

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**O.A. No.60/1522/2017
M.A. No.60/134/2019**

Date of decision: 19.02.2019

(Reserved on: 04.02.2019)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Bhupinder Singh Saini, S/o Sh. Manmohan Singh, age 52 years, R/o House No.25-C, CPWD Complex, Central Govt. Officers Residential Complex, Sector-38A, Chandigarh (Group A Employee).

... APPLICANT

VERSUS

1. Union of India through Secretary, Ministry of Electronics and Information Technology, Government of India, Electronics Niketan, Lodhi Road, New Delhi.
2. The Director General (DG-NIC), National Informatics Centre, A-Block, CGO Complex, Lodhi Road, New Delhi.
3. The State Informatics Officer, National Informatics Centre, Punjab State Unit, Room No.109, Ground Floor, Punjab Mini Secretariat, Sector-9, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Hitender Singh Lalli, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. is directed against order dated 14.12.2017 (Annexure A-7), whereby applicant has been transferred from NIC Punjab state centre to NIC J&K state centre Jammu.
2. Facts are broadly not in dispute.

3. When matter came up for preliminary hearing, learned counsel for the applicant took a ground that the impugned order of transfer is without jurisdiction and prayed that pending O.A. operation of the impugned order be stayed and finally set aside, though he had taken other grounds also. On the basis of his statement, this Court stayed the impugned transfer order and ultimately, after exchange of pleadings matter came up for hearing today. Respondents filed application for vacation of stay, which was ordered to be heard along with the main case today.
4. Applicant joined the respondent department as Scientist Officer/Engineer in 1988 and was posted at NIC Centre Sangrur. Thereafter, he was transferred to NIC Punjab State Centre Chandigarh and then again to Sangrur. In the year 2013 he was transferred from NIC Sangrur to Punjab State Centre where he joined on 03.6.2013. On 17.10.2017 an application was made by the applicant not to transfer him to a hard area of J&K State as his son was studying in 11th and it was mid session. It is the case of the applicant that local transfer committee when considered case for transfer recommended name of Sh. Jugal Kishore from Chandigarh to J&K in place of Sh. Rajesh Thapa on mutual basis. Applicant also made another representation dated 24.10.2017 reiterating his request to continue him at Chandigarh for study of his son. However, vide impugned order, applicant has been transferred to NIC State Centre, J&K, against which the applicant is before this Court.
5. Though the applicant has taken various grounds for invalidation of the impugned order but at the time of arguments he focused on two grounds firstly that the impugned order has been issued without

jurisdiction as it has been passed by an Authority who is not competent and secondly, that it is in violation of transfer policy.

6. Respondents have filed written statement by resisting the claim of the applicant. They have submitted that first ground taken by the applicant that transfer order is without jurisdiction and cannot be passed by Director is ill founded as this Court in the case of **Ramesh Kumar vs. UOI & Ors.** (O.A. No.60/166/2018) decided on 28.09.2018 has held that Director General NIC is competent to pass transfer order. With regard to violation of transfer policy it has been submitted that the wife of the applicant is working with State of Punjab and as far as possible they had been posted at particular station in terms of OM issued by Govt. of India but since applicant is having longer stay, therefore, this time, respondents have transferred him out of Punjab Region. It has also been submitted therein that recommendations by the State Committee, upon which the applicant is relying, is also not competent to make recommendations as to who should be transferred from a particular place but can only suggest, qua a person, who is longer stayee in the region. In the present case, applicant being a member of that Committee participated himself in the meetings of Local Transfer Committee held on 23.10.2017 and has cleverly not placed his case being a longer stayee in Punjab Region and recommended the name of Sh. Jugal Kishore. Therefore, it has been submitted that applicant cannot take advantage of tailor made recommendation in which he was a member. Respondents have also demolished plea of discrimination vis a vis another employee that a longer stayee has been allowed to continue and applicant who has less stay has been transferred out in para no.14 (running page 180 of the paper-book) where they have prepared a chart that shows that

applicant has longer stay than Sh. Sarabjit Singh Duggal, against whom he has alleged discrimination, which is reproduced as blow:

Details	Sh. Bhupinder Singh Saini, Scientist-F	Sh. Sarabjit Singh Duggal, Scientist-F
Date of Joining NIC	11/3/1988	11/04/1988
State & Place of joining	Punjab, Sangrur	Madhya Pradesh, Satna
Date of 1 st Transfer	31/12/1999	18/08/1989 (joined)
State and Place of 1 st Transfer	Punjab, Chandigarh	Haryana, Gurugram
Date of 2 nd Transfer	10/03/2000	31/12/1999 (Transferred) 01.01.2000 (joined)
State and Place of 2 nd Transfer	Punjab, Sangrur	Haryana, Chandigarh
Date of 3 rd Transfer	31/5/2013 (Relieved) 03/06/2013 (joined)	21/04/2017 (Relieved) 24.04.2017 (joined)
State & Place of 3 rd Transfer	Punjab, Chandigarh	Punjab, Chandigarh
Total Period of Stay in Punjab State including the stay in Chandigarh as per Hard Area Policy	29 years 6 months 16 days	17 years 8 months 24 days
Period considered	29 years 6 months 16 days	17 years 8 months 24 days

7. With regard to policy of posting of couple issued by Nodal Ministry DoPT, it has been submitted that as far as possible they can be posted at a particular station but in this case they have been adjusted for a considerable long period and applicant continued at Punjab Circle for more than 28 years, therefore, competent authority has decided to transfer him out of Punjab Circle and therefore, there is no violation of

policy also. Respondents have also placed reliance on judgment of the Principal Bench in the case of **Vijay Pratap Sharma vs. UOI etc.** decided on 05.03.2015 where similar issue of framing policy by NIC was under challenge and Court negated plea of the applicant.

