

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3443/2015

New Delhi, this the 15th day of September, 2015.

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)

Ms. Kamala,
Aged about 52 years,
R/o 11-D, DDA SFS-HIG Flats,
Sector-7, Pocket-1, Dwarka
New Delhi-110075.
Presently posted as:
Stenographer Gr.II,
CESTAT.

.. Applicant

(By Advocate : Shri Harpreet Singh)

Versus

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. The Customs, Excise & Service Tax Appellate Tribunal,
Through its Registrar,
West Block-2, R.K. Puram,
New Delhi.

.. Respondents

ORDER (ORAL)

Heard the learned counsel for the applicant.

2. The applicant, who is working as Stenographer Grade II under the 2nd respondent, filed the present O.A. aggrieved by the action of the respondents in transferring her from Delhi to Allahabad vide impugned Office Order dated 04.09.2015 (Annexure A/1).

3. It is submitted that the applicant made a representation dated 07.09.2015 (Annexure A/2) against the impugned transfer order ventilating her difficulties, and accordingly, requested the respondents to retain her at Delhi. However, the respondents vide order dated 09.09.2015 (Annexure A/3), while directing the applicant to report at Allahabad, stated that her request could be considered at a later date, if feasible. The applicant was also directed to report for duty at Allahabad on or before 28.09.2015. However, it is stated that the applicant has not yet been relieved.

4. The learned counsel for the applicant, while drawing attention to the various annexures enclosed to the O.A., submits that seniors to the applicant have been retained at Delhi, whereas the applicant is sought to be transferred to Allahabad. In addition to the personal difficulties, such as mother-in-law's serious illness, son's education etc., as detailed in Annexure A/2, it is also submitted that since the applicant's husband is also working outside Delhi, i.e. at Jaipur in the Ministry of Home Affairs, and in view of the instructions of the Govt. of India vide DOP&T Office Memorandum dated 30.09.2009, the applicant's request is to be considered in terms of the guidelines mentioned in the said O.M. The learned counsel, accordingly, submits that the order of the respondents dated 09.09.2015, which was passed in pursuance of the representation of the applicant made against the impugned transfer order, being a non-speaking order, liable to be set aside.

5. A bare perusal of the impugned transfer order dated 04.09.2015 reveals that the same was passed in administrative exigencies and in public interest. It is also the case of the applicant that the genesis of the impugned transfer is the formation of an additional Circuit Bench at Allahabad, an administrative exigency.

6. The law on the issue of transfers is well settled. In **Rajendra Singh & Others v. State of UP & Others**, (2009) 15 SCC 178, the Honble 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."

7. However, it is also to be seen that a transfer can uproot a family, cause irreparable harm to an employee and his family and drive to desperation. Hence, the administrative authorities while considering the representations made against the transfer orders, shall pass orders by keeping in view the guidelines/instructions on transfers, though not mandatory, and also the personal difficulties of the public servant.

8. The respondents vide their letter dated 09.09.2015 (Annexure A/3) though observed that the request of the applicant could be considered at a later date, if feasible, however, not given any reason for not considering her request at this stage, giving scope to the allegation of the applicant that the competent authority has not considered the various submissions made by her in the representation.

9. In the circumstances, the O.A. is disposed of at the admission stage, without going into the merits of the case, by directing the

respondents to reconsider the request of the applicant for retention at Delhi and to pass appropriate speaking and reasoned orders thereon, in accordance with law, within two weeks from the date of receipt of a copy of this order. Till then, the respondents shall continue the applicant at the present place of posting. No order as to costs.

Let a copy of the O.A. be enclosed to this order.

Order by **DASTI.**

(V. AJAY KUMAR)
Member (J)

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