

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

**OA-4102/2015
With
OA-4103/2015
OA-4104/2015**

Reserved on : 07.04.2016.

Pronounced on : 18.04.2016.

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

KHEM CHAND,
S/o Sh. Hari Singh,
Aged 39 years,
Post: Jobber (Group C),
Office: Office of the Development Commissioner,
Govt. of India, Ministry of Textiles,
West Block No. 7, R.K. Puram, New Delhi-110066,
Res: Villate Banswa, Distt. Palwal, Haryana.

...

Applicant

(through Sh. Sewa Ram, Advocate)

Versus

1. Union of India,
Ministry of Textiles, Govt. of India,
Through: The Decelopment Commissioner (Handicrafts),
West Block No. 7, R.K. Puram, New Delhi-110066.
2. Mr. Shivji Ram Meena,
Assistant Director (H) RD&TDC, Okhla,
Office of Development Commissioner (Handicrafts),
Regional Design and Technical Development Centre
Okhla Industrial Estate,
New Delhi.

...

Respondents

(through Sh. G.S. Virk, Advocate)

OA-4103/2015

PRAVEEN KUMAAR RANA,
S/o Late Sh. P.S. Rana,
Aged 37 years,
MTS Employee,
Office: Govt. of India, Ministry of Textiles,
Office of the Development Commissioner (Handicrafts),
West Block No. 7, R.K. Puram, New Delhi-110066,
Res: House No. 337, Opposite Corporation Bank,
Near MTNL Office,
Main Road, Bijwasan Village,

New Delhi-110061. ... Applicant
(through Sh. Sewa Ram, Advocate)

Versus

Union of India,
Ministry of Textiles, Govt. of India,
Through: The Development Commissioner (Handicrafts),
West Block No. 7, R.K. Puram,
New Delhi-110066. ... Respondent
(through Dr. Ch. Shamsuddin Khan, Advocate)

OA-4104/2015

ROHIT KUMAR,
S/o Sh. Chakravarty,
Aged: 28 years,
Office: Govt. of India, Ministry of Textiles,
Office of the Development Commissioner (Handicrafts),
West Block No. 7, R.K. Puram, New Delhi-110066,
Res: House No. RZ 697, K-Block, Gali No. 31, Gopal Nagar, Phase-II,
Najafgarh, New Delhi-110043. ... Applicant
(through Sh. Sewa Ram, Advocate)

Versus

Union of India,
Ministry of Textiles, Govt. of India,
Through: The Development Commissioner (Handicrafts),
West Block No. 7, R.K. Puram,
New Delhi-110066. ... Respondent
(through Sh. S.N. Verma, Advocate)

ORDER

All these three applicants are aggrieved by a common transfer order issued on 24.09.2015. Hence, all these three O.As are being disposed of by this common order. The facts of all the three applications are somewhat different and are, therefore, being discussed as hereunder:-

OA-4102/2015

2. The applicant was working on the post of Jobber since 26.10.1995 in the office of respondent No.1 and posted at RD&TDC, Okhla, New Delhi. According to him, he has been suffering from highhandedness, victimization and mala fide

treatment meted out to him by respondent No.2, whom he has impleaded by name. Further, he has alleged that due to mala fide and ill conduct of respondent No. 2, he has been transferred to Kolkatta vide impugned order dated 24.09.2015. He has further submitted that the respondents had earlier rejected reimbursement of education fee of his children, which was admissible to him as per rules. The applicant was also being harassed in other ways. It was out of grudge that the respondent No.2 had issued an order surrendering him to the office of Deputy Director, Northern Region. The applicant has also submitted that he has been singled out for this transfer inasmuch as seniors and juniors of him have not been touched whereas he has been transferred purportedly in public interest. This transfer is punitive in nature as the applicant was a low level employee and he has been transferred to a far flung project based in a State where he would have problem in understanding the language as well. This has been done in complete disregard of his family responsibilities, which include looking after his aged mother suffering from various ailments. Even the wife of the applicant was suffering from dengue. His children were school going and it was not possible to shift them to a different city. The applicant has also learnt that there was no sanctioned Jobber post at Kolkatta. Thus, respondents order dated 24.09.2015 was discriminatory and suffers from prejudice against the applicant. It was also against the rules laid down by Government of India, which required that a Group-C employee should not be transferred to a far flung area/different language area/state. The transfer was also done during mid academic session affecting the studies of his children.

OA-4103/2015

3. Applicant of this O.A. had joined service on the post of Chowkidar on 18.10.2007. He was re-designated as Multi Tasking Group-C Staff vide respondents order dated 26.12.2013. The applicant was also transferred to

Baramulla in J&K vide impugned order dated 24.09.2015. He has submitted that out of a total list containing 50 MTS employees issued by the respondents on 21.05.2015, he was the only postgraduate employee in the whole list. There were several employees senior as well as junior to him. He had been appointed in the office of the respondents on compassionate ground due to sudden and untimely death of his father and he was always taunted by his colleagues and called 'MA pass chowkidar'. On being transferred to Baramulla vide impugned order dated 24.09.2015, the applicant submitted several representations on 29.09.2015, 30.09.2015, 01.10.2015, 07.10.2015 and 12.10.2015 requesting for cancellation of the order primarily on the ground that his old aged mother was suffering from heart disease and chronic arthritis. He had also requested that he had two small children, who could not be shifted out of Delhi in the mid academic year. The applicant has also learnt that there was no sanctioned post of chowkidar at Baramulla. Further, he submitted that since he does not know Kashmiri, he would not be able to communicate with local artisans/visitors. The applicant has alleged that he had been raising his voice against injustice and insult. For this reason, he has been transferred in a discriminatory manner leaving out both seniors and juniors of the applicant. The applicant has also repeated the grounds raised by applicant of OA-4102/2015.

