

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.148/2020

Reserved on :05.11.2020
Pronounced on :19.11.2020

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

Abhay Choudhary S/o Shri Mahvier Singh age about 37 year, Resident of Village & Post Hanumanpura, Tehsil & District Jhunjhunu, presently working as Assistant Audit Officer (Commercial) (Gazetted Group B post)) at the office of Accountant General (Economic & Revenue Sector Audit) Rajasthan, Janpath Jaipur-302005, (Mobile No.9460936300).

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. The Comptroller & Auditor General (C & AG) of India, 09, Deen Dayal Upadhyay Marg, New Delhi-110124.
2. The Principal Director (Commercial),The office of Comptroller & Auditor general(C & AG) of India, Pocket - 09, Deen Dayal Upadhyay Marg, new Delhi-110124.
3. The Accountant General (Economic & Revenue Sector Audit), Rajasthan, Janpath, Jaipur-302005.

...Respondents.

(By Advocate: Shri Anand Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

The case of the applicant is that he has been transferred, by order dated 21.02.2020, from the office of Accountant General (E&RSA) Rajasthan, Jaipur to the office of Principal Director of Commercial Audit & Ex-Officio Member Audit Board Ranchi at Salem. This transfer is in violation of the transfer guidelines according to which he cannot be transferred out of his "base station", which is Jaipur. It is also against the guidelines requiring posting husband and wife (working under the Central or the State Government) at the same station or at a nearby station wherever possible. The applicant has also stated that his father is suffering from age related ailments and that his continuance in Jaipur is necessary to take care of his father.

2. The applicant had also prayed for interim relief on these grounds, which was not allowed by this Tribunal. The applicant filed a Writ Petition(No.7619/2020) which the Hon'ble High Court disposed of by their order dated 13.10.2020. The order is reproduced below:-

"Heard learned counsel appearing for both the sides.

The petition is disposed of with the direction to the Central Administrative Tribunal to decide the

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Original Application (main application) of the writ petitioner within four weeks from today.

Additionally, the petitioner is at liberty to file fresh representation before the concerned authorities for consideration in accordance with the prevalent transfer policy.”

3. A reply has been filed by the respondents in which they have denied the claim of the applicant. It is stated that the applicant has been working at Jaipur since he was transferred here from Ahmedabad, Gujrat, in the year 2012. He has been transferred out twice before, in the year 2015 and 2017, but those transfers were cancelled at his request. The applicant has been transferred as per administrative convenience. The reply also mentions that the applicant has been awarded minor punishment following a departmental proceedings, and therefore does not have a right to continue at the base station as per the guidelines also. The guidelines are only illustrative and not exhaustive and it is not possible to retain the applicant at Jaipur throughout his service career (on spouse ground). The applicant's wife is working as a Sr. Teacher under the State Government, at Jhunjhanu which is quite far from Jaipur. The applicant has not filed any complaint against his transfer before the superior authorities and thus has not exhausted all his remedies before coming before this Tribunal. The applicant has already been relieved of his duties on 26.02.2020.

4. The applicant has filed his rejoinder denying the averments of the respondents. He has reiterated his claim for retaining him at his base station Jaipur, on spouse ground, in accordance with the guidelines, citing decisions of the Hon'ble Supreme Court in **Somesh Tiwary vs. Union of India & Ors.** (2009 2 SCC 592), Hon'ble Jharkhand High Court in **Ram Bihari Prasad Singh vs. The State of Jharkhand** (WP(S) No.329 of 2019 and also the decisions of the Allahabad Bench of the Tribunal in **Subodh Kumar Singh vs. Union of India & Ors.** [2006 (91) SLJ 328 CAT] and Cuttack Bench of the Tribunal in **Prashanta Kumar Pradhan vs. Union of India & Others** (OA No.260/2019). He has also argued that the transfer cannot be made by way of a punishment.

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties through video conferencing. The Tribunal has limited scope to interfere in transfer matters unless there are allegations of mala fides, illegality or violation of guidelines creating suspicion of extraneous factors working behind such transfers. In the present case, the applicant has alleged transgression of guidelines in his transfer away from his "base station". The respondents have not specifically denied

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Jaipur being the base station. They have supported transfer outside the base station on ground that the applicant has been awarded minor punishment for a dereliction. In such cases, the guidelines allow transfer outside base station. We have gone through these guidelines (Annexure R/12). The first two principles stated in the guidelines are that "Office requirement and administrative convenience will have precedence over the convenience of individual officers" and "Transfer or posting to a particular station cannot be claimed as a matter of right by officers."

The same guidelines, in para 12, state that "An Assistant Audit Officer who has been penalized under CCS(CCA) Rules during past three years may be transferred to a station other than his base station."

6. The learned counsel for the applicant argued that the transfer order does not mention anywhere that it has been made on account of administrative exigencies. He also brought to our attention the judicial pronouncements (enclosed as Annexures A/12 to A/15 with his rejoinder) to support his claim that the transfer cannot be made by way of punishment. We have gone through these decisions. In the case before us, the transfer is apparently not by way of a punishment. The respondents have brought the fact of

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punishment in their reply only to counter the claim of the applicant about the protection available to him under the guidelines (from posting outside the base station). Though not specifically mentioned in the transfer order (Annexure A/1), that it has been made due to administrative reasons, in the light of the specific pleading by the respondents to this effect, we have no reason to believe it is otherwise.

7. Thus, the only remaining issue before us is whether the applicant can claim to have his transfer cancelled on "spouse ground". The learned counsel for the applicant brought our attention to the decision of the Cuttack Bench of this Tribunal in Prashant Kumar Pradhan's case (supra). We find the facts of that case to be materially different from the facts of the present case. In the afore-cited case, the Tribunal set aside an order passed by the concerned authorities, as those orders were not passed by the person directed, and were not also not found to be in full compliance of that Tribunal's earlier direction. Even otherwise, by no stretch of logic, that decision can be taken as a ruling to stop all transfers of any person away from where his/her spouse is stationed.

8. For the aforementioned reasons, we cannot intervene in this transfer matter. The OA is therefore, dismissed. The

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applicant, as already directed by the Hon'ble High Court of Rajasthan, has the liberty to pursue his case, for transfer on "spouse ground", with the appropriate departmental authorities. They would be free to consider his request and take a decision on relevant considerations. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/