

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 180/2018

Dated:- 27.02.2018

Coram: Hon'ble Shri. Arvind J. Rohee, Member (J).
Hon'ble Shri. R. Vijaykumar, Member (A).

Shri Narendra Kumar s/o. Mahendra Prasad,
 Senior Auditor,
 O/at Senior Auditor, Working
 Address: Div. General (Audit)
 Bandra Kurla Complex,
 Mumbai 400 051.
 R/at B/403, Vinayak Shree
 Apartment, Nandivali Road Tekadi
 Dombivli (E) – 421 201.
(By Advocate Shri R.K. Singh)

... ***Applicant***

Versus

1. Union of India
 Through the Principal Accountant
 General (Audit) Ranchi, State of
 Jharkhand 834 002.

2. Local Audit Department
 Shyamalu Colony, Daronda,
 Ranchi, State of Jharkhand 834 002.

... ***Respondents***

ORDER (Oral)

Per : Shri A.J. Rohee, Member (J)

Today when the matter is called out
 for admission, heard Shri R.K. Singh,
 learned Advocate for the Applicant. We have
 carefully perused the case record.

2. The Applicant is presently working as
 Senior Auditor in the office of Principal

Director of Audit, Mumbai (who is not joined as party respondent). He seeks request transfer on spouse ground to the office of the Principal Accountant General (Audit) Ranchi in Jharkhand State (Respondent No.1), since his wife is a State Government employee serving there in a School run by the State Government. He, therefore, submitted a representation to his office for his transfer to Ranchi office on the said ground based on the policy of the Government to accommodate husband and wife at same Station. However, his request was rejected for non-availability of vacancy in the cadre of Senior Auditor at Jharkhand vide impugned order dated 04.07.2017. The same has been challenged in this OA.

3. During the course of arguments, learned Advocate for the applicant submitted that since it is the policy of the Government to accommodate husband and wife at one Station and DOPT has also issued the Office Memorandum in this behalf, he has a vested right to be transferred to Ranchi.

However, although it is the policy of the Government to post husband and wife working in Central Government/State Government at same Station, the employee who wants to seek benefit of the said policy has only a right to be considered. In other words, it is not a vested right and the DOPT's OM also states that as far as possible the request should be considered subject to administrative constraint. Since the respondents have considered the applicant's request there is substantial compliance and it cannot be said that the impugned order is in any manner illegal, improper or incorrect which is liable to be judicially reviewed.

4. Learned Advocate for the applicant tried to contend that there is vacancy in the post of Senior Auditor at Ranchi. However even if it is so, it is for the department to take a decision and if for administrative reason it is not possible to accommodate the applicant, no relief can be granted to him. In such circumstances of the case the applicant is not at all

justified in insisting that his request for transfer or deputation on spouse ground must be favourably considered.

5. So far as transfer of Government employee on spouse ground is concerned, we may refer to the landmark decision rendered by the Hon'ble Supreme Court in **Union of India Vs. S.L. Abbas, AIR 1993 SCC 2444**, in which the Hon'ble Supreme Court has considered the aspect of application of the guidelines framed by the Department for effecting transfer of employees. In that case, the issue regarding transfer on spouse ground is also considered and it has been held as under:-

"An order of transfer is an incidence of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer 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, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right. Executive instructions issued by the Government are in the nature of guidelines. They do not have statutory force."

6. From the above discussion it is obvious that neither guidelines nor the DOPT OM referred above conferred any legal enforceable right on applicant to insist for his transfer on spouse ground. It is needless to say that his request can be considered subject to administrative exigency. The respondents have considered it and did not concede, hence it cannot be said that O.A. is maintainable.

7. Considering the above factual position on record, we do not find any substance in the present OA. The OA, therefore, stands **dismissed in limine** at admission stage, without issuing notice to the respondents.

8. In spite of dismissal of O.A., the applicant will, however, be at liberty to

approach the respondents through his Head of Department for his transfer on spouse ground, subject to availability of post at Ranchi and administrative constraint and if such request is made, the same shall be considered by the respondents in accordance with law.

9. Registry is directed to forward certified copy of this order to both the parties, at the earliest.

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

dm/H.