

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of Decision : 14.2.2003

O.A. No. 13/2003

Prithvi Singh S/o Shri Chenwar Singh, aged about 30 years, R/o C-25, Shramikpura, Masuria Colony, presently working on the post of Driver at C.R. Farm, Central Arid Zone Research Institute, Jodhpur.

... APPLICANT.

v e r s u s

1. Indian Council of Agricultural Research, through the Director General, I.C.A.R., Krishi Bhawan, New Delhi.
2. The Director, Central Arid Zone Research Institute, Jodhpur.
3. Senior Administrative Officer, Central Arid Zone Research Institute, Jodhpur.
4. Bhawra Ram, T-1, Driver, Central Arid Zone Research Institute, Jodhpur.

... RESPONDENTS.

Mr. Kuldeep Mathur counsel for the applicant.  
Mr. V.S. Gurjar counsel for respondent No. 1 to 3.  
Mr. B. P. Choudhary, counsel for respondent No.4.

CORAM

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

: O R D E R :  
(per Hon'ble Mr. J. K. Kaushik)

Shri Prithvi Singh has assailed the impugned order dated 26.07.2002 (Annexure A-1), by which order dated 22.06.2002 (Annexure A-3), through which he was ordered to be transferred from Bhuj to Jodhpur has been cancelled and has also prayed for certain other ancillary reliefs by way of filing this OA under Section 19 of the Administrative Tribunals Act, 1985.

2. The matter of controversy involved in this case is very short. The material fact necessary for adjudication of the instant case are that the applicant was initially appointed to the post of Driver on dated 10.03.1997 against a vacant post at Bhuj after facing the requisite selection test. He submitted a representation to respondent No.2 and requested for his transfer from Bhuj to Jodhpur. He inter alia informed that his wife was suffering from Bronchial asthama and due to improper treatment at Bhuj, Gandhidham, she has developed severe problem in her lungs and so on. After all protracted delay, his request was accepted and the Competent Authority was pleased to transfer him from Bhuj to Jodhpur vide communication dated 22.06.2002 (Annexure A-3). The transfer order contains an annotation that the applicant is transferred on his own request. One Shri Bhanwara Ram, Respondent No.4, T-I Driver, was also ordered to be transferred from CAZRI Institute, Jodhpur, to Bhuj by the same order. It has also been indicated that Shri Bhanwara Ram who has been transferred to Bhuj will move first to join.

3. The further case of the applicant is that Shri Bhanwara Ram did not join his duties at Jodhpur and thus the applicant was also not relieved from Bhuj for carrying out the transfer order. Suddenly on 26.07.2002, an impugned order was passed, by which transfer of the applicant and that of Shri Bhanwara Ram shown at Sl. No. 2 and 3 in the transfer order dated 26.07.2002 (Annexure A-3) have been said to be as stands cancelled. It has been, however, averred that a committee was formed by the Director, CAZRI, Jodhpur, to submit his reports on transfer guidelines. As per the guidelines, it has been submitted that on completion of continuous stay of five years, one may request for posting to another Regional Research Station or to Headquarter.

His request was accepted in pursuance with this policy and the transfer order has been wrongly cancelled. Subsequently an order was passed on 19.10.2002, by which he was allowed a temporary transfer for a period of 3 months on his own request and he joined at Jodhpur on 30.10.2002 in pursuance with the same. He submitted the detailed representations in the matter and requested the respondents to transfer him permanently from Bhuj to Jodhpur for the reasons of medication of his wife. He also apprised the authorities and submitted the necessary certificates regarding the disease suffered by his wife but there has been no response to the same.

4. The Original Application has been filed on multiple grounds i.e., no reasons have been assigned by the respondents while cancelling the transfer order. The transfer order was issued by the Competent Authority after considering the representations submitted by the applicant, the transfer order has been cancelled under the influence of Shri Bhanwara Ram as it appears, the wife of the applicant is suffering from peculiar disease, the request of the applicant for transfer from Bhuj to Jodhpur was in accordance with the transfer policy issued by the department but it is evident from the order dated 19.10.2002 that the applicant has not been transferred in a regular manner due to certain extraneous considerations, he also took up the matter through the Joint Staff Council, but of no avail, hence this OA.

