

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00534/2017

Jabalpur, this Tuesday, the 28th day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Renu Gulati,
W/o Pankaj Gulati
Aged about 34 years
Lower Division Clerk
R/o 49 Sarla Paradise BDA Road
Awadhpuri Piplani Bhopal (M.P.)
9993811925 PIN 462021

-Applicant

(By Advocate –**Shri Vipin Yadav**)

V e r s u s

1. Union of India,
Through Secretary Ministry of Labor
and employment
Shakti Bhawan,
Rafi Marg
New Delhi 110001

2. Director Dattopand Thengadi
National Board for Workers Education
and Development
Shram Shakti Bhawan
Rafi Marg New Delhi 110001

3. Dattopand Thengadi
National Board for Workers Education
and Development
through its Director North
Ambazari Road Nagpur 440033

- Respondents

(By Advocate –**Shri S.P. Singh**)
(Date of reserving the order:03.05.2018)

ORDER**By Navin Tandon, AM:-**

The applicant is aggrieved by her transfer from Bhopal to Faridabad on 11.07.2017 (Annexure A/9). Hence, this Original Application.

2. The applicant has made following submissions:-

2.1 She was appointed as Lower Division Clerk (LDC) on 16.07.2009 (Annexure A-1) with the respondents DTNBWED and was posted at Bhopal.

2.2 Due to family dispute, she has separated from her husband on 13.03.2013. An affidavit (Annexure A-2) to this effect has been submitted before the Family Court, Bhopal, which is signed both by the applicant and her husband.

2.3 The applicant has lodged a criminal case of sexual harassment against Shri Chandrashekar Kardam, Senior Clerk in the same office, who happens to be brother in law of her husband.

2.4 The husband of the applicant lodged a complaint with Respondent No.3 on 12.12.2016 (Annexure A/3) stating the applicant is having an affair with Shri M.N. Afaque, Education Officer and it is having bad affect on their daughter as well as ruining family life.

2.5 The applicant was transferred from Bhopal to Faridabad on 27.01.2017 (Annexure A-4). However, in pursuance of instructions from the Ministry of Labour and Employment, the transfer was put on hold on 01.02.2017 (Annexure A-6).

2.6 The Ministry further directed Respondent No.2 on 06.03.2017 (Annexure A/7) to hold an enquiry by a Committee consisting of Shri R.J., Wankhede Deputy Director (Education) I/c and Ms. Jayshree T. Deputy Director(HQ) into complaints received from Cabinet Secretariat and National Commission for Minorities regarding the applicant and Shri M.N. Afaque.

2.7 The applicant has submitted representation on 11.01.2017 (Annexure A-5) and 28.04.2018 (Annexure A-8) to respondent No.1.

2.8 Respondents issued order dated 11.07.2017 (Annexure A/9) transferring the applicant to Faridabad in public interest on the instructions of the Ministry received vide letter dated 05.07.2017.

2.9 The applicant submitted that her transfer order is against the provision of Para 9 and 14 of the Transfer policy

guidelines of the Organization issued on 21.03.2017 (Annexure A/10).

2.10 The applicant has submitted a representation against the transfer order to Respondent No.1 on 13.07.2017 (Annexure A/11).

3. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 To issue a Writ in the nature of certiorari order dated 11/07/2017 (A/9) may kindly be quashed.

8.2 To issue a writ in the nature of mandamus respondents kindly be directed to permit the applicant to work in the present place of posting i.e. DTNBWED Bhopal.

8.3 Any other writ or direction as the Hon'ble Court may deems fit in the circumstances of the case with awarding the cost the proceedings.”

4. The respondents in their reply have submitted that an enquiry was conducted by Shri R.J. Wankhede, Deputy Director (Education) I/C and Mrs. Jayshree T. Deputy Director (HQ) I/c of DTNBWED on 01.05.2017 (Annexure I) and they have recommended transfer of Smt. Renu Gulati and Shri M.N. Afaque Education Officer to different places to restore smooth functioning of the Zonal and Regional Officer at Bhopal. Based on this report the applicant has been transferred on administrative account.

5. Heard learned counsels for both the parties and perused the pleadings available on record.

6. Learned counsel for the applicant argued that this transfer is against natural justice. The transfer guideline of DTNBWED indicates the minimum and maximum tenure of Group 'C' employees to be 3 and 20 years respectively. The applicant is yet to complete 20 years stay at Bhopal. Also, Para 14 of the same guidelines states that widow, separated or divorced female employees may be considered for posting at the place of their choice, as far as possible, subject to administrative convenience.

7. Learned counsel for the applicant places reliance on the judgment passed by Hon'ble Supreme Court in the matters of ***Somesh Tiwari vs. Union of India and others*** (2009 AIR SCW 854), which held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

8. Learned counsel for the respondents submits that the transfer orders have been issued based on the enquiry carried out. Consequently, both Smt. Renu Gulati and Shri M.N. Afaque have been transferred to Faridabad and Dhanbad respectively.

9. Learned counsel for the respondents places reliance on the orders passed by this Tribunal in similar case of ***Shri Himanshu Shrivastava vs. Union of India*** (O.A. No.200/449/2016) and ***Smt. Kalyani Misra vs. Union of India*** (O.A. No.200/618/2016) wherein the decision of the respondents was not interfered by the

Tribunal. The same were upheld by Hon'ble High Court of Madhya Pradesh.

10. In the case of **Somesh Tiwari** (supra), the transfer order were issued based on an anonymous complaint, which were found to be untrue. Hence, the Court quashed the transfer orders. However, in the present case the transfer orders have been issued to restore the normal working environment of the office, which has been vitiated.

11. The issue of transfer and posting has been considered time and again by the Hon'ble Apex Court and entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place.

12. In **Gujarat Electricity Board v. Atmaram Sungomal Poshani**, (1989) 2 SCC 602, the Hon'ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is

necessary in public interest and efficiency in the public administration."

13. In ***Union of India & Ors. v. H.N. Kirtania***, 1989 (3) SCC 445, the Hon'ble Apex Court observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

14. In ***Shilpi Bose*** (supra), the Apex Court has held that order of transfer/posting *"issued by the competent authority did not violate any of her legal right."* The employee holding a transferable post cannot claim any vested right for his/her posting at a particular place.

15. In ***State of U.P. & Ors. v. Gobardhan Lal***, (2004) 11 SCC 402, the Hon'ble Supreme Court held as under:-

"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."

16. In view of the above, the legal position can be summarised that transfer is a condition of service. It does not adversely affect the status or emoluments or seniority of the employee. The employee has no vested right to get a posting at a particular place. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required. There is a very little scope of judicial review by the Court/Tribunal against the transfer order and only if it is found to be in contravention of the statutory Rules or for mala fide that the Court can interfere. This is for the reason that a transfer order does not violate any legal right of the employee. Transfer policy of the State does not have any statutory force. It merely provides for guidelines for the understanding of the Departmental personnel.

17. In the present case, the applicant has not been able to prove the malafide intentions of the respondents in ordering her transfer.

18. In the matters of *Himashu Shrivastava* (supra) and *Smt. Kalyani Misra* (supra), both the officials were transferred from Jabalpur to Katni and Itarsi respectively in public interest to ensure conducive work environment.

19. As per the judicial pronouncements in the matter as discussed above, and considering the facts of the present case, we do not find any reason to interfere.

20. Accordingly, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc