

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2889/2015

Order Reserved on: 08.12.2015
Order pronounced on 15.01.2016

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

Sh. Ashok Kumar Kapoor
Aged about 56 + years
S/o Sh. V.M.Kapur
R/o C4B/144, Janak Puri
New Delhi – 110 058 and
employed as SAG/IRSEE/1982 batch. ... Applicant

(By Advocate: Sh. D.R.Gupta)

Versus

1. Union of India through
Chairman, Railway Board
Ministry of Railways
Rail Bhawan, Raisena Road
New Delhi.
2. Secretary, Railway Board
Ministry of Railways
Rail Bhawan
Raisena Road
New Delhi.
3. General Manager
Eastern Railway
Kolkata. ... Respondents

(By Advocate: Sh. Kripa Shankar Prasad)

ORDER

The applicant, a 1982 Batch IRSEE Officer/SAG of the respondent-Railways, filed the OA questioning the action of the respondents in posting him in the cadre of Eastern Railway on his return from deputation to RITES, as against his request to post him at Delhi.

2. The applicant mainly raised the following grounds, to buttress the OA averments:

- i) The impugned order of transfer is against the transfer policy followed by the Railway Board in respect of the posting of husband and wife at the same station.
- ii) The respondents accommodated other officers by posting them in Delhi, who were repatriated from PSUs or Central Deputation but not considered the similar request of the applicant.

3. The respondents vide their letter dated 31.07.2015 issued in reply to the representation of the applicant against the transfer order dated 24.06.2015 and also vide their reply to the OA stated that the applicant has already worked in Delhi, during his two tenures, for more than 12 years, i.e., July, 1998 to March, 2003 (nearly 5 years) and June, 2007 to June, 2015 (nearly 8 years) and at present Northern Railway have 2 surplus SAG officers against 7 sanctioned posts of SAG and it will not be feasible to post the applicant to Northern Railway at

present. It is also submitted that though attempt is made to follow Railway/DoPT guidelines regarding posting of Husband and Wife at the same station, for senior officers belonging to All India Services, hundred per cent compliance is not possible.

4. The respondents further submitted that though the transfer order was issued on 24.06.2015 and that the representation of the applicant was rejected on 31.07.2015, and no stay was granted by this Tribunal, the applicant has not joined in the place of posting till date, and hence, in view of the decision of the Hon'ble Apex Court in **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583., is not entitled for granting of any relief and on the said ground itself, the OA is liable to be dismissed.

5. Heard Shri D.R.Gupta, the learned counsel for the applicant and Shri Kripa Shankar Prasad, the learned counsel for the respondents and perused the pleadings on record.

6. In **S.C.Saxena** (supra), 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."

7. Accordingly, as rightly contended by the respondents, the applicant, a senior officer, having not joined at the place of posting, even after more than six months, though no leave was sanctioned, is not entitled for any relief.

8. Further, once the respondents rejected the representation of the applicant in view of working of 2 surplus SAG officers against 7 sanctioned posts of SAG, i.e., due to an administrative exigency, no fault can be found on their part. It is not for the applicant or to any employee to suggest which officer has to be posted where, as the said domain is exclusively of the administrative authorities.

9. Simply because some officers, who have rendered more service in a particular place are retained, it will not give any indefeasible right to the applicant to insist for his posting in that particular place.

10. The law on transfers is well settled. 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."

11. In **Union of India & Others v. S.L.Abbas**, (1993) 4 SCC 357, 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.

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."

12. In the circumstances and in view of the settled position of law, the OA is devoid of any merit and accordingly the same is dismissed. However, this order shall not preclude the respondents from considering the case of the applicant for transfer to his place of choice, if he makes a representation, after joining at the place of posting, as per rules. No costs.

(V. Ajay Kumar)
Member (J)