

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.44833 of 2016

ORDER :

The petitioner was employed in the Hindustan Aeronautics Limited as a Senior Manager (Designs) on 24.01.2006

2. The said organization has a unit at Hyderabad (3rd respondent) and another unit at Bangalore (2nd respondent).

3. He was promoted as Chief Manager-Designs in 2011 by the 3rd respondent-Organization.

4. The petitioner's wife is working as Scientific Assistant in a Government of India undertaking under the Department of Atomic Energy at Hyderabad.

5. The 2nd respondent issued proceedings on 27.06.2015, transferring the petitioner, who was working in the Hyderabad Unit of the 2nd respondent, to Light Combat Aircraft (LCA)-Tejas, Bangalore and on 29.06.2015, the 3rd respondent issued a consequential order informing the petitioner of the same.

6. The petitioner challenged the same in WP.No.24117 of 2015 on the ground that from the Designing discipline he was the only one transferred though several Deputy Managers and D.G.Ms from other disciplines were also transferred.

7. The said Writ Petition was disposed of on 11.08.2016 directing the petitioner to submit a representation to respondent nos.2 and 3 within one week and directing them to consider the said representation in accordance with the rules and guidelines applicable to Officers whose spouses are working in other organizations, and communicate orders within four weeks.

8. The petitioner, thereafter, submitted a representation on 29.08.2016 to the 3rd respondent and also to the 2nd respondent. He placed reliance on Department of Personnel and Employment Guidelines dt.15.01.1989 which provide for posting of an employee and his spouse at the same station.

9. By order dt.20.09.2016, the 3rd respondent rejected the said representation on the ground that the said guidelines were not applicable to 2nd respondent, that transfer was an incident of his service as per the offer of appointment made to petitioner and directed the petitioner to report to the LCA – Tejas Project at Bangalore Complex under the 2nd respondent. It is also mentioned therein that job rotation would give him an opportunity to acquire a new skill set at new location and broaden the canvass of work related experience.

10. The 2nd respondent also rejected petitioner's representation dt.29.08.2016 by order dt.23.09.2016 stating that his transfer to LCA-Tejas, Bangalore was affected on the basis of organizational requirements; that the 2nd respondent is the manufacturing agency in

the LCA Programme, entrusted with the responsibility of series production of the aircraft; concurrent engineering philosophy adopted in the LCA Programme requires co-ordination with various research and development centers and other divisions involved in the Programme, for which adequate manpower strength is required; manpower strength of the division is being augmented by inducting workmen and officers and by making transfer and assignment of workmen and officers from other divisions, etc.; and that during 2015-16 several officers and workmen were posted in the LCA-Tejas Project. It was also pointed out that out of the 31 officers transferred during 2015-16, 11 officers were in senior positions of Chief Manager and above. It was stated that the DoPT Office Memorandum dt.30.09.2009 indicates that as far as possible and within constraints of administrative feasibility, both husband and wife would be posted at the same station and in the circumstances mentioned above, it was not feasible to consider the request of petitioner for retention at Hyderabad owing to critical organizational requirements.

11. The petitioner has filed this Writ Petition assailing the order dt.23.09.2016 issued by 2nd respondent and proceedings dt.29.06.2015 and 20.09.2016 issued by 3rd respondent.

12. The counsel for petitioner contended that the petitioner was selected in the organization for his Designing Skills and he had been working in the said Department in Hyderabad from the date of his appointment; transfers are very rare in view of the specialized

functions of the various personnel employed by the 2nd respondent; the Corporate Office of 2nd respondent issued a transfer policy on 09.04.2007 which shows that the very purpose of transfer or job rotation is to position such persons in places so that they are likely to be more effective and have greater job satisfaction; that Bangalore work station of the 2nd respondent does not have avionics complex while only Hyderabad, Korwa and Lucknow have such complexes; it is also necessary that spouses should be posted in the same station; and therefore, the order issued on 29.06.2015 by the 3rd respondent by transferring him to LCA-Tejas, Bangalore complex is arbitrary and illegal. He further contended that the purpose of transfer policy is to avoid discrimination and arbitrariness and since the policy of the Union of India directs spouses to be posted as far as possible at the same station since this will give job satisfaction and improve production, and since the petitioner's wife is employed in Hyderabad, he ought to be posted only in Hyderabad and not subjected to transfer. He also stated that the respondents have not stated that the petitioner's services at Bangalore are indispensable, and no other person can replace him, and therefore, the impugned orders ought to be set aside.

13. From the facts narrated above, it is apparent that the petitioner is opposing his transfer made on 29.06.2015 from the 3rd respondent's complex at Hyderabad to the LCA-Tejas Project at Bangalore under the 2nd respondent.

14. It is not in dispute that petitioner's wife is working in Atomic Minerals Department for the exploration and research, a Government of India undertaking at Hyderabad. The principle objection of petitioner to his transfer appears to be that as per certain guidelines framed by the 1st respondent as well as 2nd respondent, spouses employed ought to be posted together. The Personnel Circular No.675 dt.09.04.2007 issued by the 2nd respondent as well as Office Memorandum dt.03.04.1986 of the 1st respondent, both refer to this aspect. The Office Memorandum dt.03.04.1986 issued by the 1st respondent states that *as far as possible* and within the constraints of administrative convenience, spouses ought to be posted at the same station.

15. In the impugned orders passed by respondent nos.2 and 3, they have categorically stated that petitioner was transferred to the LCA-Tejas *on the basis of organization requirements*, and not only the petitioner, but several other officers in senior positions were also transferred there. It was also pointed out that as per the terms and conditions stipulated in the offer of appointment given to petitioner by respondent nos.2 and 3, he was liable to serve in any position in any Department / Office / Division in any part of India or abroad as per requirements of the employer, and that the petitioner should seek to broaden his work-related experience and acquire new skill set at the new location in Bangalore.

16. In my considered opinion, the reasons assigned by respondent nos.2 and 3 for rejecting petitioner's representation seeking his retention in the 3rd respondent's Office at Hyderabad cannot be said to be arbitrary and unreasonable. The transfer is admittedly an incident of service, and it is not even the case of petitioner that it is mala fide or is being affected as a measure of punishment.

17. The scope of interference with orders of transfer under Article 226 of the Constitution of India is very limited, since the Court defers to the view of the Management/employer regarding posting of its employees in the best interests of the Organization and would not normally intervene unless it is found to be mala fide or made as a measure of punishment.

18. Since these allegations are admittedly absent in the present case, I am of the opinion that this is not a fit case for this Court to exercise jurisdiction under Article 226 of the Constitution of India and grant any relief to petitioner.

19. Accordingly, the Writ Petition is dismissed at the stage of admission. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-01-2017

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