

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.19080 OF 2018

Date: 12.06.2018

Between:

J.Vijaya Kumar,s/o. J.V.Guptha, Aged about 52 years,
Occu: Statistical Officer, O/o Greater Hyderabad Municipal
Corporation, Tank Bund Road, Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary to Govt.,
Health, Medical & Family Welfare Department, Telangana
State Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner, learned Government Pleader for respondents 1 and 2 and learned standing counsel for respondent no.3.

2. Petitioner is working as Statistical Officer. He was posted to the Office of Commissioner, Greater Hyderabad Municipal Corporation on 09.01.2013. His wife is working as Multi Purpose Health Assistant (Female) in Modern Maternity Hospital, Nayapool, Hyderabad. She is working at her present place of posting from 11.07.2016 on transfer on spouse ground in terms of G.O.Ms.No.182 GAD dated 21.05.2016. According to petitioner, as he has completed more than five years of service, he is now included in the list of employees liable for compulsory transfer as per the orders of Government in G.O.Ms.No.61 Finance (HRM-I) Department, dated 24.05.2018. Petitioner opposes his transfer on the ground that his wife has not even completed two years of service. As she is working in Hyderabad, petitioner cannot be transferred out of Hyderabad and transfer of petitioner would seriously affect the family of petitioner. Hence, this writ petition.

3. According to learned counsel for petitioner, in paragraph-III, high priority is given to the husband and wife in the matter of place of posting of their choice and according to paragraph-II (a)(i), even if spouse has not completed two years of service, on spouse ground such employee can request for transfer. This relevant entry in G.O.Ms.No.61 would show that Government is keen to protect

the interest of husband and wife in public employment and to ensure that they work at the same place of posting so that their family is not disturbed. Learned counsel for petitioner submits that inclusion of petitioner's name in the list of employees liable for compulsory transfer is erroneous and is liable to be set aside.

4. Government relaxed ban on transfers and notified guidelines for affecting transfer of employees working in various categories in various departments, vide G.O.Ms.No.61 dated 24.05.2018. By this G.O., general guidelines are notified. Government authorized some of the Departments mentioned in paragraph-VI to formulate their own guidelines/rules to regulate transfers.

5. According to paragraph-II (b), if an employee completed five years of service as on 31.05.2018, such employee is liable for compulsory transfer. Petitioner admittedly completed five years of service and is due for transfer. Thus, *per se*, inclusion of name of petitioner in the list of employees to be compulsorily transferred cannot be faulted. However, learned counsel for petitioner sought to emphasize that petitioner should not have been included in the list of employees liable for compulsory transfer as his wife is working in the city of Hyderabad having been transferred only recently and that she is not due for transfer as per the transfer policy. Thus, unless and until, wife of petitioner completes her minimum tenure of service, petitioner should not be disturbed.

6. There are plethora of precedents in transfer matters. Some leading decisions are :

- i) Shilpi Bose vs. State of Bihar [1991 Supp (2) SCC 659];

- ii) Bank of India v. Jagjit Singh Mehta [(1992) 1 SCC 306];
- iii) Union of India and other vs. S.L.Abbas [(1993) 4 SCC 357];
- iv) N.K.Singh vs. Union of India [(1994) 6 SCC 98];
- v) State of Madhya Pradesh vs. S.S.Kourav [(1995) 3 SCC 270];
- vi) State Bank of India vs. Anjan Sanyal and others [2001 (5) SCC 508];
- vii) State of Utter Pradesh vs. Gobardhan Lal [(2004) 11 SCC 402];
- iv) Airports Authority of India vs. Rajeev Ratan Pandey (2009) 8 SCC 337];
- viii) Tushar D.Bhatt vs. State of Gujarath and another [(2009) 11 SCC 678];
- ix) Rajendra Singh and others Vs. State of Utter Pradesh and others [(2009) 15 SCC 178];
- x) Registrar of High Court of Judicature of Madras vs. R.Perachi [(2011) 12 SCC 137];

7. In **S.L.Abbas**, Supreme Court held as under:

“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.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)."

8. In **Shilpi Bose**, Supreme Court held as under:

"3. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore the High Court had no jurisdiction to interfere with the transfer orders.

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.”

9. In **Rajendra Singh**, Supreme Court held as under:

“14. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent 5 was a competent person to be posted at Ghaziabad IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and the Inspector General of Registration to transfer a competent officer at Ghaziabad IV as Sub-Registrar after holding that Respondent 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law.”

10. In **Airport Authority of India**, employee challenged his transfer as in violation of transfer policy. According to him, inter-regional transfer should not be made before the incumbent completes at least five years tenure in that region. Supreme Court observed:

“10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High

Court, did not even find any contravention of transfer policy in transferring Respondent 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.”

11. In **Jagjit Singh Mehta**, Supreme Court observed as under:

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he seeks to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities

should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

12. It is clearly discernible from the precedent decisions that in matters of transfer, scope of judicial review is limited and High Court should not interfere with an order of transfer lightly, unless the transfer is vitiated either by *mala fides* or on the ground of infraction of any professed norm or principle; Only limited judicial scrutiny can be undertaken either at the interim stage or final stage; Transfer is an incidence of service, implicit as an essential condition of service; no employee has vested right to remain posted at a place of his/her choice; at times, several imponderables requiring formation of subjective opinion may be involved; realistic approach is to leave to the wisdom of hierarchical superiors; the wheels of administration should be allowed to run smoothly; Courts do not substitute their own decision in the matters of transfer; there are no judicially manageable standards for scrutinizing the transfers; Courts lack necessary expertise for personnel management; in public interest, transfers involving public services have to be best left to the concerned authorities; writ Court cannot sit as appellate forum to consider transfer matters; guidelines do not have statutory force; guidelines do not confer legally enforceable right; even if an order of transfer is passed in violation of executive instructions or orders, Court should not interfere; affected party should approach higher authorities; Court should not interfere if transfer is made to equivalent post without any adverse consequence on the service prospects.

13. On a reading of various clauses in Paragraph-II, it is clear that once an employee completes five years of service, he cannot be retained in the present place of posting. However, this paragraph enables the spouse to request for transfer even if such spouse has not completed two years of service. Thus, there is no embargo on wife of petitioner applying for transfer. A combined reading of these clauses would make it clear that an employee cannot be retained beyond five years at the place of posting, but if such employee is liable for compulsory transfer, his spouse can request for transfer even if she has not completed two years of service in the present place of posting. Further, on cumulative reading of various clauses in the transfer guidelines, it is clear that merely because spouse is working for shorter period in a particular station, the other spouse, who is identified as a person completing five years of service, cannot be retained.

14. In the case on hand, petitioner is working in transferable post. He has completed more than five years of service in the present posting. He has no indefeasible right to claim that he should not be disturbed from present assignment. He cannot seek to take shelter under his wife posting in the year 2016. There may be others who may have similar requests or have been eager to come to city for their personal reasons. From the proposition of law as laid down in several precedent decisions, it is manifest that the Court cannot go into intricacies of the cadre management and posting of the employees; there can be several imponderables requiring formation of a subjective opinion and Court cannot go into those administrative issues in exercise of power of judicial review. In any service, there can be competing claims/aspirations

and the cadre controlling authority is the best judge to accommodate competing claims and organize his cadres. It is appropriate to note that no *mala fides* are attributed against any officer.

15. Having regard to the parameters set out by the Supreme Court in the precedents referred to above, and in the facts of this case, I do not see any illegality in identifying petitioner as person cannot be retained in the present place of posting warranting interference by this Court. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

Date: 12.06.2018
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JUSTICE P.NAVEEN RAO



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