

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/00727/2019

This the 10th day of October, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Champa Matlani wife of Sri Anil Kumar Matlani r/o 3/21, Panchshila Colony, Behind CTO Compound, MG Marg, Civil Lines, Allahabad (U.P.) presently working on the post of Superintendent at the CGST Commissionerate, 38 M.G. Marg, Civil Lines, Allahabad, U.P.

Applicant

By Advocates: Sri Shyamal Narain

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Principal Chief Commissioner (Cadre Controlling Authority), Central Goods and Services Tax and Central Excise, Lucknow Zone, 7 A, Ashok Marg, Lucknow-U.P.
3. The Commissioner, CGST & Central Excise, 38 M.G. Marg, Civil Lines, Allahabad, U.P.
4. The Commissioner, Customs (Prev.), Lucknow-U.P.

Respondents

By Advocate: Sri L.P.Tiwari

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

The present Original Application (O.A.) No. 727/2019, (Champa Matlani Vs. Union of India and others) was placed before the Division Bench comprising of Hon'ble Ms. Ajanta Dayalan, Member (A) and Hon'ble Mr. Rakesh Sagar Jain Member, (J) for consideration on interim relief on 15.7.2019. Both the Hon'ble members have passed separate orders in conflict with each other.

2. Hon'ble Ms. Ajanta Dayalan, Member (A) declined to grant interim relief while Hon'ble Mr. Rakesh Sagar Jain, Member (J) granted interim relief against the impugned transfer order dated 4.6.2019 (Annexure A-1).

3. In view of conflicting orders, the matter was placed before Hon'ble Chairman of Central Administrative Tribunal who has nominated undersigned to resolve the difference of opinion.

4. Heard Sri Shayamal Narain, Advocate for applicant and Sri L.P. Tiwari, advocate for respondents.

5. It appears that applicant Champa Matlani has filed the present O.A. challenging the impugned letter/order (C.No. II(3)41-CCSC/LKO/2019/557 (S/L) dated 4.6.2019, issued under the signature of Sri B.K. Singh, Deputy Commissioner (CCO), CGST & Central Excise, Lucknow, whereby the applicant has been transferred from Central Goods and Services Tax (CGST), Allahabad to Customs(Prev.), Lucknow.

6. Learned counsel for applicant has submitted that this transfer order is in violation of Zonal Transfer Policy issued for the year 2017-18 which was retained for the year 2018-19 with only minor modifications. He has argued that the new Zonal Transfer Policy 2019 itself is not a transparent policy in which some subjectivity has crept in. He has further submitted that even in this new Zonal Transfer Policy-2019, in sub clause (vi), (vii) and (viii) of same clause categorically lays down that in CGST and Central Excise Commissionerate, the minimum tenure will be two years.

7. Learned counsel for applicant has also argued that despite the representations of the applicant. an all encompassing and general order has been passed that all representations received regarding transfer and posting in the Grade of Superintendent had been disposed off.

8. Counsel for applicant has given some examples indicating that other persons have been accommodated while the applicant has been denied the same treatment.

9. Per contra, Sri L.P. Tiwari, learned counsel for respondents has argued that transfer is an incidence of service and transfer policy is not under challenge. He further argued that transfer policy is merely a guideline which is not justiciable by any adjudicatory authority. He has also argued that applicant Champa Matlani has worked for almost 17 years at Allahabad in last 18 years of her service. Even her present tenure at Allahabad will complete two years on 17.10.2019.

10. This transfer order was passed on 4.6.2019 but perhaps on account of this litigation, it could not be given effect to and on 17th October, 2019 i.e. within a week, applicant Champa Matlani would be completing two years of her tenure at Allahabad.

11. It is pertinent to point out that applicant Champa Matlani has worked 17 years at Allahabad out of 18 years of her service in the Department. The applicant herself has filed the history of her postings on record as Annexure A-6. Her reliance of Zonal Transfer Policy 2019 (Annexure A-5) is misconceived as para No. 13 of this policy lays down that the Principal Chief Commissioner has discretion to deviate from the policy as per DGHRD (HRM) F.No. 08/B/42/HRD (HRM) 2011 dated 7.7.2011.

12. In any case, the Hon'ble Apex Court in the case of **Union of India Vs. S. L. Abbas reported in AIR 1993 SC 2444**, has held that **“such guidelines do not confer upon the Government employee a legally enforceable right.”**

13. Transfer of an employee is part and parcel of his employment and ordinarily, Courts or Tribunals do not interfere in transfer unless vitiated by malafides or issued in violation of statutory provisions or issued by some incompetent person.

14. The Hon'ble Apex Court in the case of **State of U.P vs. Gobardhan Lal, reported in 2004 11 SCC 402**, has held that

the transfer is prerogative of the authorities concerned and court should not normally interfere therewith except :-

- (i) Transfer order is shown to be vitiated with malafide
- (ii) Issued in violation of any statutory provision or
- (iii) Having been passed by an authority not competent to pass such order.

15. Admittedly, the impugned transfer order is not vitiated with any malafides . No such claim has been made in the pleadings by the applicant. There is no evidence to demonstrate that any statutory provisions have been violated. In addition to that, no claim has been made that person who has issued this transfer order was not competent to pass such transfer order. Therefore, after spending 17 years at Allahabad out of 18 years of her service, the claim of applicant is obviously not sustainable.

16. The Hon'ble Apex Court in the case of **S.C. Saxena Vs. Union of India and others reported in (2006) 9 Supreme Court Cases 583** has held that tendency of not reporting at the new place and instead indulging in litigation to ventilate grievances needs to be curbed. The Hon'ble Apex Court has further held that it is the duty of the Government servant to first report for work where he is transferred and thereafter, make a representation as to what may be his personal problems." The relevant portion of this judgment is reproduced as below:-

"In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problem. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

17. In another matter of transfer which came up before the Hon'ble Apex Court i.e. the case of **Rajendra Singh & Others v. State of U.P & Others** reported in (2009)15 SCC-178, it has

been observed that the scope of judicial review in transfer matters is very limited and the courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide.

The Hon'ble Apex Court further observed as under:-

"9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held:

"4. In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. 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 overlooked these aspects in interfering with the transfer orders.

10. In *N.K. Singh v. Union of India* this Court reiterated that:

"6.....the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....."

18. Considering all facts and circumstances, I am inclined to support the views taken by the Hon'ble Ms. Ajanta Dayalan, Member (A) as far as prayer for interim relief is concerned. The request for interim relief, therefore, stands rejected in view of majority of opinion.

19. The matter be placed before the Division Bench for further proceedings , if any, on 4.11.2019.

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-