5. The respondents have contested the case. Respondent No.1, 2 & 3 have filed a detailed reply to the OA, multiple preliminary objections and a separate reply to the prayer for interim relief. Respondent No.4 did not choose to file any reply to the OA. Incidentally Respondent No.4 refused

to accept the notices dasti and the notices were deemed to be served, after the ~~departmental~~ respondents filed the reply, the case was ordered to be listed for final disposal. However, on the date set for final disposal, respondent No. 4 was represented through his counsel. Respondent No. 1 to 3 have taken multiple preliminary objections, which in fact are synopsis of certain statement of law in respect of judicial review of the transfer orders and shall be dealt with while dealing with the preliminary objections in this order ahead. The respondents have averred in the reply to the OA that the applicant was selected and offered appointment in pursuance with an advertisement for a specific vacancy meant for Regional Research Station at Bhuj ~~and~~ as per the appointment letter Annexure R-1.

6. The next ground as set out in the reply on behalf of the respondent No. 1 to 3 is that soon after the completion of probation period, the applicant started making the representation for his transfer to CAZRI main Institute at Jodhpur. The disease, which his wife is suffering seems to be right from the time when the applicant entered in the service. However, that could not be construed ~~xxxxxxxx~~ to be a ground to assail the legality, validity or correctness of the transfer, which is a condition of the service. The number of other persons have submitted their representations on similar grounds and the transfer order cannot be assailed in the eye of law as per the law laid down by the Hon'ble Supreme Court. The competent authority taking a sympathetic view in the case of the applicant, made all efforts to accommodate the applicant on humanitarian grounds and in place of applicant, the respondent No. 4 was transferred to Bhuj with a specific mention in the order of transfer that

Respondent No.4 will first move to join Bhuj, since there is only one Driver available and the work may not suffer at Bhuj. The competent authority adopted humanitarian approach and in view of the representation/request of the applicant, the order dated 22.06.2002 was passed.

Relieving of the applicant from Regional Research Station Kukma, Bhuj could have created administrative problem as he was the only Driver there. Respondent No.4 has ~~an equal claim to be retained at Jodhpur for the reason that he has appointed against the vacancy at CAZRI, Jodhpur and he too verbally requested that his parents of advanced age are being taken care by him and posting him at Bhuj would be against the transfer policy. The competent authority took the entire facts and circumstances into consideration and rightly decided to cancel the transfer order dated 22.06.2002 and the action of the answering respondents is perfectly legal and valid and in consonance of the service law jurisprudence. The applicant can get her wife treated at Gandhidham and Ahmedabad, which are nearer to the place of his posting.~~

7. It has been further mentioned that the applicant has been using political influence for getting himself transferred to the place of his choice and the relevant facts would be kept ready for perusal of this Tribunal. It has been repeated that all efforts were made to accommodate the applicant but at the same time administrative exigencies in public interest cannot be given secondary place in view of the fact that transfer is the condition of service and family problems like sickness of family members, parents of advance stage, education of children etc. cannot furnish a good ground to assail the legality, validity and transfer of the posting. The applicant can have no right to posting

for a particular place and the alleged ground of the applicant other for posting is totally misleading. The grounds have been also contraverted, and, therefore, it has been sought that the OA may be dismissed with costs.

8. This case has been argued before me with elaborate fullness by Shri Kuldeep Mathur, learned counsel for the applicant, Shri V.S. Gurjar, learned counsel for respondent No. 1 to 3 and Shri P. P. Choudhary, learned counsel for respondent No. 4. I have given my best considerations to the arguments led by the learned counsel for the parties and have carefully considered the pleadings and records of the case.

