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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 131/2003

DATE OF DECISION: 29.08.2003

Mohinder Lal S/o Shri Nazar Ram, aged about 50 years, resident of II-D-109, Jai Narain Vyas Colony, Bikaner, at present employed on the post of - Defence Estates Officer, in Defence Estates Office Bikaner Circle, 229 Sadulganj, Bikaner.

...**APPLICANT**

V E R S U S

1. Union of India through Secretary of Govt. of India, Ministry of Defence, New Delhi-110066.
2. The Director General, Defence Estates, Ministry of Defence, Sector-I, R.K. Puram, New Delhi - 66.

.....**RESPONDENTS.**

Mr. B. Khan.
Mr. S.K. Vyas

: Counsel for the applicant.
: Counsel for the respondents.

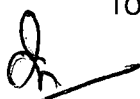
CORAM:

THE HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

ORDER

Shri Mohinder Lal has entered into second round of litigation in the matter of his transfer from Bikaner. In the present application, he has assailed the order dated 13.06.2003 (Annexure A/1) vide which he has been ordered to be transferred from the post of DEO Bikaner to the post of Joint Director in Dte. Defence Estates, Central command, Lucknow in an existing vacancy of JAG.

2. Filtering out the unnecessary details the relevant facts necessary for adjudication of the controversy involved, are that the



applicant is holding the post of Defence Estates Officer in junior administrative grade, (non-functional selection grade) w.e.f. 05.03.2001 and has been working in Bikaner for about two and a half years. He was ordered to be transferred to Jabalpur vide letter dated 23.07.2001. Certain details regarding his relieving has been narrated. Another order was passed on 06.06.2002 vide which the applicant was ordered to be posted as DEO Pathankot against non-existent post of JAG and that order came to be challenged before this Tribunal which came to be disposed of on 03.09.2002 with a direction to the respondents to consider his representation. The matter was delayed by the respondents and he had to file a Contempt Petition in the matter. Finally his representation was rejected and he challenged the same by filing another Original Application. In the said application, the respondents filed a Misc. Application stating therein that another person has been posted at Pathankot and the very Original Application has become infructuous. An assurance was given to the applicant that his case will be considered against the option which he has submitted while issuing his transfer order.

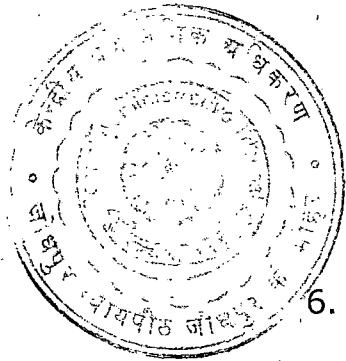


3. The Original Application has been filed on the ground that the applicant has been transferred in mid of the academic session, the applicant is being transferred arbitrarily and the respondents have not considered their assurance given to him.
4. The respondents have filed a detailed reply to the Original Application and have averred that the various transfer orders issued earlier stood cancelled and the post at Pathankot had to be filled in by another person of the rank of junior administrative grade in the exigency of service. It has also been averred that

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one side the applicant is speaking about the academic session of his daughter and at the same time he is speaking about his posting of Jalandar or Ambala etc. He has been given fair treatment in regard to his posting. It has also been averred that there is no vacancy available at Jalandar, Jaipur or Ambala and who should be posted where is to be decided by the Executive Authorities. Bikaner is a tenure station only for class "C" & "D".

5. The grounds raised in the Original Application have been generally refuted. The stand of the respondents is that the applicant is avoiding his transfers despite the fact that he has completed more than 5 years at Bikaner. His transfer has been ordered by the competent authority in the administrative interest. His case was already examined by the competent authority and then only the posting order has been issued.



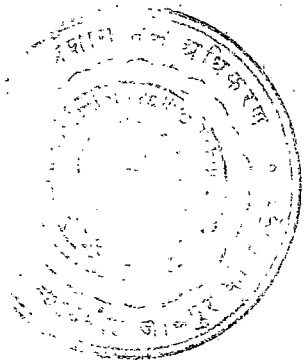
6. The exhaustive and a detailed rejoinder to the reply have been filed wherein specific objection has been taken as regards to the competence of the persons who has signed the pleadings of the reply. It has also further been submitted that power to declare hard stations vests with the Govt. and not with the respondent no. 2. Certain new facts have also been competed in the rejoinder. A short reply to the rejoinder has also been filed wherein the list of hard stations have been annexed.

