

Reserved

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

Pronounced on 6th August, 2019

Original Application No.330/00756/2019
(U/S 19, Administrative Tribunal Act, 1985)

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

Smt. Gayatri wife of Manoj Regar, resident of Flat No. 12, Block No. 2, Panchshela Colony, Civil Lines, Near Bishop Johanson School and College, Allahabad-211001.

Applicant

By Advocate: Sri Bhupendra Nath Singh

Versus

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
2. Director General Directorate General, NCC Headquarter office (Pers branch) Block -I, R.K. Puram, New Delhi.
3. Additional Director General, NCC, Directorate (Uttar Pradesh) (Pers Branch) Ashok Marg, Lucknow.
4. Group Commander, National Cadet Cops, Group Headquarter, Chaitham Line, Old Cantt, Prayagraj.

Respondents

By Advocate: Sri L.P. Tiwari

ORDER ON INTERIM RELIEF

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

The applicant, Smt. Gayatri was selected on the post of Girls Cadet Instructors-III (in short GCI) in National Cadet Corps (NCC) after passing written test, physical test, medical examination and interview and was issued appointment letter vide memorandum dated 30.12.2010.

2. The applicant has been working as such at District Prayagraj (Allahabad).

3. Now, vide impugned transfer order dated 15.4.2019, she has been transferred to District- Faizabad. This transfer order is under challenge before this Tribunal.

4. The applicant has also sought interim order to stay the impugned transfer order dated 15.4.2019.

5. The respondents have filed short counter affidavit on 29.7.2019, disputing the claims of applicant. They have also informed that transfer order dated 15.4.2019 has already been executed/implemented vide movement order dated 19.7.2019, copy of which is annexed at SCA-1.

6. Applicant has filed short Rejoinder Affidavit on 30.7.2019, reiterating their claims and annexing Standard Operating Procedure (S.O.P.) on posting, transfer and promotion of GCI.

7. Heard Sri Bhupendra Nath Singh, advocate for applicant and Sri L.P. Tiwari, advocate for respondents.

8. Learned counsel for applicant has stated that there is no policy of routine transfer of GCI since inception of Girls Battalion except on agreed transfer between two girl instructors or on the request of GCI for compassionate ground. They have given instances where GCIs have been transferred on their own request.

9. Submission is that applicant was married on 17.11.2018 with one Manoj Regar, resident of Ghandhi Dham, District- Kutch, Gujarat and applicant herself is resident of Delhi. Before marriage, she has moved an application dated 23.2.2016 for her transfer to New Delhi but the same was turned down by the

respondents. After marriage, she has again requested for her transfer to Bn-A6, Gujarat , Naval Unit, NCC Ghandhi Dham, Gujarat where vacancy on the post of GCI existed but her request was not considered. Submission is that vide impugned transfer order dated 15.4.2019, she has been transferred to District- Faizabad instead of transferring her at their choice places. In para 15 of the O.A. , it is stated that Deputy Director Coordination has informed the applicant that her request shall be considered on the availability of reliever as such there is no change of applicant's transfer to Gujarat as requested by her.

10. It is further stated that the impugned transfer order has been passed on the ground of alleged rationalization and this alleged rationalization of cadre has been done without disclosing any reason and object. The impugned order is said to be vague and amounts to suo-moto change in condition of service of GCI.

11. Counsel for respondents Sri L.P. Tiwari has denied the claims of applicant. He has drawn the attention of this Tribunal towards the document filed by the applicant herself wherein it has been made clear that position of GCI is a transferable one.

12. Without going into the details of dispute at this stage, we believe that memorandum regarding recruitment of Girls Cadet Instructors-III in NCC dated 30.12.2010 should be referred. This memorandum (Annexure No.2) has been filed by the applicant herself. Para No. 2(iv) is reproduced as below:-

- (iv) **The appointment carries with it the liability to serve anywhere in India as may be required by the exigencies of service.**

13. The aforesaid provision stipulates that successful candidate carries with it the liability to serve anywhere in India as may be required by the exigencies of service. The fact is that position of GCI is transferable one. Whether girls are regularly transferred or not is altogether a different matter but there is no doubt that cadre of GCI is a transferable cadre.

14. In any case, the applicant has already been relieved of her duties. Para No. 4 of short counter affidavit indicates it. The said paragraph is reproduced as below:-

"4. That in connection to aforesaid manner, it is most humbly submitted that in pursuance to transfer order dated 15.4.2019, the posting order in respect of applicant has been executed/implemented vide movement order dated 19.7.2019. Copy of movement order dated 19.7.2019 along with other documents are enclosed herewith and marked as Annexure SCA-1."

15. The respondents have filed Annexure SCA-1 which further indicates that stated transfer order has been executed. Copy of this document dated 20.7.2019 is reproduced as below:-

**"RATIONALISATION AGAINST REVISED
AUTHORISATION OF GCIs**

1. Pl. refer the fwg:-

(a)DG NCC letter No. 12210/HQNCC/Pers (c) dated
15 Apr 2019

(b)NCC Dte (UP) Lucknow letter No. 564/PF/Appt-
Posting/Pers (B) 20 Apr 2019

(c)NCC Dte (UP) Lucknow letter No. 564/PF/App-
Posting/Pers (B) 08 Jul 2019

2. It is confirmed that the said posting order has been
executed. Copy of movement order is enclosed.

3. This is for information please."

16. Once the transfer order has already been implemented, it
would not be proper for us to interfere with the stated transfer.

17. We have carefully perused the SOP (Annexure No. 2) of
short Rejoinder Affidavit. We believe that this SOP is merely
directory in nature. This SOP does not provide any legal
enforceable right to the applicant.

18. 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."**

19. Learned counsel for applicant has relied upon the
judgment of Hon'ble High Court in the case of **S.C. Duggal Vs.
Department of Personnel, Personnel Policy Section and
others reported in 1996(4) UPLBEC 2614** and **Akash Sharma
Vs. State of U.P. and others reported in 2007(5) ADJ 354**,

which were delivered on particular set of facts. The facts of those cases are different from the present case.

20. In the case of **S.C. Duggal (supra)**, the question of children was taken into consideration and it was expected that midsession transfer should be avoided in cases of involvement of children. In the instant case, there is no difficulty on account of mid-session transfer. The impugned transfer order was passed on 15.4.2019. This transfer order cannot be treated as midsession transfer. In para 8 of O.A. , applicant has stated that she got married on 17.11.2018. Meaning thereby, the chances of having any school going children is remote. In fact, the involvement of children has not been even mentioned in the O.A.

21. Similarly, the facts in the case of **Akash Sharma (supra)** are also not helpful to the applicant in the present case.

22. 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....."

23. 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.

24. 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."

25. There is nothing on record to demonstrate that impugned transfer order is malafide or it has violated any statutory provision. Considering all the facts and circumstances, we believe that no interference is warranted in the impugned transfer order. Needless to say that impugned order shall be subject to final outcome of this O.A.

26. List this case before Division Bench for further proceedings on.....

(Mohd. Jamshed)
Member (A)

(Justice Bharat Bhushan)
Member (J)

HLS/-