9. Before grappling the ~~crux~~ of the matter, it would first be apposite to deal with the peripheral issue i.e. the preliminary objections raised on behalf of the respondents. Learned counsel for respondent No. 1 to 3 has reiterated the preliminary objections raised through a separate pleading. The first objection is regarding the maintainability of the OA on the pretext that the OA does not disclose any cause of action. In the OA, the applicant has challenged the impugned order, by which his own request transfer order which was issued earlier has been cancelled and that has given the cause of action to the applicant. Thus, the preliminary objections has no legs to stand and stands repelled and, therefore, the same is hereby over ruled. As far as the other preliminary objections are concerned, these are in fact the synopsis of various judgements which could be used to defend a transfer order on behalf of the authority who issued them and in fact they are not the preliminary objections at all. As per the rule of pleadings, the law is not required to be pleaded and in this view, I

do not find any force in these so called preliminary objections which seems to be a misconception simplicitor. Otherwise also, in the instant case, the controversy is not regarding the transfer as such but it is regarding the cancellation of transfer order which was been passed after due application of mind by the competent authority and none of the authorities mentioned in the so called preliminary objections/pleadings support respondents' case, rather the same may support the case of the applicant to certain extent as indicated in the subsequent paras of this order. Thus, this preliminary objection also stands over-ruled.

10. The next preliminary objection was taken on behalf of the respondent No.4. Learned counsel for respondent No.4 has submitted that the transfer order once implemented cannot be challenged. After the applicant has accepted the temporary transfer, after cancellation of the impugned transfer, he has relinquished his right by acquiescence and cannot challenge the impugned order. Therefore, the very Original Application is not maintainable. It is very strange objection in the present case. The transfer order was never implemented and the order by which the applicant was temporarily transferred for a period of 3 months does not have any reference or relevance to the order of transfer. The respondent No.4 was never relieved from Jodhpur to Bhuj and similarly the applicant was also not relieved from Bhuj to Join at Jodhpur in pursuance with the transfer order dated 22.6.02(Annex. A-3). Therefore, it cannot be said that the transfer order was already implemented and, therefore, cancellation of it can't be challenged. The argument of the learned counsel is nothing but volte-face inasmuch as one side he has said that once the

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order is implemented, he cannot challenge the cancellation of the order. One side he has said that transfer order was stood implemented and other side it has also been submitted that once the transfer order is implemented, the same cannot be cancelled. In the present case, the transfer order has been cancelled which can only be done if the earlier order of transfer has not been implemented and this is the settled position of the law. Thus, in the present case, the impugned transfer order by which the applicant was transferred from Bhuj to Jodhpur and the respondent No. 4 was transferred from Jodhpur to Bhuj has not been implemented at all, otherwise it could not have been cancelled. The applicant has submitted number of representations even against the cancellation order and there is no question of acquiescence or relinquishment of his rights. Thus, the preliminary objections raised by the learned counsel for respondent No. 4 is misconceived and same stands repelled and over-ruled. I, therefore, proceed to examine the OA on merits.

11. Now adverting to the merits of the case, the learned counsel for applicant as well as for the official respondents have reiterated the grounds mentioned in their respective pleadings. ~~gram~~ The learned counsel for respondents No. 4 has urged that the rulings relied upon by the official respondents, also support his contentions. The learned counsel for the applicant has submitted that applicant was faced with certain peculiar domestic problems. He fulfilled the norms of own request transfer as per the transfer policy in vogue. The competent authority considered his request and was fully satisfied with the same. Consequently, his request was acceded to and an order dated 22.06.2002 was

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passed. But instead of relieving, the respondent No.4 and the applicant for joining at the new place of postings in implementation of the said transfer order, the very order was cancelled without any reason. Since it involved a favour to respondent No.4, some extraneous material must have been taken into account and thus the impugned order is ex facie, arbitrary and in colourable exercise of power.

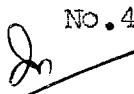
12. Per contra, the learned counsel for the official respondents has submitted that it is the prerogative of authorities as to who should be posted where. He invited my attention toward the contents of appointment letter and the notification relating to appointment/selection of the applicant. It has been indicated therein that the applicant was appointed against the vacant post at Bhuj and he has all ~~India transfer liability~~ <sup>order dated 22.06.2002</sup>. In this way, it was argued that order of transfer was wrongly issued. But when he was reminded that his argument was self-contradictory as well as against the very facts evident from the transfer order dated 22.06.2002 itself wherein there are number of other similarly situated employees have been transferred, he was at difficulty to clarify the matter, and conceded that transfer may be inter-institutes or at headquarters or vice versa are permitted.

