

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00392/2017

Reserved on : 15.04.2019
Pronounced on : 26.04.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Pradeep Kumar Gupta s/o Shri Shyam Sundar Gupta aged about 31 years, R/o Vaikh Colony, Gangapurcity, District Sawaimadhopur (Raj.). Presently working as Senior Auditor in the office of A.O. G.E. (AF), Jodhpur.

...Applicant

(By Advocate: Shri Manoj Bhandari)

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. Controller General of Defence Account, Ulan Batore Road, Palam, Delhi Cantt., Delhi.
3. Principal Controller of Defence Accounts, South Command, No.1 Finance Road, Pune (Mah.)
4. A.O. (GE), (AF), Jodhpur (Raj.)

...Respondents

(By Advocate: Shri B.L.Tiwari)

ORDER

Per Mrs. Hina P.Shah

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays that the transfer order dated 7.11.2017 (Ann.A/1) may kindly be quashed and set aside

so far as it affects the applicant and that he may be allowed to continue at his present place of posting at Jodhpur as before.

2. Brief facts of the case, as stated by the applicant, are that he was initially appointed as Auditor on 25.12.2010 and was posted at Nasirabad. Subsequently, on 6.9.2013 he was transferred to AAO (BSO), Army, Jodhpur and on 1.6.2016 he was transferred to AO (GE), Air Force, Jodhpur. Thereafter vide impugned order dated 7.11.2017, he has been transferred to AO (GE) (NW), Karanja, Mumbai. The applicant avers that the respondents issued an alert notice for transferring the employees in which the applicant was also included. After knowing about the same, the applicant submitted representation dated 21.9.2017 (Ann.A/2) to the respondents stating that he has already applied for inter-command transfer, but if he is transferred to places mentioned in the letter dated 11.9.2017, it would deprive chance of present inter-command transfer and affect adversely minimum service eligibility criteria for inter-command transfer. The applicant further states that the said representation was not taken into consideration. After passing the transfer order dated 7.11.2017, the applicant further submitted representation dated 8.11.2017

(Ann.A/3) stating that his wife being State Government employee is posted in Gangapur City and as per policy of the DOPT dated 30.09.2009, his case may be considered for relaxation. The said representation was rejected vide letter dated 16.11.2017 (Ann.A/5).

The applicant further avers that his wife is posted in Education Department of Government of Rajasthan and he is posted in South Command of the PCDA. He applied for change of command from South to South West in the year 2017. As per the policy of transfer applicable, the transfer order can be passed after considering the station seniority of all the stations. In the present case, only posting at Jodhpur station has been taken into account and other offices of the South Command has been ignored. It is the claim of the applicant that number of employees are posted in different stations who have rendered more than five years of services, but they have not been disturbed. Only the employees of Jodhpur station have been transferred, violating their own policy of transfer. Therefore, aggrieved by the transfer order dated 7.11.2017, the applicant has filed the present OA.

3. The respondents have filed reply dated 11.6.2018. They have raised the preliminary objection to the effect that the matter pertaining to transfer is not contemplated under clause (q) of Sec. 3 of the Administrative Tribunal Act, 1985, therefore, the OA deserves to be dismissed.

The respondents have further stated that the applicant has been transferred to AO GE (NW), Karanja, Mumbai in administrative exigency. An alert notice was issued to intimate the person concerned for the advance preparation for movement to the new place of posting as and when actual transfer/posting is issued. The applicant's apprehension regarding his seniority position is unfounded in view of Para 12.2. of Department's Transfer Policy. The respondents have further stated that the applicant's representation was duly considered and thereafter he was transferred in administrative exigency. In his earlier application dated 21.9.2017, the applicant has not mentioned that his wife is serving as Senior Teacher (Science) in a Govt. School and this fact is not found declared in the service record of the applicant. Further, it was not possible to keep the applicant at present posting station and in administrative exigency, he was transferred. Even otherwise as per OM dated 30.9.2009, it does not

confer upon a Govt. employee any legally enforceable right not to be transferred at any place. The respondent organization is heading towards continuous decline on account of superannuation retirement and voluntary retirement. Field offices located in Gujarat and Mumbai are facing acute deficiency to the extent of more than 40% of the requirement, whereas the field offices in Rajasthan area have only 22% deficiency. Services of the applicant entail all India transfer liability and thus to minimize the shortage of manpower in Gujarat/Mumbai area and also repatriation of officials serving in hard/tenure stations like Bhuj, Jamnagar, the applicant was transferred to the station having shortage of manpower. The respondents have also referred some of the judgments of the Hon'ble Apex Court in support of their contentions. They have further stated that in the case of all India transferable service, the hardship resulting from the spouse being posted at different station may be unavoidable at times. While choosing the career and a particular service, the couple has to bear in mind this factor and be prepared to face such a hardship if administrative needs do not permit the posting of both husband and wife at one place or nearer without sacrifice of the requirement of the administration. Thus, the

respondents stated that the applicant is not entitled to any relief and that the OA deserves to be dismissed.