OA-4104/2015

4. The applicant had been appointed as a skilled worker on 18.03.2010 and was posted at RD&TDC at Okhla, New Delhi. According to him, he has an unblemished record of service and had been performing duties to the fullest satisfaction of his superiors. With the permission of respondents, he was also pursuing B.A. course from Mahatama Gandhi University (Meghalaya) through correspondence. He is also aggrieved by the impugned transfer order dated 24.09.2015 by which he has been transferred to Kolkatta. He made several

representations on 30.09.2015, 07.10.2015 and 12.10.2015 against this transfer order. He has also alleged that he has been singled out for this transfer as both seniors and juniors of him have not been touched. This has been done in complete disregard to his family circumstances as the applicant's grandfather was an old person aged 96 years, who was suffering from joint dislocation and need consistent medical care. Applicant's mother was also suffering from multiple ailments. Applicant's wife was also under treatment at Rao Tula Ram Government Hospital. Applicant's daughter was suffering from acute eye ailment. The applicant has also stated that he had reliably learnt that there was no sanctioned vacant post of skilled worker at Kolkatta. He has alleged that he was transferred as a result of mala fide and bias attitude of the respondents. The applicant has also repeated the grounds raised by the other applicants mentioned above.

5. In more or less common reply filed in all the three OAs the respondents have stated that when these applicants were appointed, it was clearly mentioned in their appointment letters that they were liable to serve in any part of India. Respondents have also denied all allegations of mala fide and bias. Regarding applicant Sh. Khem Chand, the respondents have stated that the applicant has not come to the Tribunal with clean hands when he concealed material facts that the tuition fee bills submitted by him have since been traced and sanctioned. The respondents have further stated that transfer of all these employees was in public interest. Further, they have submitted that in catena of judgments, it has been observed that the Courts/Tribunals should not ordinarily interfere with the transfer order as no government servant has any vested right to remain posted at one place or the other and administrative authority was the best judge to decide his place of posting. In this regard, they have relied on the

judgment of Apex Court in the case of **Rajinder Singh Vs. State of UP**, 2009(15)

SCC 1351 wherein the following has been observed:-

“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.”

5.1 They have further relied on the judgment of Apex Court in the case of **Shilpi Bose (Mrs) and Ors. Vs. State of Bihar and Ors.**, 1991 Supp(2)SCC 659 in which the following has been observed:-

“4. In our opinion, the Courts should not interfere with a transfer Order which are 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 malafide. 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 over looked these aspects in interfering with the transfer Orders.”

5.2 The respondents have further placed reliance on several other judgments, some of which are as follows:-

- (i) **State of UP and Ors. Vs. Gobardhan Lal**, (2004) 11 SCC 402.
- (ii) **Purushendra Kumar Vs. UOI**, decided by Chandigarh Bench of CAT in OA No. 060/00090/2015.
- (iii) **Sunil Kumar Singh Vs. State of UP & 3 Ors.**, decided on 28.10.2015 by Allahabad High Court in Writ Petition No. 60420/2015.
- (iv) **State of M.P. & Anr. Vs. S.S. Kourav & Ors.**, (1995) 3 SCC 270.
- (v) **S.C. Saxena Vs. UOI & Ors.**, (2006) 9 SCC 583.

(vi) **Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors.**, (2004) 12 SCC 299.

5.3 Based on all these citations, the respondents argued that the employer had a right to transfer the employee as transfer was an incidence of service and not a punishment. The Courts should normally not interfere in the matters of transfer and posting until and unless it was found to be a result of any mala fide or in violation of statutory rules. The Courts also cannot go into the question of hardship caused to the employee as it would be for the administration to consider the same.

6. I have heard both sides and have perused the material placed on record with the assistance of counsel of both sides. From the appointment letters of all the three applicants available in their respective files, it is clear that all three of them had liability to serve anywhere in India. Thus, their transfers were not made in violation of any statutory rule/service conditions. While all three of them had alleged bias against respondent No. 2 (Sh. Shivji Ram Meena, Asstt. Director (H) RD&TDC, Okhla, the said Assistant Director had only placed the services of all the three applicants at the disposal of Deputy Director, Northern Region, whose office was situated in New Delhi itself. The transfer outside Delhi of all three of them was made by the office of Development Commissioner (Handicrafts) against whom no bias or mala fide has been alleged by any of the applicants. As regards their submission that there was no sanctioned vacant post at stations where they had been transferred, it appears to be based on conjectures and surmises and cannot be relied upon. The applicants have alleged that personal hardship has been caused to them by these transfers due to their family circumstances. However, Hon'ble Supreme Court in the case of **S.S. Kourav & Ors.** (supra) have laid down that it was for the administration to consider the

hardship caused to the employees and Courts were prohibited from going into the question of relative hardship.

7. The respondents have cited several judgments mentioned above in which it has been laid down that transfer and posting was within the domain of the authority concerned and Courts should normally not interfere in the same.

7.1 In the case of **S.C. Saxena** (supra) Hon'ble Supreme Court has observed that a government servant cannot disobey transfer order by not reporting at a place of posting and rushing to the Court to ventilate his grievances. It was his duty to first report for work at his place of posting and submit representations, if any, regarding his personal problems. In the instant case, I notice that the applicants have acted in complete disregard of this direction of Hon'ble Supreme Court inasmuch as they have not joined their places of posting even several months after being transferred there and have rushed to the Court.

8. Under these circumstances, I find no merit in these O.As and dismiss the same. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/