

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00463/2019

Jabalpur, this Friday, the 13th day of September, 2019

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Lakhan Singh Meena, S/o Late Shri Narayan Singh Meena, Age – 05/08/1962, Occupation : Assistant Director (H), Office of Development Commissioner (Handicraft), Handicraft Service Centre, (HSC), CGO Complex, A Wing, Ground Floor, A.B. Road, Opposite White Church, Shivaji Vatika, Indore 452001 (M.P), Mob : 8368304048/9462691962 **-Applicant**

(By Advocate – Shri S.K. Nandy)

V e r s u s

1. Union of India through its Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi 110011.
2. Development Commissioner (Handicrafts), Ministry of Textiles, Govt. of India, Office of Development Commissioner (Handicrafts), West Block No.7, R.K. Puram, New Delhi 110066.
3. Office of Development Commissioner (Handicrafts), Ministry of Textiles, Govt. of India Handicraft Service Centre, (HSC) CGO Complex, A Wing, Ground Floor, A.B. Road, Opposite White Church, Shivaji Vatika, Indore 452001 (M.P.).
4. Shri K.C. Sahu, Presently posted as HSC, Aurangabad, O/o Development Commissioner (Handicrafts), Handicraft Service Centre, Bhagya Nagar Vikash Bhavan, Dr. Rajendra Prasad Road, Aurangabad (Maharashtra)

(By Advocate – Shri Surendra Pratap Singh for respondents Nos.1 to 3 and Shri D.S. Baghel for respondent No.4)

(Date of reserving order : 09.09.2019)

O R D E R**By Navin Tandon, AM.**

The applicant is aggrieved by his transfer from Indore to Jagdalpur.

2. The applicant has made following submissions:-

2.1 He was initially appointed as Handicraft Promotion Officer in the year 1998 and posted at Gangtok (Sikkim).

2.2 Thereafter, he has been transferred to Jodhpur (Rajasthan) in 2000, to Rewari (Haryana) in 2002, Jaipur (Rajasthan) in 2006, Delhi in 2008. He got promoted as Assistant Director (Handicraft) in April 2012 and was posted at Jaipur. He was transferred to Indore (M.P), where he joined on 01.05.2017 (Annexure A-2) and was continuing so far.

2.3 His wife is serving in Delhi under the Education Department. She cannot be transferred out of Delhi. His both daughters and son are pursuing their education at New Delhi. He is going to superannuate in August 2022.

2.4 The respondents have issued orders dated 14.05.2019 (Annexure A-1), wherein three Handicrafts Promotion Officers have been promoted as Assistant Director (Handicrafts) and

posted at different places. Also, three Assistant Directors (Handicrafts) have been transferred in the same order. Respondent No.4 has been promoted from HSC, Aurangabad and posted at HSC Indore as Assistant Director (Handicraft) at Indore and the applicant has been transferred from Indore to Jagdalpur.

2.5 He has submitted his representation dated 14.05.2019 (Annexure A-3).

2.6 Model Code of Conduct (for brevity 'MCC') has been implemented w.e.f. 10.03.2019 throughout India due to Lok Sabha Elections, 2019. He has been assigned duty of Presiding Officer (Annexure A-4).

3. The applicant has prayed for following reliefs:

“8. RELIEF SOUGHT:

It is, therefore, prayed that this Hon'ble Court may kindly be pleased to:-

- (i) Summon the entire relevant record by which the entire change process was conducted from the possession of the respondents for its kind perusal;
- (ii) Quash and set aside the order dated 14.05.2019 (Annexure-A/1) so far it relates to the applicant;
- (iii) Command and direct the respondent authorities to permit the applicant to work on the post of Assistant

Director (H) at Indore or in alternatively transfer the applicant to HQ Delhi or at nearby places like Jaipur (Rajasthan) or Rewari (Haryana) along with all consequential benefits like pay, perks and status;

(iv) Any other order/orders, which this Hon'ble Court deems, fit proper.

(v) Cost of the petition may also kindly be awarded."

4. The official respondents have filed their reply and have submitted as under:-

4.1 The election duty of the applicant was on 19.05.2019.

Even through the transfer orders were issued on 14.05.2019, the applicant was not relieved till the elections at his place got over.

Hence, there is no violation of MCC.

4.2 Respondent No.4, who has been posted at the place of applicant, has already joined at Indore on promotion on 21.05.2019 (Annexure R-1). The applicant could not be relieved due to stay order dated 22.05.2019 of this Tribunal. Now, two officers are working against one post, which is creating administrative difficulty.

4.3 So far, the applicant was being adjusted in the state of Rajasthan and Haryana, which are near Delhi, where his wife is posted. Presently, there is no vacant post of Assistant Director

(Handicraft) at Delhi, Rewari and Jaipur, where the applicant can be transferred.

4.4 The applicant has been transferred to Jagdalpur on administrative exigency.

4.5 Office Memorandum dated 30.09.2009 (Annexure A-3) of DoPT regarding posting of husband and wife at same station is not having statutory force. However, keeping in view the welfare of his family, the respondent department shall explore all possibilities to address his problem sympathetically within the ambit of rules and subject to arising of vacancies at Delhi, Rewari and Jaipur.

4.6 Regarding the claim of the applicant that he has not completed 3 years of tenure in one station, there are no such prescribed norms in the office of respondents. The transfer is in public interest and Administrative compulsion.

5. Respondent No.4 has also filed his counter reply wherein he has submitted that he has already joined at Indore on promotion on 21.05.2019 as per office order dated 14.05.2019 (Annexure A/1). He has also reiterated the averments of official respondents.

