

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.325/2020

Reserved on :12.02.2021
Pronounced on: 16.02.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Ashok Kumar Mahariya S/o Shri Dal Singh, aged about 39 years, R/o Village Shekhpura, Via Shri Mahavir Ji, District-Karuali, Rajasthan.

(Applicant is holding the post of Deputy Conservator of Forests- "Group A")

...Applicant.

(By Advocate: Shri Tanveer Ahmed)

Versus

1. Union of India through Secretary, Ministry of Environment, Forest & Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Jor Bagh, New Delhi-110003.
2. State of Rajasthan, through Chief Secretary, Government of Rajasthan, Government Secretariat, Jaipur, Rajasthan-302006.
3. The Principal Secretary (Forest & Environment Department), Government of Rajasthan, Government Secretariat, Jaipur, Rajasthan-302006.
4. The Principal Secretary, Department of Personnel, Government of Rajasthan, Government Secretariat, Jaipur, Rajasthan-302006.
5. The Principal Chief Conservator of Forest (Head of Forestry Force) Rajasthan-Aranya Bhawan, Jhalana Institutional Area, Jaipur, Rajasthan-302006.

(2)

6. Shri Sangram Singh Katiyar, Deputy Conservator of Forests, District Pratapgarh, Rajasthan.

...Respondents.

(By Advocate: ShriDeepanshu Sharma for Shri Anand Sharma for respondent No.1.
Shri V.D.Sharma for respondent Nos.2 to 5
None for respondent No.6)

ORDER

Per: Dinesh Sharma, Member (A):

In this case, the applicant has prayed for the following reliefs:

- "1. To call for all the records related to transfers issued vide order dated 02.08.2020 (Annex.A/1) and declare the said transfer order as void ab initio qua the applicant, being in violation of section 7/Schedule of notification dated 28.01.2014, issued by Central Government under provisions of All India Services Act, 1951, enacted under Article 312 of Constitution of India.
2. To direct the Respondent No.2 for fixing responsibility of concerned officials for violating mandatory provisions of above-mentioned Central Government notification dated 28.01.2014 (Annex.A/2) and violation of Hon'ble Supreme Court order in Writ Petition (Civil) 82/2011 in terms of rule 3(2B)/x of All India Services (Conduct) Rules, 1968 and Rule 7 of All India Services (Discipline & Appeal) Rules, 1969.
3. To order Respondent No.2 to suitably compensate the Applicant for mental agony and harassment on account of issuance of brazenly illegal transfer order by Respondents.
4. To pass any other order deemed fit in facts and circumstances of the case."

(3)

2. The applicant has been transferred from Udaipur to Baran by transfer order dated 02.08.2020 (Annexure A/1).The applicant states that it is in violation of the Indian Forest Service (Cadre) Amendment Rules, 2014 notified by the Department of Personnel, GoI on 28th January, 2014 (Annexure A/2), since he has been transferred before end of tenure of 2 years of his posting at Udaipur. He has quoted the decision of the Hon'ble Allahabad High Court in **Lok Prahari Vs. Union of India** (Misc. Bench No.2425/2011) to support his claim. He has also prayed for cancelling the transfer orders on grounds of his own ill-health and also for the reason that his wife is undergoing PhD. from Agricultural University, Udaipur.

3. An interim order granting stay on this transfer was issued by this Tribunal on 07.08.2020.

4. No reply has been filed by Respondent No.1, Govt of India, nor by Respondent No.6 (Private Respondent). A reply has been filed by Respondents No 2 to 5 in which they have denied the claims of the applicant. Besides, challenging the jurisdiction of this Bench (on account of Udaipur being within the jurisdiction of Jodhpur Bench), it is stated that no Civil Services Board (CSB) has been constituted by the Government of Rajasthan. However, in the process followed

(4)

for the transfers and postings of IFS officers, recommendations of every member who compose the board (CSB) is obtained prior to finalizing the transfer/posting. The medical reason quoted by the applicant is not a valid reason since, if that was correct, he would not be fit even to perform his present office duties. The place to which he is transferred has equally good facilities for treatment. The applicant had been transferred earlier from two posts in less than two years. He did not oppose these transfers. He persuaded officers to post him from Jaipur to Jaisalmer and later to Udaipur. The applicant's wife is an employee of ICAR and is not posted in Udaipur but is on study leave. Transfers are a necessary incident of service and no employee can claim, as a matter of right, to be posted at any particular place.

5. The applicant has filed a rejoinder repeating his claims in the OA. On the issue of jurisdiction of this Bench, the applicant has stated that the respondents are within the jurisdiction of this Bench and the proposed place of posting is also within its jurisdiction. The processing of files through member officers cannot be a substitute for a discussion by the Board. The senior most Additional Chief Secretary or Chairman Board of Revenue is also a member of Civil Services Board and the proposal did not pass through him.

(5)

The conduct of the applicant has been outstanding as evidenced by his APARs. The applicant had personally opposed his frequent transfers before the superior officers earlier. The applicant did not take medical leave since his doctor did not advice him and it is extremely difficult to shift at new place while treatment is going on at one place.

6. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties through video conferencing. The main issue is whether the applicant's transfer, before the end of two years, from a cadre post, is illegal, being in violation of Rule 7(3) of the Indian Forest Service(Cadre) Rules. The Rule 7 as well as the relevant schedule (annexed at A/2 of the OA)are reproduced below:-

"7. Postings.-(1) All appointments of cadre officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules.

(2) All appointments to cadre posts referred to in sub-rule (1) shall be made—

(a) in the case of a State Cadre, by the State Government; and

(b) in the case of a Joint Cadre, by the State Government concerned:

Provided that the Central Government or the State Government may transfer a cadre officer for the purpose of filling leave vacancies or for making temporary arrangements for a period not exceeding three months, delegate its power of making appointments to cadre posts to Head of Departments.

(6)

(3) A cadre officer, appointed to any cadre post shall hold office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(4) A cadre officer, appointed to any ex-cadre post shall hold office for such period as may be specified by the State Government for that post, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefor."

(b) for the Schedule, the following Schedule shall be substituted, namely:-

Schedule

[See rule 7(1) and (5)]

1. Composition of the Civil Services Board:

Every State Government shall constitute a Civil Services Board which shall consist of-

- (i) Chief Secretary - Chairman
- (ii) Senior most Additional Chief Secretary - Member
or Chairman, Board of Revenue
or Financial Commissioner or an officer
of equivalent Member rank and status
- (iii) Principal Secretary or Secretary,
Department of Personnel in
the State Government - Member Secretary
- (iv) Principal Secretary or
Secretary, Forest - Member
- (v) Principal Chief Conservator
of Forest.

2. Functions.— (a) The Civil Services Board shall make recommendation for all appointments of cadre officers.

(b) The Civil Services Board shall examine the cases of officers who are proposed to be transferred before

(7)

completion of minimum period of service as specified under sub-rules (3) and (4) of rule 7 of the Indian Administrative Service (Cadre) Rules, 1966.

(c) The Civil Services Board may consider for transfer before the tenure fixed under sub-rules (3) and (4) of rule 7 of the Indian Forest Service (Cadre) Rules, 1966 based on such circumstances as it thinks fit.

(d) The Civil Services Board may recommend the Competent Authority the names of officers for transfer before completion of minimum tenure with reasons to be recorded in writing.

3. Procedure.— (a) The Civil Services Board shall seek detailed justification from the Administrative Department of the concerned State Government for the transfer of an officer before the specified tenure.

(b) The Civil Services Board shall—

(i) consider the report of the Administrative Department along with any other inputs it may have from other reliable sources;

(ii) obtain the comments or views of the officer proposed to be transferred based on the circumstances presented to it in justification of the proposal;

(iii) not make recommendation for premature transfer of Cadre Officers unless it has been satisfied itself of the reasons for such premature transfer.

(c) The Civil Services Board shall submit a quarterly report in such Form as it thinks fit to the Central Government clearly stating the details of officers recommended to be transferred before the minimum specified tenure and the reasons therefor:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board for the reasons to be recorded in writing.”

7. A plain reading of these rules leaves no doubt that **all** postings (and not just transfers before end of tenure) of cadre officers are to be made on recommendation of a duly constituted Civil Services Board. The applicant has challenged his transfer before the end of 2 years, which,

(8)

according to him, is in violation of Rule 7(5) since there is no CSB recommendation to transfer him from cadre posts before the end of minimum period prescribed in Rule 7(3). The fact remains that there is no CSB constituted in the State of Rajasthan. If transfers and postings are to be declared illegal for want of recommendation of a CSB, this would render all postings and transfers of forest cadre officers in Rajasthan illegal, including his own posting to Udaipur, which was also apparently in disregard of these rules. Even the direction that we issue, if we agree with the request for reliefs prayed by him, will be in violation of these rules, as no CSB exists. The problem, therefore, lies in not constituting the CSB, as prescribed under the rules. We cannot, selectively or at the behest of any party, undo only part of an action unpalatable to that party, on a ground that makes the whole action illegal. The respondents have explained that they have made transfers and postings following a process that takes into consideration recommendations of all the proposed members (except one) of the CSB. In the absence of a CSB, this could be the closest way to ensure that there is no arbitrariness in the process of transfers and postings. There are a large number of decisions by the Apex Court where it has been made clear that the officers serving with the Government should be prepared to work where they are posted and the transfers

(9)

should not be interfered by the Courts/Tribunals unless there is a clear evidence of bias, extraneous considerations or violation of rules and guidelines. Though there is an apparent, general violation of rules, it is not specific only to the applicant. The applicant has not shown any convincing reason to lead us to any suspicion of bias or malice only in the transfer of the applicant. The applicant wants us to quash only his transfer orders, for what could be termed as a general failure. His prayer for fixing responsibility of concerned officials for violating the Notification dated 28.01.2014 (Annexure A/2), is clearly not the main intent of the applicant and is not pursued by him either through any mention in the rejoinder or during the course of arguments. We also notice that the applicant was posted at Udaipur by an order dated 07.03.2019 (Annexure A/3), and thus, now, is close to the time which would have made his claim in this OA infructuous.

8. For reasons mentioned above, the OA lacks merit and is, therefore, dismissed. The interim order dated 07.08.2020 is vacated. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/