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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 216/2003

Date of decision: this the 16TH day of March, 2004

CORAM:

Hon'ble Mr. J. K. Kaushik, Judicial Member

Shri M.L. Soni, M.E.S. No.-169630, S/o Late Shri B.M. Soni, aged about 58 years, resident of - Opposite Sunaro-Ki-Bageechee, Ratanada, Jodhpur (Rajasthan) at present employed on the post of JE E/M under Head Quarter C.W.E. Air Force, Jodhpur (Raj.).

.....Applicant

(Rep. By Advocate Mr. B. Khan, for applicant)

V e r s u s

- (1) Union of India through Secretary to Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
- (2) Head Quarter, Chief Engineer, Southern Command, Pune-411001.
- (3) The Chief Engineer (Air Force), Ahmedabad (Gujarat).
- (4) Commander Works Engineer (Air Force), Jodhpur (Rajasthan).

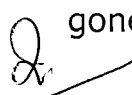
.....Respondents.

(Rep. By Advocate Mr. Vinit Mathur, for respondents)

ORDER

Shri M L Soni has assailed the order dated 30.10.2003 (A/1) by which he has been transferred for CWE (AF) Jodhpur to GE (NW) Bhand UP, Mumbai, and relieving order dated 10.6.2003 at Annexure A/2.

2. I have heard the learned Counsel for the parties and have gone through the documents produced. In view of urgency of

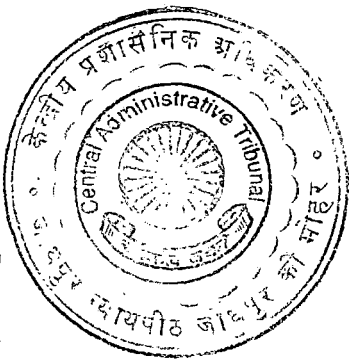


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the matter I propose to dispose of the case at the admission stage itself, for which both the parties have consented

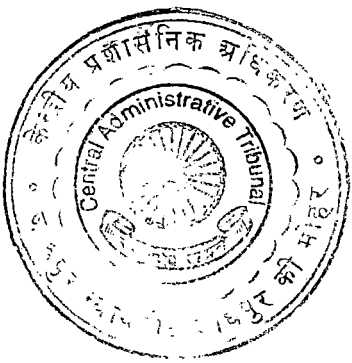
3. The concise facts of this case are that applicant was initially appointed to the post of Charge Mechanic on dated 26.5.71 and in due course he enjoyed his further promotions; last one being the JE E/M. Since his initial appointment, he served at numerous places and at present he is serving at Jodhpur. He going to retire on superannuation on dated 30.6.2006 and therefore left to serve for about two and a half years.

4. The further facts of the case are that the respondents have issued transfer guide line/policy in respect of Group C and D employees, prescribing that one should not be transferred during preceding three years of one's retirement except to a station of one's choice. The impugned order came to be issued on dated 30.10.2002 in respect of number of employees including the applicant. The applicant was ordered to be transferred from Jodhpur to Mumbai. However, he was not relieved and retained in the interest of administration till issuance of order-dated 24.9.2003 (A/2). He protested against the same through a representation, which came to be duly forwarded with recommendation to the 4th respondent on dated 17.6.2003. But the same has been rejected without considering the provision relating to prohibition on transfer during last three years prior to retirement. The impugned orders have been challenged on diverse grounds and I shall deal them in later part of this order.



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5. The respondents have contested the case by filing a written reply. Their case is that the norms relied on by the petitioner are nothing but guidelines and are not mandatory in nature and in the exigency of service, posting and transfer have to be made keeping public interest in view. This Tribunal would not like to interfere in the lawful order passed by the competent authority. The applicant is working at Jodhpur since 20.6.88. He did not cross the age of 57 years at the time of issue of the transfer order and there is no violation of the transfer guidelines also. He could not be relieved due to service exigencies for joining at new place. He cannot be allowed to take advantage of the same. The representation of the applicant was duly considered by the competent authority and the same came to be rejected since he had not crossed 57 years of age when the transfer order was issued. The grounds enunciated in the original application have been generally denied.

