

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3344/2015

Order reserved on 5th October 2015

Order pronounced on 16th October, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Mr. Atanu Mazumdar, aged about 56 years
Assistant Passport Officer
s/o Mr. P B Mazumdar
r/o P-99, Chittaranjan Park
New Delhi-19

(Mr. S M Arif, Advocate)

..Applicant

Versus

1. Union of India through its Secretary
Ministry of External Affairs
South Block, New Delhi
2. Joint Secretary and Chief Passport Officer
Ministry of External Affairs
CPV Division, Tilak Marg
Patiala House Annexee, New Delhi
3. The Regional Passport Officer
Regional Passport Office
Hudco Trikoot-III
Behind Hotel Hyatt Regency
Bhikaji Cama Place, New Delhi-66
4. Mr. Daya Krishan
Asstt. Passport Officer (Cadre)
Ministry of External Affairs
CPV Division, Tilak Marg
Patiala House Annexee, New Delhi

..Respondents

(Mr. R N Singh and Mr. Amit Sinha, Advocates)

O R D E R

In terms of impugned order dated 4.6.2015, the competent authority transferred the applicant from Passport Office, Delhi to Passport Office,

Ghaziabad in public interest. The applicant has assailed the said order on various grounds mentioned in paragraph 5 of the Original Application.

2. According to Mr. S.M. Arif, learned counsel for applicant, the transfer order is vitiated by *malafide*; the applicant is superannuating within next 36 months, thus the order of transfer is in violation of the policy on the subject; the order is neither in public interest nor in exigencies of service and when the applicant is transferred out of Delhi, the incumbents of the post with longer stay are retained in the same Office.

3. In the detailed counter reply filed on behalf of the respondents, they have espoused that the order of transfer has been issued on the basis of the recommendation by the Transfer Board duly constituted by the competent authority and before making its recommendation, the Board met on 19.5.2015 / 22.5.2015 had taken into consideration various representations, respective Passport Offices staff strength, difficulties being faced by the Passport Offices, station seniority and transfer policy and administrative exigencies. According to them, the recommendation of the Transfer Board was approved by the competent authority. It is also the stand taken in the counter reply filed on behalf of the respondents that the representation made by the applicant against the transfer order was not accepted and was rejected vide letter dated 30.7.2015 but the applicant concealed this fact from the Tribunal. In paragraph 4 of the reply, the respondents have mentioned certain judicial pronouncements, viz. **Mrs. Silpi Bose & others v. State of Bihar**, AIR 1991 SC 532, **Union of India v. S.L. Abbas**, (1993) 4 SCC 357 and **State of U.P. & others v. Goverdhan Lal**, 2004 (3) SLJ 244 SC.

4. During the course of arguments, learned counsel for respondents referred the Transfer Policy Guidelines 2015 for Central Passport Organization Officers/Officials and submitted that in the guidelines there is no provision prohibiting the transfer of the employees of Central Passport Organization within three years of their retirement. The stand taken in counter reply dated 24.9.2015 filed on behalf of respondent Nos. 1 to 4 is more or less akin to the stand taken in the counter reply dated 17.9.2015 filed on behalf of respondent Nos. 1 to 3.

5. Re-joining the submissions, learned counsel for applicant reiterated the stand taken by him in the Original Application and further espoused that respondent No.4 has all along been kept posted in Delhi. Learned counsel for applicant also placed reliance upon certain judgments of Hon'ble Supreme Court, viz. **Union of India v. Anil Kumar** (1999) 5 SCC 743 and **Tukaram Kana Joshi v. MIDC** (2013) 1 SCC 353.

6. I heard the learned counsels for the parties and perused the record.

7. As far as the allegation of *malafide* is concerned, it is *stare decisis* that the individual against whom *malafide* is alleged should be impleaded as party by name. In the present Original Application neither any officer against whom malice is alleged has been made party, nor has any material to establish the allegation been adduced. In the wake, the plea of *malafide* cannot be accepted.

8. As far as the plea of transfer of the employees with lesser stay and retention of those with longer stay at the same station is concerned, in **Union of India & others v. N.P. Thomas**, A(R 1993 SC 1605, Hon'ble

Supreme Court ruled that transfer of a government personnel holding transferable post cannot be held to be vitiated on the ground that some of his juniors are retained at the same station and his transfer is against the policy of the Government that husband and wife should be posted in the same station. Paragraph 8 of the judgment reads thus:-

“8. In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has not vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.”

9. Besides the transfer of the applicant is only to a nearby station. Nevertheless, a government servant due to retire need to complete the formalities of settlement of his terminal benefits and while doing so, he need to give references of his service particulars, place of posting and the branches of the Bank where he wants his monthly pension to be paid. That apart, he is required to do the preparation for his post-retiral settlements. In the wake, the Department of Personnel & Training (DoPT) issued certain guidelines in terms of O.M. dated 2.7.2015 providing that the officers, who are left with two years in superannuation and are likely to be promoted within one year, should not be rotated.

10. In **J.C. Joshi v. Union of India & others**, 1996 (2) ATJ CAT (Jabalpur) 611, it has been ruled that an employee left with two years service to retire should not be transferred unless there is no other alternative.

11. In **A.N. Dey v. Union of India & others**, 2001 (1) ATJ CAT (Bangalore) 36, a Division Bench of this Tribunal ruled that once there were provisions in the guidelines in this regard, an employee should not be subject to transfer at the age of 56 years. Likewise, in **P.S. Bharti v. Union of India & others** 2001 (2) ATJ CAT (Lucknow) 67, this Tribunal ruled that an employee at the age of 54 years should not be subject to transfer.

12. Though the representation made by the applicant has been rejected by the respondents in terms of the order dated 30.7.2015, the fact that the applicant is due to retire within three years has not been dealt with. However, in **S.C. Saxena v. Union of India & others**, 2006 SCC (L&S) 1890, the Apex Court ruled as under:-

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. 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. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar, Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.”

13. In view of the said judgments, the Original Application is disposed of with liberty to the applicant to make a representation to the competent authority for cancellation of his transfer within one week after joining at his

place of transfer. If such representation is made, the competent authority will decide the same having regard to the aforementioned judicial precedents that the employee at the verge of retirement should not be subjected to transfer. Till such decision is taken by the respondents, the allotment of government accommodation made to the applicant on account of his posting in Delhi should not be cancelled. No costs.

(A.K. Bhardwaj)
Member (J)

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