4. Heard Shri Manoj Bhandari, learned counsel for the applicant and Shri B.L.Tiwari, counsel for the respondents and perused the material available on record.

5. The applicant reiterated the submissions made earlier and in addition stated that the respondents have violated the transfer policy as number of employees who were posted from earlier dates have not been transferred and have been accommodated, therefore, the transfer order passed is in violation of their own policy. He further stated that since wife of the applicant is in State Government service, she cannot be transferred out of Rajasthan and, therefore, the respondents should keep in mind this fact while effecting transfer, which is the policy of the Government of India itself. Therefore, the action of the respondents is in violation of their own policy. The transfer is made from Jodhpur to Mumbai which is more than 1000 kms and, therefore, the said transfer is arbitrary, unjust and requires to be quashed and set aside. The action of the respondents in continuing the officers such as AAO for more than decade, but adopting pick and choose policy qua the

applicant is discriminatory and in violation of Articles 14 and 16 of the Constitution of India. The applicant also relied upon the judgment in Writ Petition (Civil) No.82 of 2011-

T.S.R.Subramanian and Ors. vs. Union of India and Ors., decided on 31st October, 2013, contending that the respondents should allow the officers to continue for 5 years at one place and it would have been justified if the applicant remained in Jodhpur for taking care of his wife and child. Therefore, the applicant prays that the transfer order dated 7.11.2017 qua the applicant be quashed and set-aside.

6. On the other hand, the respondents have stated that it is well settled law that no Government servant has a legal right to remain posted at one place since the services of a Government servant are transferable from one place to another, which is an incident of service. To run the administration efficiently, the transfers are made and the Court need not to interfere when the transfer is made on administrative grounds or in public interest as per the extant provisions.

The respondents have relied upon several judgments of the Hon'ble Apex Court. The sum and substance of these

is that 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 mala fides. The Courts or the Tribunals cannot interfere with the transfer matters, as they are not appellate authorities substituting their own decision on the orders passed in administrative exigencies of service.

The respondents have further pointed out that in cases of all India transferable services, hardship are bound to result but that cannot be a ground for the department to remain standstill. The public interest always prevails over the personal interest and inconvenience.

7. Considered the rival contentions of both the parties.
8. Admittedly, the applicant has challenged the transfer order dated 17.11.2017 whereby he has been transferred from AO GE (Air Force), Jodhpur to AO (GE) (NW), Karanja, Mumbai. This is a general transfer order of about 25 persons issued by the competent authority. The applicant stated that the said order is in violation of transfer policy. The alert notice of his transfer passed on the basis of

station seniority, but number of employees who were posted from earlier dates have not been transferred.

9. The respondents have stated that the Ann.A/1 transfer order is a general transfer order, which is made in administrative exigencies. The has failed to point out any violation of any statutory provisions or prove any malafides and, therefore, the transfer order cannot be interfered with merely on the basis of the submission that number of employees who were posted from earlier dates have not been transferred without giving details.

So far as the contention of the applicant that the respondents have accommodated persons of their choice and, therefore, the persons having more stay than the applicant have not been considered, which is violation of the transfer policy, the respondents have denied the contention and stated that the applicant has failed to show who are the persons accommodated. Merely making submissions without any proof cannot be a ground of discrimination. The transfer order is passed on administrative exigencies as the Department is facing acute deficiency to the extent of 40% of requirement in offices located in Gujarat and Mumbai area, whereas the offices in

