

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of order : 03.02.1998.

O.A.No. 353 OF 1997.

Jagdish Chander Joshi R/o Sh. Shiv Dutt Joshi, Aged about 34 years, working as a peon in the office of Central Ground Water Board, Jodhpur, R/o Plot No. 69, Shivpuri, Mahamandir, Jodhpur.

- Applicant.

Vs.

1. Union of India through the Secretary,  
Ministry of Water Resources,  
New Delhi.
2. Administrative Officer, Ministry of Resources,  
Headquarter Office, Central Ground Water Board,  
N.H.V, Faridabad, Haryana.
3. Executive Engineer, Central Ground Water Board,  
Division XI, 22(2), Heavy Industrial Area, Near  
Jodhpur Dairy, Jodhpur.

- Respondents.

Present: Mr. Y.K. Sharma, Advocate, for applicant.  
Mr. K.S. Nahar, Advocate, for respondents.

CORAM : HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER  
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

PER HON'BLE MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that the impugned orders dated 5.8.1997 (Annex.A-1) and 11.11.1997 (Annex.A-2) be quashed and the respondents

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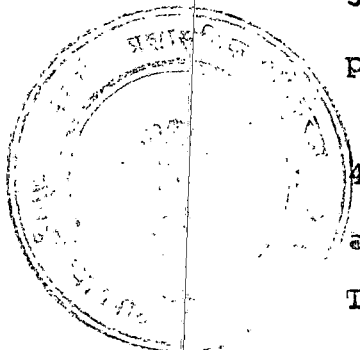
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be directed to take the applicant on duty forthwith and allowed him all consequential benefits including the salary for the intervening period i.e. from 1.9.1997 till he is taken on duty.

2. Notice of this application was given to the respondents who have filed their reply. Respondents have stated in their reply that transfer of the applicant was made in public interest. On representation by the applicant he was accommodated at Bareilly. The applicant was duly relieved to join his duties but he has not carried-out the transfer orders and is absented from duty. Therefore, the O.A. be dismissed with costs.

3. We have heard the learned counsel for the parties and gone through the record.



4. The learned counsel for the applicant has argued that the applicant was initially transferred to Trivendrum but on applicant's representation he was transferred to Bareilly. When he went to join at Bareilly, the applicant was not allowed to join his duties by the concerned authorities and he had no option but to come to Jodhpur. At Jodhpur he was not taken on duty for pretty long time and thus the authorities have made <sup>him</sup> a shuttle cock. The transfer is neither

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in public interest nor in exigencies of public interest and, therefore, the same deserves to be quashed. He has cited the following rulings in support of his contentions :-

1. (1996) 34 ATC Page 172  
Surendra Mohan (Dr) Vs. State of U.P. & Ors.
2. (1997) 2 ATJ Page 608  
U.C. Chaturvedi Vs. U.O.I. & Others.
3. 1989 (1) ATR (CAT) Page 253  
M.P. Chauhan Vs. U.O.I. and Ors.
4. 1991 (2) ATJ Page 266  
Ashok Kumar Mohey Vs. U.O.I. & Others.
5. 1989 (1) S.L.J. (CAT) Page 641.  
Kamlesh Trivedi Vs. Indian Council of  
Agricultural Research and Others.

5. On the other hand, the learned counsel for the respondents has argued that the applicant was transferred in public interest and in exigencies of administration. The applicant was relieved to join at Trivendrum but before the applicant could join at Trivendrum he was accommodated at Bareilly on his own representation by suitably amending the transfer order. The applicant had taken transfer T.A. earlier but had not joined at Bareilly. Even if the applicant was not taken on duty by the authorities concerned at Bareilly on 15.9.1997, as alleged by the applicant, he never reported back at Jodhpur office earlier than 17.11.1997, on which date he was again relieved to join at Bareilly vide order Annex.A-6. The applicant refused to accept the relieving order and went home. Thereafter he did not receive the registered letter through which the said relieving order was sent to him at his residential address. It was also argued

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by the learned counsel for the respondents that the manner in which the period of absence from duty would be dealt with has been mentioned in the Annex.A-2 dated 11.11.1997. The applicant has alleged no malafides in his transfer. Therefore, the applicant is not entitled to any relief whatsoever.

6. We have given our earnest consideration to the rival arguments and gone through the record. We have also gone through the departmental record relating to the present controversy and the cited rulings.

7. There cannot be two opinions about the principles laid down in these rulings but because of the difference of facts, the case law relied upon by the learned counsel for applicant, cannot be made applicable in the instant case. This is a settled position of law that transfer order is not required to be a reasoned order. Time and again, the Hon'ble Supreme Court has laid down that transfer can be interfered with only when the transfer is mala fide or has been made in colourable exercise of powers. Transfer order made in exercise of executive powers cannot be interfered with if it has been made in public interest. Therefore, we have to see in the instant case, whether the transfer is malafide or has been made in colourable exercise of powers.

