

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

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Date of decision: 19th April, 2021

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W.P.(C) No.4788/2021

MEENA MATAI

.... Petitioner

Through: Mr. Kishore M. Gajaria, Mr. Aayush
Paranjpe and Mr. Sarthak Gupta,
Advs.

Versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Pratyush Miglani and Mr. Taqvi
Hussain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE NAJMI WAZIRI

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.14785/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.4788/2021 & CM No.14784/2021 (for stay)

3. This petition, under Article 226 of the Constitution of India, impugns the order dated 31st March, 2021 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of O.A. No.726/2021 preferred by the petitioner, an Assistant in the Architectural Department at Public Works Department (PWD), New Delhi, with respect to her transfer to Chandigarh.
4. We have perused the records and heard the counsel for the petitioner.

5. It is the case of the petitioner, that (i) the petitioner, now aged 56 years, joined the Architectural Department of Ministry of Housing and Urban Affairs, on 10th December, 1986, on the post of Assistant; (ii) the petitioner, since 1986 i.e. for nearly 36 years, has been posted at Delhi; (iii) the petitioner was diagnosed as suffering from “hole in macula of eye and retinal detachment” and underwent two surgeries therefor in the year 2014; (iv) on 23rd June, 2016, transfers of officials, staff, employees in PWD were effected but the Transfer and Posting Committee and Hard Case Committee of the respondents, being satisfied that the petitioner, on medical grounds, was required to be at Delhi, did not effect the transfer of the petitioner; (v) in the year 2018, the petitioner was promoted from the post of Assistant, to the post of Technical Officer and was required to join duties at Raipur; (vi) the petitioner, for the sake of remaining at Delhi owing to her medical condition, refused the said promotion and vide the Office Memorandum dated 12th February, 2019, was allowed to continue at Delhi, as an Assistant; (vii) on 5th March, 2020, though again transfers were effected but the name of the petitioner was not included therein; however the said transfer order was kept in abeyance owing to the prevailing pandemic and which resulted in another transfer order dated 28th April, 2020 being issued and which surprisingly included the name of the petitioner, transferring the petitioner from New Delhi to Chandigarh; (viii) the petitioner immediately made a representation dated 30th April, 2020, pleading that she was required to undergo regular checkups and treatment and that the nature of her disease was such that an emergency could arise at any point of time, requiring her to avail of medical treatment at Delhi and it was thus not possible for her to move out of Delhi; (ix) however the respondents, vide order dated 23rd September, 2020,

rejected the representation of the petitioner; (x) the petitioner made yet another representation dated 28th September, 2020, also pleading that owing to the prevalent pandemic, it was not possible for her to move from Delhi to Chandigarh; (xi) however vide order dated 1st February, 2021, the petitioner was directed to join at Chandigarh; (xii) the petitioner preferred O.A. No.376/2021 before CAT, impugning her transfer; (xiii) vide order dated 19th February, 2021, CAT, Principal Bench, New Delhi directed the respondents to consider the representation dated 28th September, 2020 of the petitioner and to dispose of the same by passing a reasoned and speaking order and to not give effect to the transfer order of the petitioner till such order; (xiv) the respondents, vide order dated 15th March, 2021, again declined the request of the petitioner to not transfer her from Delhi to Chandigarh; however in the said order no reasons were given as to why the request of the petitioner on medical ground was not being acceded to; the order dated 15th March, 2021 was thus arbitrary and vague; the respondents did not even consider that the petitioner had forgone her promotion from the post of Assistant to the post of Technical Officer, for the sake of continuing at Delhi and in earlier orders of transfers, had not been posted out from Delhi and that there was no change in the said reasons; (xv) the petitioner, so aggrieved, again approached CAT by means of O.A. No.726/2021 (from which this petition arises), impugning her transfer from Delhi to Chandigarh; and, (xvi) the said O.A. No.726/2021 was listed before the Principal Bench, New Delhi of CAT, on 31st March, 2021, when after hearing the arguments of the counsel for the petitioner, CAT rejected the prayer of the petitioner for interim relief, passing a detailed order, which has the effect of rendering the

entire O.A. infructuous, though also giving time to the respondents to file the counter affidavit.

6. Impugning the aforesaid order dated 31st March, 2021 of CAT, copy of which, till date, is stated to be not available (and which is not found on the website of CAT by us also till the time of correcting and releasing this order), this petition has been preferred.

7. In view of the aforesaid scenario, we have at the outset only enquired from the counsel for the petitioner, whether not Chandigarh has equally good if not better medical facilities available, as/then Delhi.

8. The counsel for the petitioner, replying fairly, has not disputed the aforesaid fact but has contended that the petitioner, till now has been treated at Delhi and her follow up treatment is also at Delhi. It is emphasized that the petitioner is required to go for regular medical check-ups and which would not be possible to do from Chandigarh.

9. We have enquired from the counsel for the petitioner, whether it is the stand of the petitioner that the petitioner, since 1986, has never stepped out of Delhi.

10. The counsel for the petitioner, after obtaining instructions, has again, fairly stated that it is not so.

11. We have next enquired from the counsel for the petitioner, whether not owing to the number of posts available at Delhi being limited, allowing the petitioner to remain posted at Delhi would be to the prejudice of another, who though desirous of and being entitled to be posted at Delhi, will be denied the said posting owing to the petitioner occupying the said post.

