

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3898/2015

Order Reserved on: 20.10.2015
Order pronounced on: 20.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Ms. Kamala
D/o Ram Chandar
Aged about 52 years
R/o 11-D, DDA SFS-HIG Flats
Sector 7, Pocket 1
Dwarka
New Delhi – 110 075
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.

3. Sh. A. Mohan Kumar
Registrar
CESTAT
West Block 2, R.K.Puram
New Delhi.

.. Respondents

ORDER

By V. Ajay Kumar, Member (J):

The applicant, earlier filed OA No.3443/2015, questioning her transfer from Delhi to Allahabad and this Tribunal by its order dated 15.09.2015 disposed of the said OA, at the admission stage, without going into the merits of the case by directing the respondents to consider the request of the applicant for retention at Delhi and to pass appropriate speaking and reasoned orders, in accordance with law.

2. The respondents vide the Annexure A2-Office Order dated 16.10.2015, again rejected the representation of the applicant, by passing a speaking and reasoned order.

3. A regional bench of the 2nd Respondent-Customs, Excise and Service Tax Appellate Tribunal (CESTAT), for Allahabad was notified by the Government on 01.11.2013. After infrastructural arrangements, the operation of this Bench was notified w.e.f. 01.10.2015. To fill up various posts of this regional bench, by transfer from the existing staff, the respondents vide the impugned Annexure A1 Office Order, dated 04.09.2015, transferred the applicant from Delhi to Allahabad along with others, and directed them to assume charge at the new station on or before 28.09.2015. Against the said order, the applicant submitted Annexure A5 representation on 07.09.2015. The respondents vide Annexure A6 dated 09.09.2015 stated that the request of the applicant could be considered at a

later date, if feasible, and directed the applicant to report for duty at Allahabad on or before 28.09.2015.

4. Aggrieved by the same, the applicant filed the aforesaid OA No.3898/2015 and the same was disposed of as indicated above.

5. In pursuance of the orders in the said OA, the respondents passed a speaking and reasoned order, vide Annexure A2 Office Order dated 16.10.2015.

6. Heard Shri Harpeet Singh, the learned counsel for the applicant and perused the contents of the OA and its Annexures.

7. The learned counsel in addition to the personal difficulties mentioned in the Annexure A5 representation of the applicant dated 07.09.2015, raised the following grounds:

- a) The impugned transfer order neither serves any public interest nor is based on any rotational basis.
- b) The impugned speaking order has not dealt with the various grounds raised by the applicant in her representation dated 07.09.2015.
- c) The applicant is not the senior most Steno. Grade-II and that there are so many others, who are senior to her and also junior to her, and that she was picked up arbitrarily.
- d) The transfer order and the subsequent rejection of her representation are the results of mala fide intentions of the 3rd Respondent.
- e) When the Applicant's first option was Chandigarh, and last option was Allahabad, the respondents instead of considering her

for Chandigarh, which is going to be operationalised w.e.f. 1st December, 2015, transferred her to Allahabad.

8. Admittedly, the respondents transferred the applicant along with others to Allahabad as a new bench has been notified and came into operation w.e.f. 01.10.2015 at Allahabad. The 2nd Respondent is a Tribunal and required to cater the needs of the litigant public at various places, depending on the filing of cases. Hence, it cannot be said that, at any stretch of imagination that constitution of regional benches at various places including at Allahabad by the 2nd Respondent-Tribunal, as not in public interest.

9. We now proceed to discuss the grounds on which the orders of transfer and rejection of representations against the transfer have been challenged. It would be useful, in this connection, to make mention of the limited scope of judicial interference in transfer matters, that has been reiterated by the Hon'ble Apex Court time and again. Some relevant pronouncements of the Hon'ble Apex Court in the matter are given below:

The Hon'ble Supreme Court in **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Others**, (2001) 8 SCC 574 held as under:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as

a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

In **State of U.P. and Others** vs. **Siya Ram and Another**, AIR

2004 SC 4121 the Hon'ble Supreme Court held as under:

"5. The High Court while exercising jurisdiction under Arts. 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and another (2001 (8) SCC 574)."

In **State of U.P. & Others v. Gobardhan Lal**, (2004) 11 SCC 401,

the Hon'ble Apex Court observed as under:

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale

of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In **Mohd. Masood Ahmed v. State of U.P. and Others**, (2007)

8 SCC 150 held as under:

"Since the petitioner was on a transferable post, the High Court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Supreme Court, transfer is an exigency of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders."

In **Union of India and Others v. S.L.Abbas**, AIR 1993 SC

2444 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.

1. 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."

The Hon'ble Apex Court in Director of School Education v.

O.Karuppa Thevan, (1994) Supp.2 SCC 666 held as under:

õ2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent.
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9. In the aforesaid case though the Hon'ble Apex Court, in the facts of the said case, directed the respondents therein to defer with the transfer of the appellant/respondent, therein, till the completion of the academic year, but categorically held that there is no hard and fast rule that no transfer can be effected in the middle of the academic year, even in the administrative exigencies and in public interest. In the present case, as observed above, the transfers are being effected purely in public interest and administrative exigency and that the Allahabad bench came into operation w.e.f. 01.10.2015 and since the personal difficulties have to yield to the public interest. Tthe transfer

order cannot be interfered solely on the ground of ill health of the applicant or the transfer is effected in the middle of the academic year.

10. 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 view of the aforesaid decision, a transfer order can be interfered only on the grounds of incompetency, violation of statutory rules or on mala fides. Admittedly, no grounds of incompetency or violation of any statutory rule are raised in this OA.

12. The applicant by making the third respondent as a party to the OA by his name, levelled certain specific mala fides against him at ground No.5.6 of the OA. It is to be seen that the 3rd Respondent issued the impugned transfer order on 04.09.2015 and the applicant preferred the representation against the same on 07.09.2015 and filed the earlier OA on 15.09.2015. The applicant neither in her representation dated 07.09.2015 nor in her application in OA No.3443/2015, raised any grounds of mala fides against the 3rd Respondent or any other respondents. Hence, the mala fides attributed to the 3rd Respondent for the first time in the present OA are clearly an afterthought and created for the purpose of filing of the present OA. Hence, the same cannot be accepted at this belated stage.

13. The other contention of the applicant that there are some seniors to her and some juniors to her in the category of Stenographers and that she is picked up arbitrarily cannot be accepted in view of the specific stand of the respondents that the new regional bench at

Allahabad required to be manned by senior and experienced persons and that the applicant is one of the senior and experienced Stenographer and also Allahabad is one of the options given by the applicant. No employee can insist that he/she cannot be transferred on the ground of seniority as it is for the administrative authorities to decide which employee is suitable to man a particular post in a particular place, in the administrative exigencies. This Tribunal cannot substitute itself for such administrative decisions.

14. It is not in dispute that the applicant has been continuously working at Delhi for the last about 16 years, for whatever reasons, and hence, in view of the above referred settled law, she cannot refuse to comply with the transfer orders.

15. Even the submission of the learned counsel for the applicant that all the grounds raised by the applicant were not considered by the respondents while passing the speaking order dated 16.10.2015, once the respondents satisfactorily explained the administrative exigency and the public interest involved, it is not mandatory to deal with each and every personal difficulty of the applicant, which are in any way cannot determine the transferability of the applicant, is untenable and unsustainable.

16. In the circumstances and for the aforesaid reasons, the OA No.3898/2015 is dismissed as being devoid of any merit. No costs.

By Dasti.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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