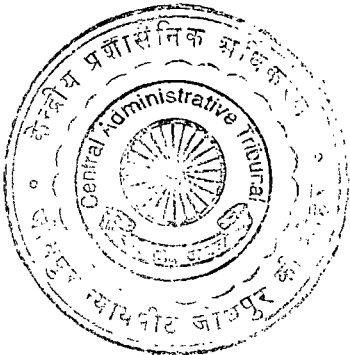


6. Both the learned counsels have reiterated their pleadings and there is hardly any quarrel regarding factual aspect of the case. The petitioner's main grievance about the original transfer order dated 30.10.2002 read with order dated 24.8.2003 transferring/relieving him from Jodhpur to Mumbai is that it was against the norms as laid down by the competent authority. He has also tried to show that there was a clear vacancy for the post held by applicant at Jodhpur on which he could be conveniently accommodated. However, the learned counsel for the respondents has submitted that there is no pleading to this effect. He has further contended that the transfer guidelines are

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not mandatory or statutory in nature. The Hon'ble Supreme Court has held in a number of cases that unless the instructions are statutory, they are not binding on the respondents and the transfer order can be challenged only on the ground that it is violative of any mandatory statutory instructions or that it is malafide.

6(A). I have considered the rival submissions put forward by the learned Counsel for the parties and have perused the material on record. The law relating to the transfer of the Government servants has been laid down in a number of decisions by the various High Courts as well as the Hon'ble Supreme Court. In the case Union of India v. S. L. Abbas, 1994 SCC (L&S) 230, it was observed that an order of transfer is an incidence of Government service. It was further observed that under Fundamental Rule 15 the President may transfer a Government servant from one post to another. It was then observed that who should be transferred where, is a matter for the proper authority to decide. Unless the order of transfer is vitiated by malafides and is made in violation of any statutory provisions the court cannot interfere with it.



7. In the case Rajendra Roy v. Union of India, AIR 1993 SC 1236, it was observed that it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee, but on that score the order of transfer is not liable to be struck down. It was further observed that unless such order is passed malafide or in violation of the rules of service and guidelines for transfer, without proper

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justification, the Court and the Tribunal should not interfere with the order of transfer.

8. In the case *Mrs. Shilpi Bose v. State of Bihar*, AIR 1991 SC 532, it was observed that where a competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the Court, merely because the transfer orders were passed on the request of the employees concerned. It was further observed that the courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other.



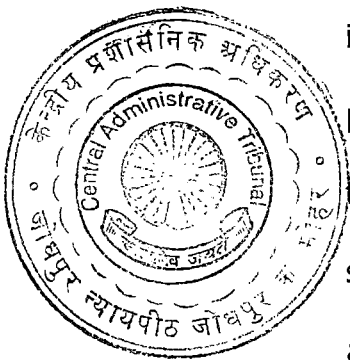
9. A similar view was taken by the Patna High Court in the case *Dr. Shyam Prasad v. State of Bihar*, 1995 (2) PLJR 610. The learned Counsel for the applicant has also referred to certain rulings on the question. These include the decision in the case *Achchuta Nand Bahera v. State of Orissa*, 1985 (2) SLR 16 and also the case decided by Madhya Pradesh High Court being *R. K. Dubey v. State Agro Industries Development Corporation*, 1990 (6) SLR 530. In these cases also a similar view has been taken.

10. In the case *Union of India v. S. L. Abbas (supra)*, their Lordships also observed that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service

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matters and the Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute itself in judgment for that of the authority competent to transfer.

11. Keeping in view the law laid down by the Hon'ble Supreme Court it is obvious that this Tribunal cannot interfere with an order of transfer passed by a competent authority treating itself to be some sort of an appellate authority. This Tribunal can of course, interfere with a transfer order if it is established that the order was passed in breach of some statutory provision or it was mala fide. As observed in the case *Rajendra Roy v. Union of India* (supra), it may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.



12. Therefore, in overall view of the case, I am not in a position to entertain the original on merits. However, I simultaneously note that the petitioner's representation was rejected on the ground that on the date of issue of the transfer order, he had not completed 57 years of age where as per the policy at Annexure A/1, the age of 57 years is to be reckoned from the date of move. In the instant case the applicant's move was to take place only on 24.9.2003 and on that date he completed the said age of 57 years; his dated of retirement being 30.4.2006.

Thus it is true that the representation of the applicant was not considered in true prospective as per the policy in vogue. In my considered opinion the same ought to have been considered by the respondent No. 4 by taking the age of the applicant as on the date of his move as per the transfer policy and not on the date of transfer order and to that extent the matter would needs reconsideration by the said authority afresh.



13. Under the circumstances, although I am unable to allow this application, I find it expedient to remand the case to the 4th respondent for considering and deciding the representation of the applicant afresh, keeping in the observations made in penultimate para as expeditiously as possible and till then impugned orders shall not be given effect to. No costs.


(J.K. Kaushik)
Judicial Member

Kumawat

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer () as per
order dated 18/10/13

S.R. Ghosh
Section officer (Records) 23.10.2013

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