13. Nextly, the learned counsel for the official respondents submitted that there was a specific condition in the transfer order that respondent No.4 shall move first, but the competent authority cancelled the same since the respondent No.4 orally apprised him, his domestic problems. The cancellation of the transfer order was done after taking into account the entire facts and circumstances of the case. He placed reliance on (1989) 2 SCC 602 G.E.B. v/s Atma Ram and (2001) 5 SCC 508 S.B.I. v/s Anjan Sanyal, decided by the Supreme Court.

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in addition to the number of authorities mentioned the pleadings styled as 'Preliminary objections'. When he was confronted with a question from the court as to whether the controversy involved in the instant case at all relates to a transfer since all the authorities referred to related to defend a transfer order, or it is case of cancellation of transfer order. Fairly his answer was 'Of course it is a case of cancellation of transfer'. He last submitted that there is no infirmity or illegality in issuance of the impugned order.

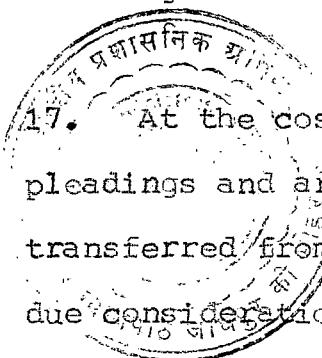
14. The learned counsel for the respondent No.4 has submitted that cancellation of transfer order also tantamounts to transfer and all the ruling referred to on behalf of official respondents fully apply to the controversy involved in the instant case. He has vehemently argued that no reasons are required to disclosed in case of transfers and the transfer order cannot be interferred except when it is assailed on the ground of mala fide or infraction of statutory rules which is not there in the present case. He has also submitted that the plea of applicant that any pressure was exerted by the respondent No.4 on the competent authority is patently wrong and not tenable since the concern authority has not been impleaded as a party respondent by name. The impugned order has been passed by a competent authority. Further it has been submitted that the respondent No.4 was also not the junior most at headquarter, Jodhpur, and as per the transfer policy only the junior most person could be transferred to give a way to a person who was allowed own request transfer and this Tribunal will not pass any order which would result in giving rise to another illegality. He also submitted that Respondent No.4 ~~xxx~~ was appointed in the year 1999.



15. No doubt the controversy involved in this case is at a very narrow compass but the precarious assertions in the reply as well as the arguments based on misconceptions have made the matter perplex one. I confess, I was finding it hard and insurmountable but could narrowly got escaped from getting dismayed. I had to carry out an incisive analysis and go to the heart of the problem. The main confusion has been created by not understanding the difference between a 'Transfer order' and 'an order of cancellation of Transfer order'. In the present case, it is a case of cancellation of Transfer order but the respondents have been moving from the premises as if it were a case of transfer and that too as if applicant is transferred in the interest of administration.

16. The factual aspect is not in dispute. The ~~xxx~~ applicant was ordered to be transferred on his own request, after due consideration of mind by the competent authority which took into consideration the policy in vogue. The fourth respondent was transferred in the interest of administration while the applicant was allowed own request transfer. But instead of implementing the said order, it was cancelled. ~~for respondents~~ The learned counsel ~~has~~ not been able to disclose any reason in support of his contention except adumbrating stands of respondents in the reply. However, he has agreed that one of the order i.e. transfer order dt. 22.06.2002 (Annexure A-3) or impugned order dated 26.07.2002 (Annexure A-1) is without application of mind. In this view of the matter, the controversy boils down and it is to be ascertained as to which of these two orders, is arbitrary and without application of mind. In case the transfer order (Annexure A-3) is such, the subsequent order Annexure A-1 would be justified and applicant

would have no case for judicial interference. But if the Transfer order (Annexure A-3) is legal, and justified, the impugned order Annexure A-1 would be arbitrary, without application of mind and the same will have to be declared as illegal and inoperative.



