compassionate grounds, as the applicant has attained the age of 57 years as on the date of impugned transfer.

- ii) The husband of the applicant is suffering from serious illness and bed ridden since long time, as evidenced by Annexure A10 documents.
- iii) There is no other family member to look after the husband of the applicant as they have no children.
- iv) Though the Tribunal issued the status quo order on 21.04.2015, but the respondents have not been paying salary to the applicant w.e.f. 17.04.2015.

4. Per contra, Shri Hanu Bhaskar, the learned counsel for the respondents would submit as under:

- a) The applicant has not attained the age of 57 years as on the date of the impugned transfer order, and hence, the transfer policy guideline on which the applicant placed reliance has no application to her.
- b) The applicant was transferred from Delhi to Jaipur vide the impugned Annexure A1 transfer order dated 25.02.2014, by way of annual general transfers, along with so many others. The representation made by the applicant was also considered by the respondents and while upholding her transfer order, she was permitted to retain at Delhi till 31.03.2015, vide order dated 04.04.2014. The applicant having accepted the said order and having stayed as per the retention granted by the respondents till 31.03.2015, cannot file the present OA on 20.04.2015.

- c) The OA is time barred as the impugned transfer order is dated 25.02.2014 and whereas the OA is filed on 20.04.2015, i.e., after expiry of the period of limitation of one year.
- d) The applicant was relieved from service on 17.04.2015 and hence, the status quo order obtained from this Tribunal, by suppressing the fact of her relief, has become infructuous.
- e) Every Government servant is bound to join at the place of transfer at the first instance, and then only can make a representation or question the transfer, if aggrieved, as held by the Hon'ble Apex Court in **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583.

5. Heard Shri H.R.Jha and Shri Subhash Chander, the learned counsel for the applicant and Shri Hanu Bhaskar, the learned counsel for the respondents, and perused the pleadings on record.

6. It would be useful, in this connection, to make mention of the limited scope of judicial interference in transfer matters, that has been reiterated by the Hon'ble Apex Court time and again. Some relevant pronouncements of the Hon'ble Apex Court in the matter are given below:

7. In **Union of India & Others v. H.N.Kritania** (1989) 3 SCC 445, the Hon'ble Supreme Court observed as under:

"5. After hearing learned counsel for the parties we do not find any valid

justification for the High court for entertaining a writ petition against the order of transfer made against an employee of the central government holding transferable post. Further there was no valid justification for issuing injunction order against the central government. The respondent being a central government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondents transfer."

8. In **Gujarat Electricity Board v. Atmaram Poshani** (AIR 1989 SC 1433), the Hon'ble Apex Court in Para 4 of the said judgment reads as under:-

"4. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. 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. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order

of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other".

9. In **Union of India and Others v. S.L.Abbas**, AIR 1993 SC 2444 it was held as under:

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority." Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that

behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

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. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

10. In **State of M.P. Anr. v. S.S.Kourav & Others** (1995) 3 SCC 270 observed as under:

"....in this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the Court."

11. The Hon'ble Supreme Court in **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Others**, (2001) 8 SCC 574 held as under:

"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 were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

12. In **State of UP and others Vs. Gobardhan Lal** (2004 (11) SCC 402), it is held that the 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. In the said case it was further held that challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are appellate authorities over such orders. Paras 7 and 8 of the judgment read as under:-

"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 consequence 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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

13. In **State of U.P. and Others vs. Siya Ram and Another**, AIR 2004 SC 4121 the Hon'ble Supreme Court held as under:

"5. The High Court while exercising jurisdiction under Arts. 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone

into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice 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. Un-less an order of transfer is shown to be an outcome of mala fide 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, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and another** (2001 (8) SCC 574)."

14. In **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583, the Hon'ble Apex Court held as under:

"6. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a 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."

15. In **Mohd. Masood Ahmed v. State of U.P. and Others**,

(2007) 8 SCC 150 held as under:

"Since the petitioner was on a transferable post, the High Court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Supreme Court, transfer is an exigency of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders."

16. In **Rajendra Singh & Others v. State of UP & Others**,

(2009) 15 SCC 178, the Hon'ble Apex Court held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee

unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of

mala fides or violation of any specific provision."

17. In **Registrar General, High Court of Judicature of Madras**

Vs. **R.Perachi & Ors.** (2011) 12 SCC 137), the Hon'ble Apex Court held that transfer is an incident of service and one cannot make a grievance, if a transfer is made on administrative ground. The relevant paras of the said judgment are extracted below:

"22. In the context of transfer of a government servant we may refer to the dicta of this Court in **N.K.Singh v. Union of India** (1994) 6 SCC 98) where this Court observed in AIR para 22 as follows:-

"23... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicted."

23. In **State of M.P. v. S.S.Kourav** the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to that while setting aside the order of the Tribunal this Court observed in para 4 of its judgment as follows:

"4....The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. In this case, we have seen that on the administrative grounds the transfer came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances

the decision of the then Chief Justice to transfer him outside that district could not be faulted."

18. It is thus well settled that in the matter of transfer, the Executive retains the absolute right to transfer a person in public interest and unless there are clear cut mala fides established or if it is established that the decision is in violation of a statutory rule it should not be interfered with. Therefore, interference in the cases is warranted only if the transfer orders are issued by an incompetent authority or the transfer orders are established to be based on mala fides. Normally, Courts or Tribunals cannot act as appellate forums to decide on transfers on administrative grounds. Further, a government servant cannot disobey a transfer order by not reporting at the place of posting. It is his duty to first report for work where he is transferred and make a representation, if aggrieved with the transfer order.

19. Admittedly, the applicant has not attained the age of 57 years as on the date of transfer, and hence, the policy guideline cited by the applicant has no application to her case.

20. The applicant having availed the retention period granted by the respondents vide their order dated 04.04.2014, in response to the representation made by the applicant against the impugned transfer order, is estopped from questioning the same subsequently by way of this OA.

21. The present OA filed on 20.04.21015 questioning the impugned transfer order dated 25.02.2014, as contended by the respondents' counsel, is barred by the period of limitation, as her representation against the same also disposed of on 04.04.2014 itself.

22. Since the applicant has not denied the fact of her relief on 17.04.2015 itself, in pursuance of the impugned transfer order dated 25.02.2014, cannot contend that the respondents have not complied with the status quo orders of this Tribunal dated 21.04.2015.

23. However, in view of the ill health of the husband of the applicant and that no other person is there to look after him, the respondents are required to consider the applicant for posting in any of the offices located at Delhi, if there are any existing/future vacancies.

24. In the circumstances and for the aforesaid reasons, the OA is dismissed as being devoid of any merit. However, if the applicant, after joining at the place of posting, makes any representation, the respondents may consider the same sympathetically as indicated in para 23. The break period, i.e., from the date of relief of the applicant till her joining at the place of posting, shall be determined by the respondents, as per the leave available to her credit, as per

rules. In view of the aforesaid orders in the OA, the MA 1822/2015 is also dismissed accordingly. No order as to costs.

(V. Ajay Kumar)
Member (J)

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