12. The counsel for the petitioner has not controverted the aforesaid also.

13. We have next enquired about the family of the petitioner.

14. It is informed that the husband of the petitioner carries on business at Delhi and the children of the petitioner are grown up, with one working in Delhi and the other shifting abroad.

15. The possibility of the petitioner wanting to continue at Delhi, to be with her husband and children at Delhi who, owing to their business / personal commitments are unable to move out of Delhi, and of the petitioner using the medical ground only as an excuse, cannot be ruled out.

16. Supreme Court, in a catena of decisions has held that a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other; he is liable to be transferred in the administrative exigencies, from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. The Courts are always reluctant to interfere with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. Reference in this regard may be made to the decisions in *Shilpi Bose (Mrs) Vs. State of Bihar* AIR 1991 SC 532, *Rajendra Roy Vs. Union of India* (1993) 1 SCC 148, *Union of India Vs. S.L. Abbas* (1993) 4 SCC 357, *State of U.P. Vs. Gobardhan Lal*

(2004) 11 SCC 402 and *Rajendra Singh Vs. State of U.P.* (2009) 15 SCC 178.

17. When it is not in dispute that the job / service of the petitioner is transferable and when the petitioner has been accommodated by the respondents at Delhi, where her husband is carrying on business, for the last as many as 36 years, even if a sympathetic view were to be taken, the same does not permit us to do injustice to others not before this Court and who would axiomatically be prejudiced / will suffer from sympathy if any shown to the petitioner; they would be deprived of their desired posting at Delhi, for the reason of the petitioner, under orders of this Court continuing at the post at Delhi. This Court, as a Court of equity and justice, cannot while appearing to be sympathetic, be seen as shutting its eyes to others not before it and is required to take a holistic view and which view does not allow us to interfere with the order of CAT declining any interim relief to the petitioner.

18. We have also perused the medical records of the petitioner placed before us and therefrom also are unable to find that the petitioner is required to visit the medical facilities being consulted by her at New Delhi with any regularity. The said documents are of 19th July, 2014, 21st July, 2014, 1st December, 2014, 29th August, 2018, 12th September, 2019 and 29th February, 2020 and which show the visits of the petitioner to be far apart and not requiring any daily or weekly check-ups.

19. As far as the argument, of the petitioner having foregone her promotion in the past, to remain at Delhi, is concerned, the same cannot also entitle the petitioner to any relief as none can be permitted to buy a post at Delhi, to the prejudice and cost of others.

20. 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 administration, which would not be conducive to public interest. Reference in respect of the aforesaid reasoning may be made to the decision dated 15th July, 2020 in W.P.(C) 3625/2020 titled ***Rachpal Singh Vs. Union of India*** (Special Leave Petition whereagainst has been dismissed vide order of the Supreme Court dated 14th August, 2020), the decisions in ***Kiran Pooja Vs. Union of India*** MANU/DE/1715/2020, ***Aadesh Kumar Vs. Union of India*** MANU/DE/1872/2020, ***Baikuntha Nath Das Vs. Central Reserve Police Force*** MANU/DE/1708/2020, ***SI/(M) Praveen Kumar Vs. Union of India*** 2020 SCC OnLine Del 1047, and the decision dated 11th August, 2020 in W.P.(C) 5182/2020 titled ***CT/GD Rajender Singh Vs. Union of India***.

21. We may also notice that the earlier O.A. being O.A. No.376/2021 preferred by the petitioner impugning her transfer, was disposed of directing the respondents to decide the representation of the petitioner, not for the reason of CAT at that time having found any merit in the challenge made by the petitioner to her transfer but for the reason of the counsel for the petitioner having suggested so and which suggestion was accepted by CAT.

22. We also find the order dated 15th March, 2021 of the respondents, pursuant to the direction of CAT, to have reasoned, that (i) OM dated 25th March, 2019 qua restructuring of Central Public Works Department (CPWD) had resulted in closing of some offices, opening of new ones and issuance of sanctions of staff of those offices after restructuring; (ii) as a result, the staff had to be mapped / transferred in new offices and as per re-organized set up,

posting of staff to that offices was done; (iii) due to restructuring, at some stations the staff became surplus and had to be posted out where ever necessary, against creation of vacancies as per restructuring of CPWD; (iv) accordingly, transfer and postings were done and policy was adopted for transfer of senior most staff at that station; (v) the petitioner was transferred from Delhi to Chandigarh, being the senior most at Delhi station and to meet the administrative requirements as per restructuring; (vi) the petitioner had been working at Delhi since 10th December, 1986; and, (vii) the representation of the petitioner against her transfer, on medical grounds, was duly considered by the Competent Authority and was not found to be covered by Ministry of Housing and Urban Affairs Guidelines dated 11th May, 2020.

23. No error whatsoever in the aforesaid reasoning has been pointed out during the hearing.

24. The counsel for the petitioner has lastly contended that the petitioner has only three to four years of service left and Delhi is also the hometown of the petitioner and the petitioner should not be disturbed therefrom.

25. Once it is found that the petitioner has never been transferred out of Delhi and owing to medical grounds expressed by her has been accommodated in the past and further once no merit is found in the medical ground urged by the petitioner, we are not persuaded by the aforesaid argument either.

26. No case for interference with the impugned order of CAT declining interim relief, is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

APRIL 19, 2021
'gsr'..

NAJMI WAZIRI, J.

