

\$~8 & 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: December 09, 2015

+ (i) **W.P.(C) 10155/2015 & CM APPLN.25024/2015**

MEENU GUPTA Petitioner
Through: Mr. V.K. Garg, Senior Advocate,
with Mr. Saqib and Ms. Noopur
Dubey, Advocates

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Arun Bhardwaj, CGSC, with
Mr. Shekhar Kumar, Advocate for
respondents No.1 and 2
Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Pankaj Seth,
Mr. Shoumik Mazumdar and Mr.
S.C. Das, Chief Manager, National
Insurance for respondents No.3 to
5

+ (ii) **W.P.(C) 10410/2015**

SUNITA MALIK Petitioner
Through: Mr. V.K. Garg, Senior Advocate,
with Mr. Saqib and Ms. Noopur
Dubey, Advocates

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Arun Bhardwaj, CGSC, with
Mr. Shekhar Kumar, Advocate for
respondents No.1 and 2
Mr. Sudhir Nandrajog, Senior
Advocate, with Mr. Pankaj Seth,

Mr. Shoumik Mazumdar and Mr.
S.C. Das, Chief Manager, National
Insurance for respondents No.3 to
6

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

In the above captioned two petitions, the challenge is to the impugned transfer orders of 5th October, 2015 and 1st October, 2015 respectively whereby petitioners have been transferred from Delhi to Chandigarh by respondent No.3-Company. Petitioner-*Meenu Gupta* upon being promoted to the post of Deputy Manager (Scale-III) has been transferred to Chandigarh whereas the transfer of petitioner-*Sunita Malik*, Assistant Manager (Scale-II), is a general one. These transfers have been made under the *Transfer and Mobility Policy (TMP)* for Class-I Officers of respondent-Company.

With the consent of learned counsel for the parties, both these petitions were heard together as the challenge to the impugned transfers is on identical grounds and so, by this common judgment, these petitions are being disposed of together.

To assail the impugned transfers, learned senior counsel for petitioners had drawn the attention of this Court to the Office Memorandum of 30th September, 2009 (*Annexure P-3*) dealing with the posting of husband and wife at the same station and also relied upon directions issued by first respondent vide Communication of 23rd

September, 2014 (*Annexure P-4*) on the subject of transfer/posting of female employees in Public Sector Insurance Companies. Pertinently, respondent-Company is a Public Sector Insurance Company.

At the hearing, it was pointed out by learned senior counsel for petitioners that husband of petitioner-*Meenu Gupta* is posted as Administrative Officer (Judicial) in this Court whereas the husband of petitioner-*Sunita Malik* is posted as Personal Assistant in Delhi University and so, it was submitted that the impugned transfers are in utter violation of afore-referred Office Memorandum (*Annexure P-3*) and Government's Circular (*Annexure P-4*). Attention of this Court was drawn to paragraph No.5 of the Office Memorandum (*Annexure P-3*) which provides that specific reasons are required to be given if the posting of husband and wife at the same station is not made and no such reasons are coming forth by the counter-affidavit by respondent-Company.

During the course of hearing, attention of this Court was drawn by learned senior counsel for petitioners to the Representation (*Annexure P-13*) made by petitioner-*Meenu Gupta* to the respondent-Company on 10th October, 2015 wherein it was highlighted that two small children and an old mother-in-law aged more than 75 years, who is having serious neurological and other ailments requires petitioner's attention and so, prayer was made for retaining her in Delhi or in the alternative, to post her in Ghaziabad or at Rohtak, Haryana. It was pointed out that similar Representation (*Annexure P-10*) was made by petitioner-*Sunita Malik* on 2nd November, 2015 in the above-captioned second writ petition highlighting that her husband has undergone cataract operation of both

the eyes and so, it will not be possible for her to join the new place of posting and a request was made, while highlighting that her husband is suffering from diabetes and hyper-tension, and so she be retained in Delhi.