17. At the cost of repetition, it is asserted from the pleadings and arguments that the applicant was ordered to be transferred from Bhuj to Jodhpur as per his own request after due consideration of his case and also adopting the humanitarian approach. It is not the case of any of the parties that any mistake has been committed by the competent authority while accepting the request of the applicant and issuing the said order of transfer. It is also not the case of any of the parties that the transfer order had to be cancelled because of any infirmity in the ~~xxx~~ order sought to be cancelled. There is absolutely nothing on record as to indicate that the respondent No.4 had ever protested or challenged the validity of the transfer order Annexure A-3. The mere precarious assertion made in the reply to the OA is after thought exercise just to justify the impugned order. Besides that respondent No.4 has not chosen to file the reply to the OA. It is also startling to observe that the applicant has been submitting written applications/representations and the respondents did not find it convenient to accede to his request and have rather made the matter complicated. How can ~~xx~~ it be accepted that they will consider the request of respondent No.4 who is said to have projected his problem orally. Not only this, have the respondents be fair, ~~xxxx~~ they would have made the clear breast of the facts and disclosed some substantial reasons as to why the respondent No.4 was not relieved to join

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at the new place of posting despite the fact that he was required to move first and his transfer was in administrative interest. Their reply conceals more than what it reveals and it seems that some link from the chain is missing as to what transpired after issuance of the transfer order. In any anyone's case, it is not ~~the~~ case that the transfer order was bad in any way, rather the same was very much in consonance with the transfer policy in vogue. In this view of the matter, I am of the firm opinion that the order of transfer by which the applicant was ordered to be transferred from Bhuj to Jodhpur on his own request and vice him respondent No.4 was transferred in administrative interest was legal and justified.

18. As ~~the~~ a result of the aforesaid finding the necessary corollary follows that the impugned order dated 26.07.2002 (Annexure A-1) has been passed arbitrarily and without application of mind. As per the aforesaid preposition, ~~and~~ there remains nothing to decide except to declare that the impugned order is bad in law and thus inoperative.

19. Much ado was made by the learned counsel for the official respondents that whole exercise has been done in administrative interest. This submission is surreptitious. Inasmuch as it was the respondent No.4 who was in fact transferred in administrative interest and of the law and judgements on which respondents counsel placed reliance in fact support the contention of the applicant. It ~~is~~ is very strange that respondent No.4 was transferred in the interest of administration and he never challenged but the said transfer was not given effect too. The respondents seems to be applying the double standard and practising hostile discrimination with the applicant. Such practice is required to be deplored. As regards the law of arbitrariness in issuance of even the administrative orders, there is unanimity

in the judicial pronouncements and arbitrariness is antithesis to the equality clause enshrined in Article 14 of the Constitution of India and the impugned order being ex facie, arbitrary and without application of mind cannot be sustained. As regards the placing reliance on the authorities which are quoted on behalf of the respondents, none of them applies to the present case, the impugned order being a cancellation of the transfer order and not a transfer order as discussed above.

20. Now I take up the submissions made on behalf of respondent No.4, learned counsel for the respondents has heavily embarked on the submission that the cancellation of the transfer order itself is a transfer and no reasons are required to be disclosed in case of transfer orders. He tried to elaborate his statements that once the transfer order is cancelled the individual employees are brought to their original position. On the other hand, he had submitted that the transfer order once implemented cannot be cancelled. In the present case, he maintains that the transfer order was in fact implemented and the cancellation of the transfer order i.e. impugned order dated 26.07.2002 would tantamount to transfer and in this way, he has submitted the judgements referred to in support of the contentions on behalf of the official respondents would apply in the present case with full force. The submissions are self-contradictory and seems to be based on misconception. In the present case, the transfer order was not implemented at all and there is no question of changing the position either of the applicant or of the respondent No.4 and by no stretch of imagination, the cancellation of the transfer order can be treated a transfer. Learned counsel for the respondent No.4 has not been able to countenance his submissions by any authority or law in the matter. I am not impressed with such submissions and, therefore the contentions stands repelled.

