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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

- 1) O.A. NO.2356/2003
M.A. NO.1548/2003
with
2) O.A. NO.2357/2003
M.A. NO.2024/2003
3) O.A. NO.2392/2003

This the 17th day of October, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

- 1) O.A. NO.2356/2003
M.A. NO.1548/2003

1. Smt. Alka Kapoor W/O R.K.Kapoor.,
R/O A-37 Moon Light Appdt.,
Plot No.70, Patparganj,
Delhi-110092.
2. Smt. Archana Kapoor W/O Ramesh Kapoor.,
T-34, Rajouri Garden,
New Delhi. ... Applicants

(By Shri C.Hari Shankar, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Home Affairs.
2. Directorate General SSB,
Block-V (EAST) R.K.Puram,
New Delhi-110066. ... Respondents

(By Shri B.S.Jain, Advocate)

- 2) O.A. NO.2357/2003
M.A. NO.2024/2003

1. Smt. Rekha Saxena W/O Sudhir Saxena.,
R/O Qtr. No.247, Sector 5,
R.K.Puram, New Delhi.
2. Smt. Rekha Verma W/O Dinesh Verma.,
C-3, Hari Nagar, Clock Tower,
New Delhi.
3. Smt. Sreela Suresh W/O T.Suresh.,
Sector 7, 522, R.K.Puram,
New Delhi. ... Applicants

(By Shri C. Hari Shankar, Advocate)

-versus-

- L 1. Union of India through
Secretary, Ministry of
Home Affairs.

2. Directorate General SSB,
Block-V (EAST) R.K.Puram,
New Delhi-110066.

... Respondents

(By Shri B.S.Jain, Advocate)

3) O.A. NO.2392/2003

Meena Naidu, UDC,
Accounts Branch, FHQ Delhi,
R/O Qr. No.123, Sector IV,
R.K.Puram, New Delhi.

... Applicant

(By Shri V. Sreedhar Reddy, Advocate)

-versus-

1. Union of India through
Director General SSB,
Ministry of Home Affairs,
East Block-V, R.K.Puram,
New Delhi.

2. Assistant Director (EA),
Office of the Director General SSB,
Ministry of Home Affairs,
East Block-V, R.K.Puram,
New Delhi.

... Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (ORAL)

As the matter involved in these OAs is founded on identical facts and question of law, these OAs are being disposed of by this common order.

2. A preliminary objection has been raised by the respondents to the effect that in a matter of transfer no common cause of action can be said to have accrued and as such under Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987, the present OAs are not maintainable. On the other hand it has been stated by the learned counsel of applicants Shri C.Hari Shanker that as the respondents have passed a common order of transfer and the challenge to it is on identical legal

issues effecting transfer in the midst of academic session. I am satisfied that the present OAs are maintainable under Rule 4(5) of the Rules ibid having common cause of action, and to avoid multiplicity, in the interest of justice, I allow the applications for joining together and overrule the objection put forth by the respondents.

3. Applicants are Private Secretaries/Lower Division Clerks in the Directorate General SSB. By an order dated 8.9.2003 applicants have been transferred in the same capacity to different places. One of the common contentions raised by the applicants relying upon the decision of the Apex Court in **Director of School Education, Madras & Ors. v. O.Karuppa Thevan & Anr.**, 1996 (1) SLR 225, is that the respondents have effected the transfer in the midst of the academic session adversely affecting the studies of their children.

4. By referring to the guidelines contained in order dated 21.8.2003 relating to rotational transfer, it is stated by the learned counsel of applicants that these transfers are to be ordered at the end of normal academic session so that the Government employees on their transfer are able to admit their children in schools at the new place of posting. It is further contended that as no urgent administrative exigencies exist, the transfer should be kept pending till the current academic session is over.

5. One of the contentions putforth is that though there exist vacancies at the nearby places, transfer of the female staff to far off places in difficult conditions is not in the interest of either the administration or the public.

6. The learned counsel of applicants refers to the following decisions of the Apex Court to contend that violation of guidelines renders the transfer punitive :

- (1) 1981 (2) SCC 72 : **Shanti Kumari v. Regional Deputy Director Health Services, Patna & Ors.**;
- (2) 1993 (1) SCC 148 : **Rajendra Roy v. Union of India & Anr.**

7. On the other hand, Shri B.S.Jain, learned counsel of the respondents contested the OAs and vehemently opposed the contentions. According to Shri Jain, as a consequence of transfer of administrative control of SSB from the Cabinet Secretariat to the Ministry of Home Affairs, the organisation was declared as a border guarding force. As a consequence of this change, the offices of the organisation in the old locations in HP, Rajasthan, North East, Jammu etc. were closed and personnel were deployed in new areas of operation. As a policy decision it has been decided that the officials who have put in more than 15 years of service at the headquarters should be replaced by the people deployed in the field to strike a balance between the personnel posted in the field and headquarters, as this had led to resentment in the field staff for posting in headquarters. The decision uniformly taken, does not

suffer from any mala fides or violation of statutory rules, which is the only scope of judicial review in cases of transfer.

8. However, on being confronted by me as to any urgent administrative exigency to resort to the transfer in the midst of the academic session, the learned counsel of respondents fairly stated that in the event the transfer is to be kept in abeyance till the end of the academic session, deemed relieving should be ordered with an undertaking to be furnished by each of the applicants.

9. The learned counsel of respondents, however, puts an objection in the case of OA No.2392/2003 by contending that the relief prayed is for quashing the transfer order.

10. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the claim of the applicant in OA No.2392/2003 is concerned, in one of the grounds, the applicant has taken the plea of mid academic session transfer. As such, similar direction can be passed as in the other two OAs.

11. The following observations have been made by the Apex Court in the case of **Karuppa** (supra) :

12. The Tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer

for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

12. If one has regard to the above, while effecting transfer when the children of an employee are studying and in the midst of academic session, the same should weigh while ordering transfer of a Government servant. If there is no urgent exigency of service, the transfer should be kept in abeyance till the end of the current academic session. Admittedly, the current academic session will be over on 31st March of each year.

13. Having regard to the aforesaid ratio, I have scanned through and deliberated upon the reasons for urgency. The only reason is that staff posted at the border areas have resentment insofar as posting of employees in headquarters for more than 15 years is concerned and accordingly as a policy decision, it has been decided to transfer keeping in view the length of service at a particular station of those who are posted at headquarters for 15 years or more. I do not find any urgent administrative exigency in effecting transfer during the mid-academic session.

14. However, apart from the mid-academic session, transfer which has been resorted to cannot be interfered with in judicial review in absence of any established mala fides or violation of the statutory rules. This has to be ensured that if the applicants are allowed to stay till the current academic session is over, they should give an undertaking to the department for their transfer and implied relieving as on 1.4.2004, giving effect to the earlier orders of transfer.

15. In this view of the matter, the OA is disposed of with a direction to the respondents that in the event within a period of one week from the date of receipt of the copy of this order if the applicants furnish to the respondents an undertaking to the effect that the transfer would be in abeyance till 31.3.2004 and thereafter they would join the transferred place on deemed relieving as an effect of the order of transfer, the transfer ordered shall be kept in abeyance till 31.3.2004. However, this shall not preclude the applicants from raising their grievance before the respondents insofar as their contention of posting them to nearby places is concerned. No costs.

16. Copy of this order be kept in all the three OAs.

S. Raju
(Shanker Raju)
Member (J)

/as/