

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-2368 of 2016

Order with signature of Judge

Present : **Mr. Justice Muhammad Ali Mazhar**
Mr. Justice Arshad Hussain Khan

Dr.Sadia Saeed.....Petitioner

Versus

Federation of Pakistan and 04 others.....Respondents

6th October, 2016

Petitioner is present a/w her counsel Mr.Ali Asadullah Bullo, Advocate.

Mr.Imdad Khan, Advocate for Respondent Nos.2 to 5

Shaikh Liaquat Hussain, Standing Counsel for Federation of Pakistan (Respondent No.1).

Com.Muhammad Ashraf Khan, Deputy Director, DESTO, is also present

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Muhammad Ali Mazhar, J: The petitioner has challenged her Transfer Order dated 18th April, 2016 on the premise that she is unmarried female government servant having ailing parents as such she cannot be transferred due to social economic and security problems from Karachi to Islamabad.

2. In fact the petitioner wants the benefit of Sl-5, Chapter No.III of Estacode which relates to the posting of unmarried female Government Servants at the place of residence of Parents/Family. In clause-(vi) it is stated as under :-

“(vi) Unmarried female Government servants already posted at a station, including those posted on deputation beyond the prescribed maximum period, may normally not be disturbed without compelling reasons of public interest. Requests for extension of deputation period beyond the permissible limit may be considered with compassion if interests of public service would permit”.

3. It is clear from aforesaid provision of Estacode that unmarried female Government servant already posted at a station may normally not be disturbed without compelling reasons of public interest, but on the other hand this provision makes it clear unequivocally that under compelling reasons of public interest, transfer may be made despite express provision in the policy.

4. The respondent No.3 to 5 filed their comments in which it is stated that the petitioner's PhD was sponsored by them with no contribution from Federal Government. It is further averred that transfer of petitioner was made under the order of competent authority to work on the project and no other employee has requisite qualification to work on the project for which the petitioner has been transferred to Chattar. Cdr® Muhammad Ashraf Khan, Deputy Director (Administration) DESTO clearly states that there is no question of change of petitioner's discipline and even after her transfer at Islamabad, she will be required to perform same duties in her own specialized field. She has been transferred to work at Islamabad in acute exigency and larger national interest.

5. To a question raised by this court that petitioner is unmarried and looking after her ailing parents, the Deputy Director Administration stated that the petitioner may go with her parents at Islamabad where she will be provided all required facilities commensurate to her job and pay scale. It is further stated by him that after completion of project, the petitioner will be allowed to join her original posting at Karachi. On this statement the petitioner is satisfied and ready to join new posting within 02 weeks on which Deputy Director Administration, DESTO has no objection.

6. At this juncture we would like to observe that the policy enunciated in the Estacode containing bar against the

transfer of female civil servant is not absolute and unbridled, but in the compelling reasons of public interest it is quite flexible. In the present case the main reason of transfer is a project in the national interest and under the compelling reasons the petitioner is called upon to report at Islamabad, so in our view the said policy provided in the Estacode does not apply in stricto sensu in the facts and circumstances of the case and on this policy decision, national interest cannot be sacrificed or compromised. This is also a fact that the petitioner could not deny that her transfer is not made due to acute exigency and in national interest to work on a project. It is also well settled proposition of law that the transfer is one of the terms and conditions of service which cannot be defused in view of policy guidelines applicable in some particular or peculiar circumstances.

7. As a result of above discussion, this petition is disposed of accordingly along with pending applications.

Judge

Judge