

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No. 330/00731/2019

This the 25th day of July, 2019

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

Yogendra Kumar son of Ram Lal, aged about 49 years, posted as Joint General Manager, Ordnance Equipment Factory, Kanpur.

Applicant

By Advocates: Sri Shyamal Narain
Ms. Akansha Gaur

Versus

1. Union of India through Secretary, Government of India, Ministry of Defence, Department of Defence Production, New Delhi-110011.
2. Director General Ordnance Factories (DGOF) & Chairman, Ordnance Factory Board, 10-A, S.K. Bose Road, Kolkatta-700001.
3. General Manager, Ordnance Equipment Factory, Phoolbag, Kanpur.

Respondents

By Advocate: Vidit Khanna

ORDER

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

Applicant, Yogendra Kumar posted as Joint General Manager, Ordnance Equipment Factory, Kanpur has been transferred by the competent authority to Ordnance Clothing Factory, Shahjahanpur vide order dated 3.5.2019.

2. The applicant is said to be working in the Ordnance Equipment Factory since 2014 as conceded by learned counsel for the applicant. The impugned order available on record as Annexure-1A indicates that this transfer/posting order was passed in relation of 60 persons. The name of applicant, Yogendra Kumar, finds place at serial No. 17.

3. Learned counsel for the applicant Sri Shyamal Narain has submitted that wife of the applicant is suffering from Schizophrenia and is going through counseling and Pshycho Education at Kanpur.

4. Incidentally, the wife of the applicant is also working in the Central Leather Research Institute (C.L.R.I), Branch at Kanpur. The submission of the applicant is that this transfer order will force spouse to live separately.

5. Learned counsel for the applicant has also submitted that applicant has two children studying in class XII and X and mid session transfer would break their academic year.

6. Counsel for respondents Sri Vidit Khanna has filed short counter affidavit, stating that Shahjahanpur is located less than 200 kms. from the present place of posting i.e. Kanpur. Subsequent to impugned transfer order, applicant, Yogendra Kumar has made a representation which has been dismissed by the authorities concerned. He has also submitted that applicant has already been relieved w.e.f. 20.7.2019 as is visible from the notification dated (Annexure- 1B).

7. Para 7 of short Counter Affidavit further indicates that travelling allowance claim order as well as certificate of provisional leave details on transfer have already been issued in respect of applicant, copy of which is annexed as SCA-6.

8. The claim of the respondents is that the applicant has been transferred in public interest and in the functional requirement of the unit and if the officer is not released, it will adversely impact the functioning of other defence production units.

9. Learned counsel for applicant Sri Shyamal Narain has drawn the attention of this Tribunal towards the **Office Memorandum No.F.No. 28023/9/2009-Estt.(A) dated 30th**

September, 2009 issued by the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training), New Delhi, whereby stated mandatory directions have been issued for posting of husband and wife at the same station. He has also drawn the attention of this Tribunal towards the judgment of Hon'ble Apex Court in the case of **Director of School Education Vs. O. Karuppa Thevan** reported in 1994 SCC, **Supple (2) 666**, whereby it was hoped that when the children of the employee are studying, that should ordinarily be given due weightage.

10. This Tribunal has considered arguments of both parties. It is apparent that applicant has been posted at present place of posting i.e. at Kanpur for about last five years. His wife is also working at Kanpur. She is said to be suffering from Schizophrenia but nothing is available on record to demonstrate that said illness has stopped her from working at C.L.R.I, Branch Kanpur. Evidently, there is no lab of C.L.R.I, at Shahjahanpur but admittedly, Shahjahanpur is not at great distance from Kanpur. Impugned transfer order was passed on 3.5.2019 which can hardly be mentioned as mid session transfer. In fact, the representation made by the applicant as well as litigation appears to have delayed his departure from Kanpur to Shahjahanpur.

11. The judgment of Hon'ble Apex Court relied upon by the applicant in the case of **Director of School Education Vs. O. Karuppa Thevan (supra)**, merely indicates that fact of education of children should be taken into consideration but it has not issued any direction that the said employee cannot be transferred even in defence production unit merely because their children are studying.

12. Transfer is an incidence of service and ordinarily Courts or Tribunals do not interfere in the transfer unless vitiated by malafides or issued in violation of statutory provisions. There is no allegation of malafides in this case.

13. O.M. dated 30th September, 2009 relied upon by the applicant itself indicates that department has to make an effort to keep the husband and wife at the same station. If it is not possible, then an effort should be made to keep them in the same state or a nearby place. As stated earlier, Shahjahanpur is less than 200 kms. from Kanpur. Wife of the applicant is a working women, therefore, it cannot be said that impugned order would create a great problem for applicant or his wife. Of course transfer from a bigger place to small place entails some difficulties but that is part and parcel of transferable job.

14. In the case of **Union of India Vs. S. L. Abbas reported in AIR 1993 SC 2444**, the Hon'ble Apex Court has been pleased to observe as under:-

"The said guideline, however, does not confer upon the Government employee a legally enforceable right."

15. 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....."

16. 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.

17. 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.”

18. Learned counsel for applicant has made another request saying that he should be allowed to make another representation to the department for consideration, incorporating his difficulties and till the disposal of the said representation, his transfer should be stayed. I am afraid that this request is misconceived. Record itself discloses that applicant had already made a representation to the authorities concerned for cancellation of his transfer order. Competent authority did not agree with the request of the applicant.

19. Learned counsel for applicant has submitted that earlier representation did not incorporate the fact of sickness of his wife as well as existence of O.M. No. F.No. 28023/9/2009-Estt.(A) dated 30th September, 2009. I am afraid that this is no ground of giving another opportunity to the applicant for submitting another representation. The applicant has had an opportunity to ventilate all his grievances in the earlier representation made by him and now merely because he did not discuss his other problems, his transfer order cannot be stayed even for the short period. Applicant is not an ordinary person. He is an educated and highly ranked officer in his department. It was incumbent upon him to ventilate all his grievances in his earlier representation.

20. In view of the aforesaid discussion, this Tribunal believe that no interference is warranted in the impugned transfer order.

21. List this case before Division for further proceedings on 28.8.2019.

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-