Rajasthan area has 22% deficiency. So far as the plea of the applicant that his wife is posted in the State Government service and, therefore, she cannot be transferred outside State, the respondents have stated that the applicant has never mentioned about his wife being employed in State Government prior to the transfer order. As per the policy of Government of India, normally the husband and wife should be posted together as far as possible but in cases of administrative exigencies, the employee can be transferred to the place where his services are required. In all India transferable services, hardship remain when spouse is posted at a different station but while choosing career and particular service, the couple has to bear in mind and be prepared to face such hardship, if administrative need do not permit posting of husband and wife at one station. Further contention of the applicant that the respondents have failed to take into consideration the seniority position and therefore, it is violation of transfer policy, the respondents have stated that keeping in mind the deficiency in Gujarat and Mumbai area, the respondents have tried to post the officers keeping in mind the difficulties, but to minimise the shortage of manpower in these areas, in administrative exigencies the transfer has

been made. In support of their contention, the respondents have relied upon the judgment in the case of **State of U.P. & Ors. vs. Siya Ram and Ors.** (2004) 7 SCC 405 and stated that no Government servant has any right to be posted forever at any particular place since transfer of an employee appointed to a transferable post from one place to other is not only an incidence but a condition of service necessary too in public interest and proficiency in the public administration. Pertaining to the ground that the applicant is deprived from consideration of his case in South West Command and that he will not be considered for inter command transfer, the respondents have stated that such apprehension is unfounded in view of Para 12.2 of transfer policy.

10. The sum and substance of the grounds raised by the applicant is that the respondents have adopted pick and choose policy. The transfer is made more than 1000 Kms away as he has been transferred from Jodhpur to Mumbai and he cannot be transferred as his wife is working in State Government. But, the applicant failed to name the persons, who have been retained by the respondent department in violation of the transfer policy. Mere submission in this regard cannot be accepted. So far as the plea of husband

and wife should be posted at one place is concerned, the respondents should take care of this as far as possible, but in the administrative exigency, the employee can be transferred and the applicant has no legally enforceable right in this regard.

11. It is settled principle of law that transfer is an incidence of service and who should be posted where is in the domain of the administrative authorities. The Hon'ble Apex Court in the case of **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Ors.**, (2004) 12 SCC 299 held that transfer is in incidence of service. Who should be transferred and posted where, is a matter for administrative authority to decide. Unless the order or transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer, the courts should not ordinarily interfere with it.

In the case of **State of U.P. and Ors. vs. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Apex Court held that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when transfer order is shown to be vitiated by mala fides, or in violation of any statutory provisions or having been passed

by an authority not competent to pass such an order. It is further held that allegation of mala fides must be based on concrete material and must inspire confidence of the court.

In this regard, it would also be relevant to extract some of the observations of the Hon'ble Rajasthan High Court in the case of **Bhagwan Das Mittal vs State Of Rajasthan And Ors.** decided on 12 April, 2007 reported in RLW 2007 (3) Raj 1713, where in the Hon'ble Rajasthan High Court in para 28 and 29 observed as under:-

"28. So far as the plea of the learned Counsel for the petitioners that they have been put to great harassment by transferring them to far off places and that too in mid term session prematurely and within two years of superannuation though the posts were available at the places from where they have been transferred and the respondents could have accommodated the petitioners against vacant posts, is also not sustainable as the transfer is an exigency of service and the petitioners cannot dictate the employer for his posting at a particular place or at a nearer distance or the petitioners have difficulties because of their children are minor and school going. It is the prerogative of the employer to post his employees wherever their services are required in public interest In similar circumstances the Apex Court while discussing the plea of the [State of Panjab and Ors. v. Joginder Singh Dhatt](#) wherein the High Court allowed the writ petition on the ground that it was mid term transfer and within two years of the superannuation, was reversed by the Supreme Court allowing the Civil Appeal preferred by the State of Punjab, observing as under:

This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under [Article 226](#) of the

Constitution of India in a matter where, on the face of it, no injustice was caused

29. The malafide as pleaded by the petitioners also cannot be taken into consideration as the concerned Minister/Authority of the State/MLA has not been arrayed as party respondents. No observation and finding can be recorded in their absence. Allegations of malice has been leveled without supporting material and the court is unable to record any finding bereft of supporting evidence. Dealing with such situation, the Apex Court in case title [State of U.P. and Ors. v. Gobardhanlal & D.B. Singh](#) v. D.K. Shukla and Ors. , while maintaining the transfer order observed 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.

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 or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

12. In view of above observations, it is clear that the transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when transfer order is shown to be vitiated by mala fides, or in violation of any statutory provisions or having been passed by an authority not competent to pass such an order. Such is not the case in the present matter. The applicant is not able to establish any violation of statutory provisions or malafide or discrimination in this transfer matter. It is a general transfer order, which is passed to minimise the deficiency of the manpower in Gujarat and Mumbai area. The transfer is made in administrative exigency and, therefore, we do not find any reason to interfere in the matter.

13. Accordingly, the OA is dismissed with no order as to costs.

(ARCHANA NIGAM)
Administrative Member

(HINA P.SHAH)
Judicial Member

R/