6. The applicant has filed rejoinder wherein he has averred that he has been subjected to frequent transfers. He has joined at Indore on 01.05.2017, and has served for only two years at this station. Further, the post at Jagdalpur is vacant. Respondent No.4 on promotion could have been posted at Jagdalpur resulting in saving of public expenditure as well as harassment to the applicant. Further, two transfers in the same impugned order dated 14.05.2019 (Annexure A-1), one each of promotion/transfer and transfer in same grade, have been cancelled on 07.06.2019 (Annexure RJ-1) and retained at same place. Also, respondent department has issued circular dated 31.03.1995 (Annexure RJ-5) regarding transfer of public dealing posts, wherein it is stated that incumbents of public dealing posts should be transferred in public interest every three years.

6.1 Applicant has also highlighted the fact that the respondent department has allowed respondent No.4 to engage a Government counsel to file his reply and payment towards fee of the said Government counsel shall be paid according to the rate fixed by Ministry of Law & Justice. Letter dated

02.07.2019 to the effect is placed at Annexure RJ-4/1. This shows the bias of the respondents in favour of respondent No.4.

6.2 While issuing promotion orders on 17.10.2017 (Annexure RJ-2), as many as seven Assistant Directors (Handicraft) were transferred to their choice place of posting.

6.3 Applicant and Shri S.K. Kendre, Assistant Director (Handicraft) Jaipur have submitted their application dated 17.03.2018 (Annexure RJ-3) for mutual transfer, but the same has not been considered.

7. Heard the arguments of learned counsels of all the parties and perused the pleadings available on record.

8. Learned counsel for the applicant brought our attention to the provisions of posting of husband and wife at the same station, which are as below:-

8.1 Para 4 (vii) of DoPT's OM dated 30.09.2009 (Annexure A-3) reads as under:-

“4 (vii) The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.”

8.2 Para 5 (c) of respondent department's circular dated 31.03.1995 (Annexure RJ-5):

“5.(c) Government of India's instructions and guidelines in the matter of (i) posting of spouses (wife and husband) at the same station, (ii) placement of personnel at a place of their choice after serving at hard stations for a fixed tenure, (iii) posting of persons, to superannuate within two years, near their place of settlement as far as possible, and (iv) giving fair treatment to officers belonging to SC and ST categories in the matter of posting & transfer, are to be duly taken care of while deciding transfers and postings of personnel.”

9. Learned counsel for applicant averred that the applicant could have been given relief in terms of guidelines stated above. Even, his request for mutual transfer with Shri S.K. Kendre has not been considered.

10. Learned counsel for official respondents submitted that Hon'ble Supreme Court in several judgments has stated that transfer is an incident of government service. Transfer order can be challenged only on ground of violation of statutory rules or malafide. In the instant case, the applicant has not assailed the transfer order on any of these counts.

10.1 He places reliance on judgment dated 11.12.1997 of Hon'ble Rajasthan High Court in the matters of **Dr. Archna Patni vs. The State of Rajasthan and another** (1998(2) WLC

1) and judgment dated 13.08.2015 of Hon'ble Allahabad High Court in **Sandeep Yadav vs. State of U.P and others** in Writ A No.45473 of 2015 regarding posting of husband and wife at the same station.

FINDINGS

11. The case of the applicant is that he has been transferred even before completing his tenure of 3 years at Indore. Also, as per DoPT's guidelines, he should be posted at the same station where his wife is posted or nearby.

12. As far as transfer during the Model Code of Conduct of General Elections – 2019 is concerned, the respondents have clearly stated that the applicant has not been relieved till his election duties were not completed on 19.05.2019. In any case, that is the issue between Election Commission and the respondent Department.

13. Hon'ble Supreme Court has held in **Union of India and others vs. S.L. Abbas** 1993 (4) SCC 357 that:-

“6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that “the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority”. Fundamental Rule 15 says that “the President may transfer a Government servant from one post to another”. That the respondent is liable to transfer

anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, — though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed “mischief” to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

14. In the matters of State of U.P and others vs. Gobardhan Lal, 2004 (11) SCC 402, Hon'ble Apex Court has held that:-

“7. 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.

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

15. Hon'ble Supreme Court has held in the matters of **Shilpi**

Bose (Mrs.) and others vs. State of Bihar and others, 1991

Supp (2) SCC 659 that:

“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.

16. Perusal of the above cited judicial pronouncements clearly indicate that transfer is an incident of government service and it is the prerogative of the Appropriate Authority/Department to decide as to who should be posted where. Courts/Tribunals should not interfere in such cases unless there is malafide or violation of statutory rules. **S.L. Abbas** (supra) also makes it clear that posting of husband and wife at the same place do not have statutory force.

17. Cases cited by learned counsel for respondents in **Dr. Archna Patni** (supra) and **Sandeep Yadav** (supra) have also drawn upon the wisdom of several judgment of Hon'ble Supreme Court to hold that posting of husband and wife at the same place does not have statutory force.

18. In the instant case, we find that circular dated 31.03.1995 (Annexure RJ-5) states ‘Incumbents to posts as at (i) to (iii) above should be transferred in public interest every three years’. This gives an upper limit of 3 years for posting at a public dealing posts. This cannot be interpreted to mean that no transfer can take place before 3 years.

19. From the above, we are not able to find any illegality in the impugned order of transfer issued by the respondents. Hence, the O.A is liable to be dismissed.

20. However, we notice that the respondents have submitted that they will explore all possibilities to address the problems of the applicant sympathetically. We do hope the assurance will be honoured in true spirit.

21. Accordingly, O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member