

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1717/2016

Order Reserved on: 16.05.2016
Order pronounced on 18.05.2016

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

Devender Singh
(age 38 years)[Post: Technical Officer(A)]
S/o Sh. Ramdiya
R/o 898/7, Street No.03
Jain Bagh Cocoly
Sonipat, Haryana-131001. .. Applicant

(By Advocate: Shri Ashok K. Singh)

Versus

National Technical Research Organization
Government of India
(Through its Chairman]
Block-III, Old JNU Campus, New Delhi. .. Respondent

(By Advocate: Sh. Gyanender Singh)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, a Technical Officer (A) in the respondent-National Technical Research Organization (in short, NTRO), at its Delhi Office, filed the OA questioning the Annexure A2, transfer order, dated

02.02.2016 in transferring him from Delhi to FRU, Anand Pur in Himachal Pradesh.

2. Brief facts, as stated by the applicant in his OA, are that he joined on 09.10.2002 as Deputy Field Officer (Technical), in the Aviation Research Centre (in short, ARC) of the respondent-NTRO at its ARC, Sar Sawa, Saharanpur, UP. On 21.08.2006, he joined as Technical Assistant (B) and was transferred to NTRO-FRU, Numaligarh, Assam where he was promoted as Technical Officer (A) on 01.01.2008. He worked there till 30.06.2009 and thereafter transferred to the present place of NTRO, DAC, AED, Mayur vihar, Delhi on 15.07.2009. Since then, he has been working at the same place.

3. It is further submitted that the applicant's wife, on her selection as primary teacher under Haryana Government, joined as a Primary Teacher at Govt. Primary School, Atta, Panipat, Haryana on 04.01.2011. The applicant duly intimated about the fact of the employment of his spouse vide letter dated 18.03.2014. Later, on promotion as Science Teacher (TGT), she was transferred to Sonipat and residing there.

4. The respondent vide the impugned transfer order dated 02.02.2016 transferred the applicant from Delhi to Anandpur, Himachal Pradesh. The representation dated 06.02.2016 (Annexure

A3), preferred by the applicant against the said order, was rejected by the respondents vide Annexure A5, order dated 04.05.2016.

5. Heard Shri Ashok K. Singh, the learned counsel for the applicant and Shri Gyanender Singh, the learned counsel for the respondents, on receipt of the advanced notice for the respondents, and perused the pleadings on record.

6. Shri Ashok K. Singh, the learned counsel for the applicant, submits that the impugned action of the respondents in transferring the applicant from Delhi to Anandpur, is illegal, arbitrary and violative of the transfer policy of the respondent-NTRO and of the DoPT OM dated 30.09.2009.

7. The learned counsel submits that the impugned transfer order and the consequential rejection of his representation order are illegal and arbitrary being non-speaking orders. They were not issued either in public interest or due to any administrative exigencies.

8. It is further submitted that as per Annexure A7, DoPT OM dated 30.09.2009, i.e., the consolidated guidelines on the issue of posting of husband and wife at the same station, where one spouse is employed under the Central Government and the other spouse is employed under the State Government, the spouse employed under the Central Government may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station, to the State where the other spouse is posted. The

learned counsel further submits that as per Annexure A6 employees transfer policy of the respondent-NTRO, the posting of husband and wife at same station, especially when one of the spouse belongs to other Ministry/Department will be governed as per DoPT OM dated 30.09.2009. Though the applicant, who is working under the Central Government applied to the competent authority requesting to post him at the station of his spouse or to any station near to the same, but the respondents failed to accede to his request, which is against to the aforesaid guidelines and the policy.

9. The learned counsel further submits that though the applicant is working at Delhi for the last about 7 years but prior to the same he worked in a hard station in North East. Further, his minor children are aged about 5 years and 10 years and his support to his wife, who is working at Sonipat, to look after them is essential. Since Delhi is near to Sonipat, he is able to take care of his children but if he forced to join at Anandpur, Himachal Pradesh, he and his family will be put to great hardship.

10. Per contra, Shri Gyanender Singh, the learned counsel for the respondents submits that as per the Annexure A6-Employees transfer policy of the respondent-NTRO, the tenure of a normal posting is 3 years and keeping in view the difficulties and the fact of his spouse employment, the respondent continued him in Delhi from 2009 till date, i.e., for more than two tenures. Again keeping the circumstances of the applicant, he is posted to Anandpur in Himachal

Pradesh, which is near to Shimla, and about 4 or 5 hours journey to Sonipat, where his wife is working. The transfer of the applicant is not an isolated one, but the same is issued in the administrative exigencies and in public interest and along with so many others, as an annual routine transfer, that too, to a regular station as against hard station. Hence, he cannot have any objection for the transfer.

11. The learned counsel further submits that the guidelines in Annexure A7, DoPT OM dated 30.09.2009 and the Annexure A6-Employees transfer policy are not mandatory but only directory and subject to the administrative exigencies and public interest. Hence, there is no irregularity or infirmity in the impugned action of the respondent and accordingly prays for the dismissal of the OA.

12. In **Union of India & Others v. S. L. Abbas**, (1993) 4 SCC 357, the Hon'ble Apex Court observed 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.

7. 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.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Art. 226 of the Constitution of India in service matters. This is evident from a perusal of Art. 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Art. 323-A. (We find it all the more surprising that the learned single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority).

9. Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in *Bank of India v. Jagjit Singh Mehta*, (1992) 1 SCC 306: (1992 AIR SCW 170) rendered by a Bench of which one of us (J. S. Verma, J.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein (para 5 of AIR):-

"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 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 an 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.....No doubt the guideline requires 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."

(Emphasis added)

10. The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondent's contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as *mala fide* for

that reason. To reiterate, the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

13. In **State of U.P. v. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Apex Court held 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."

14. In **Rajendra Singh. Etc., Etc. v. State of U.P. & Others**, (2009) 15 SCC 178, the Hon'ble Apex Court observed 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."

15. As held by the Hon'ble Apex Court in the aforesaid decisions that 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 and 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, 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. It was further held, regarding wife and husband posting at one place, that "No doubt the guideline requires 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."

16. In the circumstances and in view of the long stay of the applicant at Delhi and in view of the aforesaid declaration of law by the Hon'ble Apex Court, we do not find any merit in the OA and accordingly the same is dismissed. However, this order shall not preclude the respondents from considering the representation of the applicant, if made in future, for posting him at any place near the place of his wife's working, subject to the availability of vacancies and the administrative exigencies. No costs.

(V. Ajay Kumar)
Member (J)

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