8. There is no dispute about the fact that the applicant has all India transfer liability. He was initially transferred to Trivendrum vide order dated 5.8.1997 (Annex.A-1). Consequent to this, applicant

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was ordered to be paid Rs. 5,500/- as an advance transfer T.A. vide Annex.R-4 and was also granted one month's advance pay vide an order dated 22.8.1997 (Annex.R-5). The applicant was ordered to be relieved vide Annex. R-6 dated 17.11.1997. In the meantime, the applicant vide its representation dated 12.8.1997 (Annex. R-1) requested that he be adjusted somewhere near Jodhpur and gave Bareilly, Ahmedabad and Faridabad as his first, second and third preference respectively. The concerned authorities vide their Corrigendum dated 3.9.1997 (Annex. A-5) directed that with respect to the applicant's transfer Bareilly be read in place of Trivendrum. Thereafter, the applicant vide his joining report dated 15.9.1997 (Annex.A-6) reported at Bareilly, however, he was not taken on duty because he had not addressed the joining report properly and had also not submitted his relieving order. The applicant instead of doing the needful, as directed, came back to Jodhpur and remained absent or away from duty. Further vide application dated 17.11.1997 (Annex.R-7) applicant reported on duty at Jodhpur giving reference of a letter dated 11.11.1997 issued by the Headquarter Office. He was thereafter relieved on the very same day but the applicant has not joined at Bareilly as yet. From the pleadings or any other material on record, it is not made out that the applicant was malafidely transferred to Trivendrum and then to Bareilly. When a Government servant has an all India transfer liability, he can always be transferred to another place. In this case if the authorities had any malafides against him the

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applicant would not have been accommodated at Bareilly at his own request. The very fact that he was accommodated at Bareilly, it appears that he was mistakenly transferred to a longer distance and when the mistake came to the notice of the higher authorities the same was accordingly corrected. The applicant has been transferred in colourable exercise of powers has also not been established. As mentioned above, the applicant was relieved on 29.8.1997 to join his posting at Trivendrum and while he was availing the joining time the applicant was adjusted at Bareilly vide an order dated 3.9.1997 Annex.A-5. It appears that after availing the joining time the applicant reported at Bareilly on 15.9.1997. However, when he was not taken on duty by the concerned authorities on some technical reason, the authorities at Headquarters were good enough to treat this visit of the applicant as tour on duty. Therefore, the applicant cannot argue that respondents had acted malafidely. On the contrary, the concerned authorities had not gone into the technicalities of applicant's approach to the matter and treated his visit to Bareilly as tour. In our opinion, the applicant was bound to report at Bareilly by properly addressing an application for joining duties. At the same time he was under an obligation to submit his first relieving order to show that he was relieved from Jodhpur and should have also shown to the concerned authorities his transfer order to Trivendrum and the Corrigendum issued thereafter giving him posting at Bareilly. But he did not do any such thing. He came back to Jodhpur and remained away

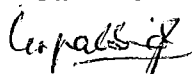
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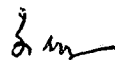
from duty upto 17.11.1997. When applicant reported on duty on 17.11.1997 in pursuance to the directions contained in Annex.R-2 he was relieved to join duties at Bareilly on the very same day which order he had not cared to collect nor received. In our opinion, the applicant cannot avoid ~~the~~ joining at Bareilly on the ground that he was not given pay for the intervening period or has not been given any transfer grant. Needless to say that applicant has yet to account for Rs. 5,500/- which he had taken as transfer grant while he was under transfer to Trivendrum. Since the applicant had also remained absent from 15.9.1997 till 17.11.1997 and even thereafter till date, therefore, he cannot say that pay for the intervening period should first be paid to him. This period would be adjusted as per the directions contained in the letter Annex.R-2 as and when the applicant reports on duty. In our opinion, it has also not been established that the applicant was transferred in colourable exercise of power or to accommodate any other person.

9. We have gone through the records submitted by the learned counsel for the respondents and are of the opinion that the present transfer is in public interest. Therefore, the same is not required to be interfered with.

10. From the foregoing discussion, we come to the conclusion that applicant has not been able to make out a case worth interference. The application deserves to be dismissed.

11. We, therefore, dismiss the Application at the admission stage. However, the parties are left to bear their own costs.

  
( GOPAL SINGH )  
Administrative Member

  
( A.K.MISRA )  
Judicial Member

j.r.m.

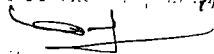
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Part II and III destroyed  
in my presence on 2-5-2004  
under the supervision of  
Solicitor General as per  
order dated 2/2/2003

  
Solicitor General (Records)