

**Central Administrative Tribunal
Principal Bench**

OA No.2216/2017

New Delhi, this the 10th day of July, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

B.L. Sharma, IAS(AGMUT:2004)
Member DSSSB, Aged about 58 years
S/o Sh. D.R. Sharma
R/o Flat No.6, Kasturba Institute
Of Technology, Pitam Pura, New Delhi-88. ..Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Union of India through
It Secretary, M/o Home Affairs
North Block, New Delhi.
2. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
I.P. Estate, New Delhi. ..Respondents

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

Heard.

2. Issue notice. Shri R.K. Jain, learned counsel, appears and accepts notice on behalf of respondent No.1 and 2.
3. This Original Application has been filed challenging the transfer of the applicant vide the impugned order

dated 29.05.2017 whereby the applicant has been transferred from Delhi to Chandigarh. The applicant represented against his transfer vide his representation dated 01.06.2017. This representation has been rejected vide the second impugned order dated 29.06.2017 (Annexure A-2).

4. The transfer is assailed on two grounds; one that the same is in contravention of the transfer policy as the applicant has not completed three years tenure at New Delhi and second, that the son of the applicant has entered class XIIth and he has to take care of the studies of his son and till he completes class XIIth, he should not be transferred.

5. We have heard the learned counsel for the parties and perused the record. From the list of the dates and events, we find that earlier also the applicant remained posted at Delhi. Though the period is not mentioned, however, learned counsel, on instructions, from the applicant has informed that he has served only for three years up to 2012. The applicant was inducted into IAS on 31.01.2015. Prior to that he was a DANIC officer and was serving at Andaman and Nicobar Island.

He was transferred to Delhi on 13.07.2015. Vide the impugned order he has been transferred to Chandigarh.

6. One of the ground of challenge of impugned Annexure A-2 order is that it's a non-speaking order. We have examined the impugned order. It is true that the order rejecting the representation does not reveal that the submissions of the applicant in the representation have been taken note of. Though the order says that the representation of the applicant has been considered in the Ministry and could not be acceded to.

7. We have considered the representation of the applicant. As noted hereinabove, only two grounds have been urged. In so far as the studies of the child are concerned, this can be a problem with many Govt. employees and thus does not provide the basis for stalling the transfer which is made in public interest. Vide the impugned order dated 29.05.2017, as many as 24 officers have been transferred and it is not that the transfer of the applicant is in isolation. Picking up the case of the applicant will disturb the entire chain. Otherwise also the Tribunal can always take a judicial notice that Chandigarh is no less a place for study of

child at the level of class XIIth. This cannot be a ground for stalling the transfer. In so far as the second ground is concerned, we have examined the transfer policy. These are the guidelines for transfer/posting of IAS/IPS officers of joint AGMUT cadre 2016. The applicant is relying upon para 8 (ii) of the guidelines which reads as under:-

"(ii)Direct recruits on promotion to Senior Time Scale may invariably be posted from Category 'A' to Category 'B' and vice-versa, for a tenure of 3 years in view of the table in para 7. In case sufficient vacancies are not available in Category 'B', the officers shall be posted to other segments in Category 'A'."

8. Based upon the aforesaid stipulation, it is argued that the applicant is yet to complete three years and thus his transfer is in contravention of the transfer policy. The applicant also relies upon the judgment of the Hon'ble Himachal Pradesh High Court reported as 2014 SLR Online 1800 (H.P.), wherein it has been stated that once the State Government has framed a transfer policy, then it is its duty to implement the same because the very purpose of framing a policy is to strike a balance between rights of the employees and the State in matters relating to transfer so that the same is not misused.

9. We have carefully considered the aforesaid judgment. At the first place the transfer policy is not statutory in nature and it is only in the nature of guidelines. The relevant clause 8(ii) noted above also uses the expression "may invariably be posted", meaning thereby that there is no mandate to the employer. In any case, transfer is an exigency of service. No employee has the right to remain at a particular post or at a particular station. It is the prerogative of the employer to post an employee as may be deemed appropriate in public interest. As far as the observations of Hon'ble Himachal Pradesh High Court are concerned, the observations are to prevent misuse of the transfer policy or guidelines. In the present case, there is no allegation of *mala fide* against any person whatsoever. Nor any such person has been impleaded as a party respondent. Thus, the question of misuse does not arise in the present case. One of the ground which Shri Anil Singal has urged is that a number of officers with longer stay have been retained at Delhi. Again, it is a question to be considered by the employer where the services of an employee can be best utilized. It goes without saying that every employee cannot perform at the same level. Therefore,

the choice has to be given to the employer to post the employees keeping in view the efficiency of the employee and the requirement of the nature of job at a particular place/station. The court cannot substitute its opinion in this regard. The settled law is that transfer can be interfered only where it is by an incompetent authority, actuated by *malafides* or in contravention of any statutory provisions or on some similar grounds. None of such grounds exists. Application dismissed.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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