

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8218 OF 2014**

Shaila S. Prabhu .. Petitioner
versus
Union of India & Ors. .. Respondents

Mr. Mayur Khandeparkar i/b. Mr. D. S. Jain for petitioner.
Mrs. N. V. Masurkar with Mr. D. A. Dubey for respondents – UOI.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 05 APRIL 2016**

P.C.:

1] The challenge in this petition is to order dated 21 July 2014 made by the Central Administrative Tribunal (CAT) dismissing the petitioner's original application no. 197 of 2014 and refusing to set aside the petitioner's transfer, upon promotion to the post of office superintendent. The petitioner has accepted the promotion but is resisting the transfer since last four years.

2] The impugned transfer order was made on 18 December 2012. The petitioner, without reporting to the transferred post, made representations which were duly considered but not acceded to on account of administrative reasons. The representations were rejected by order dated 25 March 2014 and by consequential order dated 27 March 2014, the petitioner was required to report to the transferred post at Karwar. It is at this stage that the petitioner instituted original application no. 197 of 2014 before CAT, which has made the impugned order dated 21 July 2014.

3] CAT in the impugned order dated 21 July 2014 has made it clear that the petitioner's original application lacks merit and is therefore

dismissed. However, the CAT, on '*purely humanitarian and sympathetic grounds*' directed that the transfer order be kept in abeyance for over two years i.e. until 15 April 2016, so as to enable the petitioner's daughter to complete her education in Xth as well as XIIth standards. The operative portion of the impugned order, reads thus :

“ 30 (a) *In the result, the application is dismissed.*

(b) *Consequently, the impugned order dated 25.03.2014 (Annexure A-1) and the transfer / promotion order dated 27.03.2014 (Annexure A-2) so far as it relates to the applicant are, hereby, confirmed.*

(c) ***However, purely on humanitarian and sympathetic grounds and considering the welfare and future prospects of the only daughter of the applicant, who is a meritorious student and to facilitate her to prepare and appear in the Higher Secondary School Certificate Examination to be held in March, 2016, the impugned transfer / promotion order, Annexure A-2, shall remain in abeyance / suspended till 15.04.2016.***

(d) *It is made clear that, in any event, above deadline will not be extended.*

(e) *During this period, the applicant will continue to work as U.D.C. at Mumbai.*

(f) *The respondent no. 3 shall relieve the applicant from the post of UDC on 15.04.2016 A.N. to facilitate her to join and report at Karwar, on promotion post of Office Superintendent, by availing joining period, if she so desires.*

(g) *It is needless to say that the applicant will be entitled to get the Transfer Allowance and Travelling Allowance as per rules on joining at Karwar.*

(h) *In the facts and circumstances of the case, no order as to costs.”*

[emphasis supplied]

4] From the aforesaid, it is quite clear that the petitioner, on the basis of representations, correspondence and finally CAT's order dated 21 July 2014 has managed to avoid reporting to the transferred post for a period of over four years since date of the transfer order. In such a situation, we would have thought that the petitioner would be

satisfied with the relief which she has already obtained, *inter alia* on the basis of the impugned order made by CAT. However, Mr. Mayur Khandeparkar, learned counsel for the petitioner has stated that he has instructions to argue the matter further.

5] Mr. Khandeparkar submitted that the petitioner, being a widow with a minor daughter, constitutes a class by herself therefore, her case was required to be considered, even *de hors* the policy guidelines concerning transfers. He submitted that the Senior Administrative Officer and the Personal Manager, had in fact, by communication dated 2 January 2014 recommended the retention of the petitioner at Mumbai, even after her promotion. Finally, Mr. Khandeparkar placed reliance upon the 62nd report concerning status of women in government employment and in public sector undertakings with regard to service conditions, protection against exploitation, incentives and other related issues, which were presented to the Rajya Sabha and Lok Sabha in the year 2013, to submit that certain observations in such report bind the respondents, since, in terms of office memorandum dated 13 January 2014 and office memorandum dated 30 January 2014, the contents of the report have been reissued as policy guidelines, *inter alia* in the matters of transfer.

6] We find no merit in any of the contentions raised by and on behalf of the petitioner. On basis of the domestic issues which the petitioner faces on account of her widowhood or the educational needs of her daughter, the petitioner, cannot claim to constitute a class by herself and thereafter insist that her case should have been considered even *de hors* the policy guidelines concerning the transfers or the administrative exigencies as may arise in the matter. The petitioner, it must be noted, is not averse to accepting the

responsibilities of the promotional post, but seeks to only avoid her transfer. This is clearly impermissible.