8. We have heard learned counsel for the parties.
9. Learned counsel for the applicant vehemently argued that the impugned order deserves to be quashed first on the ground that it has been passed without jurisdiction and secondly it is in violation of respondents own policy.
10. Sh. Ram Lal Gupta, learned counsel for the respondents reiterated what has been stated in the written statement. Apart from that, he placed reliance on the order in the case of **Ramesh Kumar** (supra) **Vijay Pratap Sharma** (supra), **Balbir Singh vs. UOI & Ors.** (O.A. No.561/PB/2013) decided on 22.05.2013 where this Court while dealing with matter of transfer upheld the view taken by the respondents and observed that Court cannot ordinarily interfere in the matter of transfer unless it is out of sheer malice or order of transfer has been passed by an incompetent authority.
11. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
12. By now transfer and posting has been considered time and again by the Hon'ble Supreme Court and entire law has been settled by a 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. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency as has been held in the case of **Gujarat Electricity Board versus Atmaram Sungomal Poshani** (A.I.R. 1989 S.C. Page 1433). The same view was taken in the case of **Airport Authority of India Vs. Rajeev Ratan Pandey** (2009 (8) SCC 337) and then in case of **State of U.P. versus Gobardhan Lal** (A.I.R. 2004 S.C. Page 2165), wherein it has been held as follows:

"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."

In the case of **State of Haryana Vs. Kashmir Singh**, (2010) 13 SCC 306), the lordship of the Hon'ble Apex Court have held as under:-

"Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities."

13. In view of the above judicial pronouncements which are binding upon us, when we see facts of the present case, as narrate above, we are afraid that this petition can succeed on two indicated grounds firstly that minutes of meeting of local transfer committee held on 23.10.2017 (A-5) upon which the applicant has relied upon cannot be looked into because he himself being a party participated in the meeting and did not bother to consider his own case being a longer stayee and as per respondents that committee has been constituted only to forward their recommendations by informing as to who is the longer stayee at a particular station who can be transferred out. It is interesting to note that the applicant has acted as a judge of his own case. As per extracted para of the written statement, where respondents have given a chart showing period of stay of applicant in state of Punjab, which is more than 28 years. Applicant is either serving at Sangur or its head office at Chandigarh and in between two states only, he got transfers. As borne out from pleadings, it is first time, he has been transferred out of Punjab Circle. Applicant also failed to point out that his transfer is outcome of malice as no one by name has been impleaded as a party. Though he has pleaded that order is without jurisdiction as the authority who has passed this order is not competent but this plea has already been negated by this Court in the case of **Ramesh Kumar** (supra). With regard to other plea of the applicant for posting husband and wife at same station in terms of

policy issued by the DoPT is concerned, the facts of the present case suggest that under this policy, applicant has been allowed to continue in Punjab circle for the last more than 28 years and this policy does not talk that they cannot be posted to other stations, as it say that it can be done as far as possible. Moreover, policies are guidelines to executive for maintaining transfer but cannot take colour of rules or to say that it is mandatory in nature. Clause 4(vii) of the policy makes it clear that where one spouse is employee of Centre Govt. and other of the State Govt. then competent authority may post them at the same station but if there is no post then they can be posted at other station. Similar clause came for consideration before the Hon'ble Supreme Court in the case of **Bank of India vs. Jagjit Singh Mehta** (A.I.R. 1992 S.C. Page 519), where the Lordships have observed that the terms incorporated in the transfer policy for posting of both spouses, if in service, at the same place, required to be considered by the authorities "along with exigencies of administration" and "without any detriment to the administrative need and claim of other employees.

Para 5 of the said judgment reads as under:-

"5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple has to make their choice at the threshold between career prospects and family life. After giving preference to the career

prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officers' grade and thereafter he seeks to be relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

14. In view of the above, we find no illegality in the impugned transfer order. Accordingly, the O.A. is dismissed. No costs.
15. Though at the time of arguments during preliminary hearing, applicant had raised a plea that his son is studying in class 11th and transfer at that stage would hamper his studies but the fact that in the year 2017 he was in 11th class, he must be studying in 12th class now, therefore, let applicant be asked to furnish an affidavit that his son is studying in 12th and if he is studying then he may be allowed at the present place of posting for remaining current academic session.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date:

Place: Chandigarh.

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