

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.446/2020
M.A. No.583/2020**

Reserved on :21.12.2020
Pronounced on:24.12.2020

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

Gajendra Singh Parihar S/o H.S.Parihar, age about 57 years,
R/o A-190, Mahesh Nagar, Jaipur, presently posted as
Income Tax Officer, Ward No.6(3), Jaipur – Group (B)
Mo:9530400661.

...Applicant.

(By Advocate: Shri Mahendra Shah)

Versus

1. The Union of India, through its Secretary, Ministry of Finance, Department of Revenue, CBDT, North Block Delhi-110001.
2. The Principal Chief Commissioner, Income Tax, Jaipur, Rajasthan, New Central Revenue Building, Bhagwan Das Road, Jaipur – (Raj.) 302005.

...Respondents.

(By Advocates: Shri Gaurav Jain)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for quashing the order dated 07.10.2020 by which he has been transferred from Jaipur to Jodhpur, instead of Tonk/Alwar/Sikar as requested by him.

(2)

2. The applicant is a Group 'B' officer holding the post of Income Tax Officer. It is stated that the transfer is contrary to the transfer policy framed in 2017-18, which, in absence of any other rules or law enacted in this regard, has the force of law and cannot be deviated without justifiable reason. The policy mandates the local placement committee to accommodate officers at their first choice station. If that is not possible, the committee should endeavour to accommodate them to their other choice stations; and, if vacancies were not available there, at stations near their choice stations. The applicant had given choices, in order of preference for Tonk, Alwar and Sikar. The applicant has alleged that the respondents have not looked into the application of the applicant and there has been no deliberation in respect of non-availability of vacancy. In fact, there was a vacancy at Tonk and one Shri Daya Shankar Madhwani has been transferred to Tonk, even though he had not even given choice for Tonk. Another person, Shri Balveer Singh Tanwar has been given the place of his first choice in violation of the rules. The applicant has also stated that his father and mother are very old and suffering from various ailments, and it is his fundamental duty to take care of them. The transfer deprives the applicant from taking care of them and as such is in violation of Article 21 of the Constitution.

(3)

3. The respondents have filed a reply denying the claims of the applicant. It is stated that the transfers are as per the transfer policy. The applicant has been transferred after having completed his normal tenure. He has been posted to Jodhpur taking into consideration the acute shortage of officers at Jodhpur, with the creation of Regional e-assessment Centre (ReAC) at Jodhpur. Even after effecting transfers, there is still a deficit of officers at Jodhpur. The respondents have cited the judgment of the Hon'ble Apex Court in the case of **Punjab National Bank and Ors vs. All India New Bank of India Employees Federation** (1977) 10 SCC 627, **Shilpi Bose and Ors vs. State of Bihar and others**, AIR1991 SC 532 and **State of Madhya Pradesh and Ors vs. S.S.Kourav and Ors**. AIR 1995 SC 1056. These are to support their contention that there is no vested right of any government employee to remain posted at one place or the other, and the courts should be reluctant to interfere unless there is violation of any mandatory statutory rule or on ground of mala fides. The reply also gives details of the procedure adopted for Annual General Transfers and measures taken by the department to ensure transparency in the whole procedure. It is stated that out of the five officers who were not given their choice of posting 3 were

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posted at Jodhpur, due to acute shortage of officers there. All these officers had more or less given choice for the same stations nearby Jaipur and it was not possible to accommodate all of them at their choice stations. The reply also gives reasons why Shri Daya Shankar Madhwani and Balveer Singh Tanwar were posted/kept at Tonk and Jaipur respectively. This was since Shri Daya Shankar Madhwani had finished his normal cooling off period at Jodhpur and given stations of choice as Jaipur, Ajmer and Kishangarh, and Shri Balveer Singh Tanwar on grounds of his wife's serious health problems.

4. In the rejoinder filed by the applicant, he has reiterated his earlier claims about the transfer not being in accordance with the policy. It is stated that nothing has been placed on record to show that the Local Placement Committee considered the request of the applicant and endeavoured to place him at his preferred place or any nearby place. The applicant has cited cases of some other officers too (Shri Bajrang Lal Gupta transferred to Sawai Madhopur twice but never posted to Jodhpur, Shri Mukesh Agarwal shifted to Makrana from Jodhpur, without completing his tenure at Jodhpur). The rejoinder also cited the case of **Lt. General Manomoy Ganguly VSM Vs. Union of India and Others** (2018(18) SCC 83) to support the applicant's

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contention that once a policy has been framed it has to be adhered to.

5. A reply to rejoinder has been filed reiterating the arguments of the respondents given in their reply. They have also explained the reasons for transferring Bajrang Lal Gupta and Mukesh Agarwal to SawaiMadhopur and Makrana. It is stated that the Local Placement Committee has made endeavour to provide maximum accommodation to employees but it is not possible to give 100% satisfaction to all the employees and it is an administrative action to achieve the organization goals of the department. Out of 62 transfer orders effected, minimum grievances were received and only two Original Applications have been filed before this Tribunal. They have also denied the applicability of the judgment in Lt. General ManomoyGanguly (supra) on the facts of this OA, as the cited case was with respect to inter-se seniority and suitability for the post of DGMS(Army) and not in the matter of transfers and postings.

6. We have gone through the pleadings and heard the arguments of both the parties, through video conference, on 21.12.2020. We also sought the records of the Local Placement Committee meeting relating to Annual General Transfers 2020 and have perused those records. The case of

3.5 If an officer cannot be accommodated at his first choice station, then it shall be the endeavour of the Local Placement Committee to

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accommodate him/her at one of his two choice stations subject to availability of the vacancies and administrative convenience. In case, it is not feasible to accommodate him/her at his choice stations due to non-availability of vacancies, he/she shall be accommodated to a nearer station to his/her choice stations. "

It is clear from the above that though the word used is "shall", it is only with respect to "endeavour to accommodate". It cannot be read to be a mandate to post every person as per his/her choice alone.

7. We have gone through the reply of the respondents where they have clearly stated that all transfers have been done following the recommendations of the Local Placement Committee, after following a transparent procedure of seeking applications and publishing these on the web so that everyone was aware of who asked for what stations. We have also gone through the records of the Local Placement Committee which gives elaborate description of who asked for which place, where did they work in the past and details all relevant considerations with respect to each and every applicant in a properly organized format. Transfers are not acts of quasi judicial nature and it may not be possible to record each and every reason with respect to each and every person in every transfer and posting exercise. The respondents have explained, with reason, why, in the

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instances cited by the applicant, some persons were accommodated, which the applicant considers to be a violation of policy. There is apparently no violation of policy in case of those persons also. The learned counsel for the applicant argued about why somebody else's illness was considered and why the applicant's parents illness was given lesser weightage than somebody else's wife's illness. We are sorry to say that it is not for this Tribunal to substitute its judgment for the judgment of the Placement Committee in such matters, in the absence of any proof of mala-fides. Having gone through the policy in detail, and the minutes of the decisions of the Local Placement Committee, we do not find any violation of the department's transfer policy to attract intervention from this Tribunal. The OA is, therefore, not allowed. The interim order issued by this Tribunal dated 14.10.2020 is hereby vacated.

8. MA No.583/2020 seeking adjournment in the matter is disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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