Reliance was placed upon an extract of vacancy position in the cadre of Deputy Managers/Scale-II Officers in Delhi to show that there are 29 vacancies available in Delhi and so, petitioners can be accommodated in Delhi and in view of Office Memorandum (*Annexure P-3*) and Government's Circular (*Annexure P-4*), the impugned transfers ought to be set aside. Reliance was also placed upon Apex Court's decision in *State of Karnataka and Another v. R. Vivekananda Swamy* (2008) 5 SCC 328 and it was submitted that to refute the allegations of arbitrariness, respondent-Company should demonstrate that petitioners have been treated fairly in the light of the Office Memorandum (*Annexure P-3*) and Government's Circular (*Annexure P-4*).

To refute the stand taken on behalf of petitioners, learned senior counsel for respondent-Company had drawn attention to the first preliminary objection taken in the counter to submit that All India Large Scale Transfer of Officers undertaken by respondent-Company was closely monitored by the Central Vigilance Commission, and so, after scrutinizing each and every case, special care was taken that in view of their safety, genuine hardships, security concerns, and in view of the Government's Circular (*Annexure P-4*) of 23rd September, 2014 (*Annexure P-4*), the lady officers are accommodated in the State Capitals or in the major cities.

It was pointed out that since large number of lady officers were

being transferred/posted on all India basis, therefore, it was not possible to accommodate all of them. It was also submitted by learned senior counsel for respondent No.3 that an endeavour was made to find out if petitioners can be accommodated in the vicinity of Delhi, but seeing the manpower situation, it was found that it is not possible to do so and the vacancy position, as highlighted by petitioner, does not present a complete picture and since petitioners have been transferred to a State Capital, therefore, no case for quashing the impugned transfers is made out. Reliance was placed upon Apex Court's decision in *Union of India and Others v S.L. Abbas* (1993) 4 SCC 357 to submit that the Office Memorandums or the Government's Circulars do not confer any legally enforceable right on an employee as these are only the guidelines issued by the Government, which have been followed in these cases and so, impugned orders cannot be termed to be arbitrary.

Upon hearing both the sides and on perusal of the material on record and the decisions cited, I find that the Office Memorandum (*Annexure P-3*) heavily relied upon by petitioners has no application to the case of petitioners. Rather, Government's Circular of 23rd September, 2014 (*Annexure P-4*) applies to the case of petitioners and as per the above-referred Government Circular, transfer/posting of female employees in Public Sector Insurance Companies has to be done to accommodate married female employee at the place where her husband is stationed or near to that place, as far as possible.

In view of the counter-affidavit filed by respondent-Company, I find that substantial adherence has been made by respondent-Company to the Government Circular (*Annexure P-4*) and the plea of arbitrariness

does not stand to reason because manpower situation at each station has to be considered by respondent-Company and so, vacancy position in Delhi by itself would be of no avail. Since there is no basis for petitioners to allege that respondent-Company had acted arbitrarily, therefore, reliance placed upon Apex Court's decision in *R. Vivekananda Swamy (supra)* is of no avail. In matters of transfer, the pertinent observations of a Division Bench of this Court in *Udai Vir Singh Rathi (ACP) v. Union of India & Ors.* 2011 SCC OnLine Del 2601 have to be kept in mind.

In the afore-referred decision, the Division Bench has reiterated that if courts continue to interfere with the day-to-day orders passed by the government and its subordinate authorities, then there will be complete chaos in the administration, which will not be conducive to public interest and that even if the transfer order is passed in violation of executive instructions or orders, the courts should not ordinarily interfere with the transfer order.

Apex Court in *Registrar General, High Court of Judicature of Madras v. R.Perachi & Ors.* (2011) 12 SCC 137 has reiterated that several imponderables requiring formation of a subjective opinion in the sphere of transfers may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by *mala fides* or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left in public interest to the departmental heads subject to a very limited

judicial scrutiny.

Applying the afore-noted dictum of Apex Court to the facts of the instant case, I find no palpable error in the impugned transfer orders. Hence, both these petitions and the application are dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 09, 2015

s