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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of order : 18.11.97.

O.A.No. 211 of 1997.

Sumer Singh S/o Shri Shaitan Singh aged about 37 years, working as Technical Operator of Drilling in the Office of Central Ground Water Board, Jodhpur, R/o V.P.O. Dhelah Via Lohal District-Jodhpur.

.....Applicant.

VERSUS

1. Union of India through Secretary, Central Ground Water Board, N.H. IV, Faridabad, Haryana.
2. Administrative Officer, Central Ground Water Board, Division-XI, 22(2), Heavy Industrial Area, Near Jodhpur Dairy, Jodhpur-03.

.....Respondents.

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CORAM :

HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER.

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Mr. Y.K.Sharma, counsel for the applicant.

Mr.K.S.Nahar, counsel for the respondents.

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BY THE COURT :

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order Annex.A/1 be quashed.

2. Notices of this O.A. were sent to the respondents. They have filed their reply stating therein that applicant has not alleged any mala fides against his transfer, therefore, the O.A. is not maintainable.

3. The applicant has filed rejoinder to the reply and reiterated its claim.

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4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for applicant has argued that the Rig on which he and many others were working, was transferred to Ranchi. As per the extent norms, the persons working on the Rig should be transferred alongwith the Rig but the applicant was transferred to Bareilly and then on his representation, his transfer to Bareilly was cancelled and he was transferred to Ahmedabad whereas many others working on the same Rig have been retained at Jodhpur against the norms. He has also argued that applicant has an old mother and school going children, His wife is also ailing. Therefore, his transfer out of Jodhpur would effect the entire family and applicant would not be able to take care of his family members. He has requested that the transfer of the applicant deserves to be quashed.

6. In reply, the learned counsel for respondents has argued that applicant has alleged no mala fides against the respondents in transferring him from Jodhpur. Therefore, the order of transfer cannot be interfered with. He has also argued that generally the staff working on a Rig, is transferred alongwith the Rig to the place where the Rig has been transferred. But in order to safeguard the interest of the working hands, options are invited from persons working on other Rigs also at different stations, informing them about the transfer of the rigs and asking their option incase they wish to go to a place where the Rig has been transferred, so that needy persons could be adjusted. In this case, the Rig was transferred to Ranchi but instead of sending the applicant to a far distant place, he was first transferred to Bareilly and then on his representation, he was adjusted to a place nearer to Jodhpur i.e. Ahmedabad. He has also argued that few other persons who were initially working on the transferred rig, have been retained at Jodhpur, but while retaining such persons at Jodhpur, no hostile discrimination has been made. Persons of

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shorter stay have been retained at Jodhpur and persons of longer stay at Jodhpur, have been transferred. The applicant was working at Jodhpur since his appointment i.e. since 1988 and, therefore, he was transferred. He has also submitted that many persons who were transferred to different places, have been relieved and so also, the applicant, but as the applicant has not carried out the orders, therefore, he does not deserve any relief. His O.A. deserves to be dismissed.

7. The learned counsel for the respondents has cited the following judgments in support of his contention :-

- (i) ATC (1993) 25 844
- (ii) ATC (1994) 28 625
- (iii) ATC (1987) 2 574.

8. I have considered the rival arguments and gone through the rulings cited by Shri K.S.Nahar, counsel for respondents.

9. In (1993) 25 ATC 844, - Union of India and Others Vs. S.L.Abbas, Hon'ble Supreme Court has held that "unless order is mala fide or is made in violation of statutory provisions, Courts/Tribunals cannot interfere. Not following instructions/guidelines, not sufficient to quash the order as being mala fide. Authority not obliged to justify the transfer by adducing the reasons thereof. The Executive Instructions, such as for transfer of Government servants, are in the nature of guidelines. They do not confer any legal enforceable right."

10. In (1987) 2 ATC 574 - Krishna Dev Dutt Vs. Union of India and Others, it was held by the Calcutta Bench of C.A.T. that 'departmental guidelines cannot be made basis for seeking immunity from transfer."

11. In (1994) 28 ATC - Savitri Wadhvani (Smt) Versus Union of India and Others, it was held by Lucknow Bench of C.A.T. that "transfer in violation of policy guidelines cannot be challenged

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on that mere ground."

12. From the principles laid down in above rulings, it is very clear that a transfer which is against the departmental guidelines, cannot be successfully challenged in the Courts or Tribunal. Moreover, the transfer which is based on no mala fides and is purely on administrative grounds, also is not subject to interference by the Courts or the Tribunal. In the instant case, applicant has alleged no mala fide in respect of his transfer. The transfer is also not made against any statutory rules. Therefore, in my opinion, applicant cannot say that he was wrongly transferred to Ahmedabad. In fact, the authorities have considered his posting to a place which is nearer to Jodhpur. As per norms, he could have been transferred to Ranchi alongwith the Rig but the respondent-department was quite sympathetic to the persons working on the Rig. Their claims for nearer posting or prayer for retaining them at Jodhpur were considered by the authorities. Hence, no interference is necessary.

13. Alongwith the rejoinder, applicant has filed a copy of the Office Order dated 30/11/1994, which is Annex.A/6, deputing the persons on a particular Rig. On going through this order, I find that 18 to 22 persons were posted on each rig in different capacity to handle the Rigs. If a Rig is transferred and staff is retained at the place of their posting, then the Rig at the transferred station would be lying useless and in-operative and the employees working on the rig would be without anywork at the old station. Therefore, when the Rig is transferred to any other station, then the working staff is also transferred alongwith the Rig. Therefore, it is quite in consonance to the administrative action to transfer such persons to out stations and no mala fide can be found in such transfer.

14. In ATC (1993) 25 844, the Hon'ble Supreme Court has clarified the position beyond any discussion and has left it to the employer

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to depute his employees as per his requirement, to any place of work under the department. In the instant case, the applicant had all India transfer liability. His appointment letter Annex.A/2 specifically mentions that appointed persons can be transferred to any part of India. Thus, applicant cannot say that his transfer is bad in the eye of law.

15. During the course of arguments, it was argued by the learned counsel for respondents that applicant was relieved from the present post on 9.5.1997 to join his new posting at Ahmedabad but he has not joined there. If that be so, it appears that applicant is not obeying the orders of his superiors. To establish his bonafides, he ought to have joined at Ahmedabad and then could have represented his domestic difficulties to the concerned authorities for his adjustment at Jodhpur but he has not carried out the transfer orders. In such transfer matters, if the employee continues to stay even after he has been spared then he does so at his own cost and risk. He stands to lose either his leave or his pay as the case may be. However, it is observed here that after the applicant carries out the transfer order and joins at Ahmedabad, he may make a representation to the department and the department may consider his representation on merits for his adjustment at Jodhpur if possible, within a reasonable time.

16. From the above discussion, I come to the conclusion that application has no merit and the transfer order is not required to be interfered with. The O.A. deserves to be dismissed.

17. The Original Application is, therefore, dismissed. The parties are left to bear their own costs.


(A.K.MISRA)
Member(J)

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