

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

OA-4575/2015

Reserved on : 21.04.2016.

Pronounced on :25.04.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Mr. Neeraj Khatri, Age-48
S/o late (DR.) Prem Prakash Khatri,
R/o 113, Vikas Nagar,
Rohtak, Haryana.

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Applicant

(through Sh. Ajit K. Singh with Sh. Kumar Sameer and Ms. Drishti Singh, Advocate)
Versus

Ministry of Environment,
Forest & Climate Change through
Secretary,
Indira Paryavaran Bhavan,
Jorbagh Road, Aliganj,
New Delhi-110003.

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Respondent

(through Sh. N.D. Kaushik, Advocate)

O R D E R

The applicant was working as Scientist 'C' when a FIR was registered against him amongst others on 16.01.2013 following a trap laid by CBI. The applicant was placed under CBI custody till 21.01.2013. On 18.01.2013, he was suspended w.e.f. the date of detention i.e. 17.01.2013. The applicant was reinstated on 11.04.2014. Meanwhile, CBI filed charge sheet against him in the aforesaid case. Government of India granted sanction for prosecution to the CBI vide their order dated 23.12.2015. It is an admitted position that the matter is now pending in the Court, which has already taken cognizance of the same.

2. The grievance of the applicant is that on his reinstatement after suspension, the respondents have posted him at Coimbatore completely

ignoring the fact that his wife, who is a Government servant is posted at Rohtak. He has been making several representations in this regard commencing from 01.05.2014 requesting that as per Government of India Instructions, he may be posted at the same station or in the same State in which his wife is posted. However, the respondents have not paid heed to his request forcing him to approach this Tribunal by filing this O.A. seeking the following relief:-

“(i) To direct the respondent to transfer/post the applicant at Chandigarh Regional Office of the Ministry of Environment, Forest & Climate Change or at any place near Chandigarh.

(ii) To direct the respondent to transfer/post the applicant at Chandigarh Regional Office of the Ministry of Environment, Forest & Climate Change or any nearby place, at the same post which may not be sensitive as per the government.

(iii) Pass any other relief(s) which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.”

3. Learned counsel for the applicant argued that Government of India Instructions clearly provide that husband and wife should as far as possible be posted at the same station. However, the respondents have ignored this Instruction. Learned counsel also relied on the judgment of Hon'ble Rajasthan High Court in the case of **John Virendra Kumar Vs. State of Raj. & Anr.**, 1966(3)WLC 558 wherein the following had been laid down:-

“7. Next question which arises for consideration would be what should be the fair procedure which transferring authority should follow in such cases of transfer of husband and wife depriving them from a livable life. In my humble opinion the procedure should be reasonable and must conform to the norms of justice and fair play. To my mind before depriving husband and wife from livable life by way of transferring them, every transferring authority must record reasons in writing as to why it is not possible to allow husband and wife to work at one place. This procedure evolved by this Court would meet the requirement of [Article 21](#) of the Constitution of India according to which no person can be deprived of his life or personal liberty except according to procedure established by law.

8. It is true that assessment of possibility to keep husband and wife together at one place is within the exclusion domain of transferring authority but in order to make such transfer order objective the

transferring authority is under legal obligation to record reasons as to why it is not possible to keep husband and wife at one place.

9. At the time of deciding the representation of the petitioner it should also be kept in view by the authority that the State Government has taken a policy decision that as far as possible husband and wife should be allowed to work together. In view of the policy decision taken by the State Government I hereby direct the transferring authority to record reasons as to why it is not possible to keep husband and wife together at one place i.e. sheoganj while deciding the representation."

3.1 Learned counsel has also relied on the judgment of Hon'ble Supreme Court in the case of **Bank of India Vs. Jagjit Singh Mehta**, (1992) 1 SCC 306 in which the above observation has been more or less reiterated.

4. In their reply, the respondents after narrating the facts of the case have stated that the revocation of suspension of the applicant was considered in consultation with CBI. CBI vide their letter dated 03.10.2013 had advised that in case it was decided to revoke suspension of the applicant then he may not be given any sensitive post and posting him out of Delhi should be considered so that he is not able to influence the witnesses. Learned counsel for the respondents also drew out attention to the DoP&T O.M. No. 28034/2/97-Estt.(A) dated 30.09.2009 on the subject of posting of husband and wife at the same station. He stated that the case of the applicant was covered by Clause-vii of the aforesaid Memorandum, which deals with cases in which one spouse belongs to the Central Government and the other spouse is employed under the State Government. It is provided therein that the spouse employed under the Central Government may apply to the competent authority, who 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. Learned counsel asserted that the word used in the aforesaid Instructions was "may" and not "shall" meaning thereby that it was not mandatory in all cases to post husband and wife together. He further argued that such Instructions were applicable for ideal situation and cannot be

applied in the instant case in which the applicant was facing a CBI charge sheet.

5. I have heard both sides and have perused the material on record. After going through all the relevant Instructions of the Government regarding posting of husband and wife at the same station, I am convinced that these Instructions provide for posting of husband and wife at the same station or in the same State as far as possible. However, for valid reasons the competent authority has been given discretion to deviate from these Instructions after considering the facts and circumstances of the case. In the instant case, a CBI charge sheet has been filed against the applicant, which is pending trial in the competent Court. Government of India has already accorded sanction for prosecution on 23.12.2015 (pages 72 to 76 of the paper-book). From the prosecution sanction order, it appears that the check period of the case pending against the applicant is from 31.03.2007 to 17.01.2013. During this period the applicant was posted in Delhi from 30.03.2007 to 18.07.2011 and again from 01.02.2012 to 17.01.2013. In between during the period from 19.07.2011 to 31.01.2012 the applicant was posted at Chandigarh. Since the check period of the criminal case pending against the applicant pertains to his posting in Delhi and Chandigarh, I find no infirmity in the decision of the respondents not to post him at either of these two stations. From the relief clause of the applicant, it is obvious that he has been seeking posting only to Chandigarh or nearby station since CBI has already advised the respondents not to post him at Delhi. However, for the reasons mentioned above. I am of the opinion that respondents cannot be faulted for not entertaining his request.

6. In view of the above, I am not inclined to allow the prayer of the applicant that he may be posted to Chandigarh. The O.A. is, therefore, dismissed. No costs.

(Shekhar Agarwal)
Member (A)

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