7] Though it is true that the senior administrative officer, in memo dated 2 January 2014 had recommended the retention of the petitioner at Mumbai, such recommendation, is obviously not binding upon his superiors at the Western Naval Command where, the petitioner presently serves. The record, as verified by CAT clearly indicates that the recommendation made by the senior administrative officer has been taken into consideration by respondents to the extent possible. The recommendation, by itself, is not at all a ground to interfere with the transfer order.

8] The third submission urged by and on behalf of the petitioner is equally misconceived. The office memoranda dated 13 January 2014 and 30 January 2014, do not constitute the contents of the 62nd report as some executive instructions or even policy guidelines. The office memorandum dated 13 January 2014 merely brings to the notice of the concerned ministry / departments the factum of presentation of the report and requires them to send compliance / ATR latest by 31 January 2014. The office memorandum dated 30 January 2014, makes reference only to the aspect of age relaxation for appointment of widows, divorcee women or women judicially separated from their husbands. In any case, on the basis of certain recommendations in the report, which recommendations are yet to be formulated as policy guidelines, it is impermissible for the petitioner to seek any relief in the matter of her transfer.

9] In case of ***Union of India & Ors. vs. S. L. Abbas***¹, the Hon'ble Supreme Court has held that the order of transfer is an incident of government service. 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 courts cannot interfere with it. Even the guidelines issued by the governments in matters of transfer do not confer upon the government employee a legally enforceable right. The Supreme Court did not approve the decision of the High Court in interfering with transfer order only on the ground that the employee's wife was working in Shillong, his children were studying there, and his health had suffered a setback some time ago. It was held that the CAT is not an appellate authority sitting in judgment over the orders of transfer and it cannot substitute its own judgment on that of the competent authority to transfer.

10] In ***Union of India & Ors. vs. H. N. Kirtania***² the Hon'ble Supreme Court interfered with the order made by the Central Administrative Tribunal, Calcutta, when in a transfer matter, CAT after recording positive finding that the transfer order was legal, valid and not vitiated by unfairness or *mala fides*, proceeded nevertheless, to direct that all arrears of salary with allowances be paid to the employee and no release order be issued until the payment of all the emoluments. The Hon'ble Supreme Court held that CAT had no jurisdiction to issue such further directions after it had recorded positive findings with the transfer order was legal, valid and not vitiated by unfairness or *mala fides*.

1 (1993) 4 SCC 357

2 (1989) 3 SCC 447

11] In **State of U.P. & Ors. vs. Gobardhan Lal**³, the Hon'ble Supreme Court in matters of scope of interference with transfer orders has observed thus :

“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

3 (2004) 11 SCC 402

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.”

12] Before we part, we deem it our duty to observe that CAT exceeded jurisdiction in virtually doling out relief to the petitioner on '*purely humanitarian and sympathetic grounds*'. In this case, CAT, should have been conscious that it was dealing with the responsible and sensitive organization like Western Naval Command. Therefore, unless malafides were established or breach of any statutory provisions or binding instructions demonstrated, there was no question of interference with the transfer orders only upon humanitarian or sympathetic grounds.

13] In ***Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh & Ors.***⁴, the Hon'ble Supreme Court has held that sympathy or sentiments by itself cannot be a ground for passing an order in relation thereto the parties have miserably failed to establish a legal right.

14] In ***Sudhir Kumar Consul vs. Allahabad Bank***⁵ in service matters concerning pensionary benefits, the Hon'ble Supreme Court whilst expressing sympathies, stated that in society governed by the rule of law, sympathies cannot override rules and regulations.

15] In ***LIC vs. Asha Ramchandra Ambekar***⁶, the Hon'ble Supreme Court observed : (SCC p.721, para 10)

“10. ..The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic

4 (2004) 2 SCC 130

5 (2011) 3 SCC 486

6 (1994) 2 SCC 718

consideration Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that 'law is the embodiment of all wisdom'. Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be."

16] In ***Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.***⁷, the Hon'ble Supreme Court, whilst reiterating the principle that relief cannot be granted merely out of sympathy or humanitarian considerations has observed that orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The courts must, therefore, exercise judicial restraint in this connection, and not encroach into the executive or legislative domain. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.

17] Therefore, whilst deprecating grant of relief to the petitioner by CAT on '*purely humanitarian and sympathetic grounds*', we dismiss this petition. Interim order, if any, stands vacated. There shall however be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

⁷ (2007) 1 SCC 408