21. A swift reference may be made to another argument of the learned counsel for the respondent No.4 that as per the transfer policy also it is only the junior most person who is required to give a way to adjust the person who is allowed own request transfer and that the applicant is not the junior most in Jodhpur and in case the impugned order is declared illegal, the order of this Tribunal would give rise to another illegality. It is a very strange argument inasmuch as there is no material in support of the contention of the learned counsel for the respondent No.4. The present case has been filed by the applicant and not by respondent No.4. If the respondent No.4 was aggrieved in any way by the transfer order Annexure A-3, he would have protested against the same and no relief as such can be claimed by him in this OA. However, I otherwise also do not find any force in this contention for want of material as well as in absence of any protest whatsoever by the respondent No.4. In this view of the matter, contentions of learned counsel for the respondents is devoid of any merit and stands repelled.

22. Lastly a passing remark has been made by the learned counsel for official respondents in pursuance with the averments made in the reply to the OA that the applicant has been using political force and pressing the respondents. Even if all the contention of the learned counsel for the official respondents is accepted, it may be safe to infer that such pressure must have been exerted on the competent authority in ordering cancellation of the transfer order, obviously by the respondent No.4. I have reason to believe from the reading in between the lines and taking all the events of this case together. One of the reason may be that the transfer order dated 22.06.2002 was passed admittedly after

due application of mind and considering the specific written requests of the applicant whereas the impugned order dated 26.07.2002 (Annexure A-1), has been passed without there being any written request on behalf of the respondent No.4. There is no other material so as to justify the issuance of the said order. There is no justification as to why, the order of transfer by which the respondent No.4 was transferred in the interest of administration from Jodhpur to Bhuj was not implemented. The other reason for such conclusion would be that of doctrine of pre-decisional hearing. As per the said doctrine, when the administrative authority passed an order which may affect any individual, the authority must give a pre-decisional hearing to the concerned employee. This concept is developed on the reasoning as a authority will embark on his earlier decision and is not likely to change his decision by giving consideration to the subsequent representation. This proposition is based on a judgement of the Supreme Court in H.L. Trihan & Ors. vs. U.O.I. & Ors. AIR 1989 SC 568, wherein in Para 12 their Lordship has held as under :-

"12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity."

23. In the present case, once the competent authority took a positive decision to transfer the applicant on his own request and the respondent No.4 in the interest of administration, in the normal course and passed transfer order, the same could not have been cancelled. Thus, there must have been some extra pressure on the competent authority to cancel

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its earlier order and that pressure could have been from nowhere except from the respondent No.4. Thus, the averment made on behalf of the applicant that the pressure was exerted by respondent No.4 has also substantial force and on this ~~quaffia also~~, the impugned order is illegal and inoperative.

24. In view of what has been discussed and said above, the OA deserves acceptance and the same is hereby allowed. The impugned order dated 26.07.2002 (Annexure A-1) is hereby quashed and the transfer order dated 22.06.2002 (Annexure A-3) gets revived. Consequently, the respondent No.1 to 3 are directed to forthwith relieve respondent No.4 to carry out the transfer order dated 22.06.2002 (Annexure A-3). Rule 1 already issued is made absolute. However, in the facts and circumstances of the case, the parties are directed to bear their own costs.

J. K. KAUSHIK  
(J. K. KAUSHIK)  
Judl. Member

Recd. Copy  
21/2/2003

Received copy

Ans  
to P.P. Chaitanya De  
7/2/2003

Copy of Judgement dated  
14.2.2003 sent to Shri S. Gopinath  
Counsel for R-1 to R-3 by Registered Post  
vide letter no 24 dated 25.2.2003

Ans  
25.2.03

Part II and III destroyed  
in my presence on 14.5.08  
under the supervision of  
Section Officer ( ) as per  
order dated 27.2.08

Ans  
Section Officer (Record)