
(2008) 02 DEL CK 0017

In the Delhi High Court

Case No : WP (C) No. 5624 of 2007 and CM No. 16961 of 2007

P.K. Kapoor

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0017

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Jasmine Ahmed, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner has filed the present petition aggrieved by the transfer orders dated 20.3.2007, 9.4.2007 and the order dated 25.7.2007 of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") directing the petitioner to join his posting at Jammu. The Tribunal while declining to quash the order of transfer, disposed of OA No. 610/2007 giving the following directions:

...As such, in the interest of justice, the applicant is granted liberty to prefer a representation within three months after joining at the new place of posting in Jammu. The respondents are directed to consider the same upon its receipt with a view to adjust the applicant in one of the vacancies presently existing or likely to arise in Delhi and pass appropriate orders thereon within a period of six weeks from the date of receipt of such representation. In case it is found feasible to accommodate the applicant in Delhi he may be posted back within a period of six months from the date of his joining at Jammu.

2. We may notice that the petitioner had earlier filed OA No. 563/2007 challenging his transfer which was disposed of asking the respondents to consider his prayer for retention at New Delhi by treating it as an additional representation. In the meanwhile, status quo was directed to be maintained.

Pursuant to the directions given, the respondents had passed the order on 9.4.2007 rejecting the representation dated 22.3.2007 due to administrative exigencies and public interest while recognizing and sympathizing with the family circumstances of the petitioner.

3. The facts relevant for the disposal of the present writ petition may be briefly noted:

(i) Petitioner is presently working as an Engineer with the Director, Wireless Monitoring Organization. Petitioner vide order dated 20.3.2007, was transferred to Jammu posted as Engineer/Officer-in-charge at the Wireless Monitoring Station, Jammu. Petitioner is also to discharge the functions of drawing and disbursing officer.

(ii) The present writ petition had come up for admission on 2.8.2007 when notice to show cause was issued having regard to the family circumstances of the petitioner and his submission that there were vacant posts available in Delhi. Petitioner also urged that the liberty granted to the petitioner to prefer a representation for his transfer back to Delhi within three months would hardly be of any avail once the transfer had been affected. Pending notice, the order of transfer was stayed. Vide orders dated 14.8.2007, petitioner was permitted to make a representation within three days without proceeding to Jammu and respondents were asked to consider and dispose of the same within two weeks. Matter was adjourned from time to time and was taken up for disposal on 6.2.2008.

(iii) The respondents in the meantime, vide an office Memorandum No. C-11015/1/2007-Admn.(pt)/2927, 28, 29, 30 dated 31.8.2007, declined the request for cancellation of transfer to Jammu. However, while declining, it was observed "However, taking into account the humanitarian considerations of the difficulties of Sh. P.K. Kapoor, as stated in his representation dt. 16.8.07, efforts will be made to consider his request at an appropriate time." It is in the above background that the present writ petition was taken up for disposal.

4. Learned Counsel for the petitioner Ms. Jasmine Ahmed urged that the petitioner's family circumstances were such that the transfer to Jammu would bring in lot of misery to the petitioner. It is stated that the petitioner's father is over 86 years of age and is suffering from prostate cancer. His sister is mentally retarded and needs help. His son is presently working in Jaipur and needs treatment for his knee problem. Petitioner's daughter was studying in M.Sc. It is urged that in these circumstances, if posted to Jammu, the family life of the petitioner would be disrupted. Further, that the petitioner has never been posted outside Delhi.

5. Learned Counsel for the respondent has submitted that admittedly, the petitioner being Engineer/Officer-in-Charge, is subject to all India transfer liability. Petitioner has not been posted out for 33 years. It shows that only on account of administrative exigency and requirement which has now arisen that

the petitioner is being posted to Jammu.

6. Having heard counsel for both the parties and considered the aspects urged before us, we find that this is not a case where any malafides or bias in posting the petitioner against any of the functionaries of the respondent have been alleged in passing the transfer order of the petitioner to Jammu. Once it is accepted that the order has been passed in the exigency of service, it becomes the bounden duty of the employee to comply with the same. Exigency of service cannot always be made subservient to personal and family difficulties or hardships. Petitioner is not being posted to a non-family station or to a place where medical facilities are not available. The respondents have themselves indicated that they are conscious and alive to the petitioner's difficulties and would consider re-posting the petitioner to Delhi at an appropriate time. Looking after a father in old age suffering from prostate problems is not something which is unusual. Petitioner at least has the family fabric of his daughter and wife to help him and discharging those duties with moral support from his son. Moreover, we find that in this case, petitioner has been able to stall his transfer for nearly one year. In view of the foregoing discussion, we are of the view that this is not a fit case calling for interference in the exercise of writ jurisdiction where the power of transfer has been exercised in the exigency of service.

The writ petition stands dismissed.