7. With the consent of learned counsel for the parties, the case was taken up for final disposal at admission stage. I have heard the elaborate arguments advance on behalf of both the parties and have carefully perused the records of this case.

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8. The learned counsel for the applicant has reiterated the facts and grounds raised in the pleadings. He has submitted that the vacancy for the post of JAG grade is still available at Ambala but the respondents are not deliberately posting him there. He has next contended that while declaring the earlier case as infructuous the respondents have given assurance that they will give due regards to the option which has been submitted by the applicant for transfer. It is also stressed that the applicant has spent lot of money on the admission of his daughter and his transfer has been made in the mid of the academic session which is going to damage the career of his daughter. In this connection, he has also relied upon the judgement of the Supreme Court in case of **Director of School Education vs. O Kauruppathevan** ; 1996 (1) SLR 225 (SC) wherein their Lordships of the Supreme Court has held that "although there is no such rule, were of the view that in effecting transfer, the fact that children of an employee are studying should be given due weight, if the services of a Govt. servant are not urgent". He has submitted that there was no urgency in the present case in as much as no regular incumbent has been posted vice him at Bikaner.

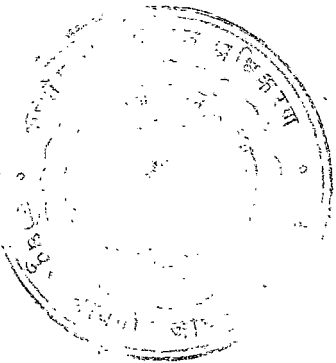
9. The learned counsel for the applicant has further stressed that Bikaner is a hard station and as per the rules in force the applicant is entitled for posting as per his choice-cum-option. But the respondents have side-tracked the same on one pretext or the other. He has also reiterated the objection regarding the reply and has submitted that reply has not been signed by the competent authority on behalf of the respondents and the same cannot be taken on record. Further it is also submitted that the



respondents have not disclosed any administrative interest or the service exigency which necessitated the transfer of the applicant.

10. On the contrary, the learned counsel for the respondents has submitted that the orders which have been issued regarding the declaring the particular station as a hard station or tenure station have already been placed on record and the applicant's case is not covered under them. He has also submitted that applicant has not placed any order of the competent authority indicating that Bikaner is a hard/tenure station in respect of all categories including that all the applicant.

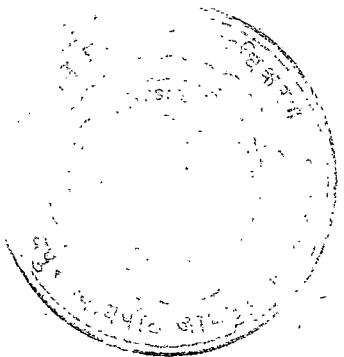
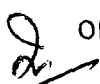
11. He has categorically submitted that as per the information given to him by the respondents there is no post of JAG grade vacant at Ambala. The applicant is however not entitled for any choice posting whatsoever. The transfer of an employee which is an incidence of service. It is also urged that there is no allegation of malafide or biasness against of any individual official. As regards the contention that the child of the applicant is studying at Bikaner, this position was very much available when the earlier O.A. was decided, however this ground cannot be sustained for the reason that the applicant is otherwise ready to go on transfer but to his choice place. His transfer has been issued keeping in view the urgency as well as the necessity of the administration. As regards the signing of the pleadings is concerned, the pleadings have been signed by Shri S.K. Sharma, Asstt. Defence Estates Officer who has been duly authorized to sign the pleadings on behalf of the respondents and thus there is nothing illegal in the matter.



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12. I have considered the rival contentions raised on behalf of both the parties. Firstly, as regards the question as to whether the Bikaner is a hard/tenure station or not, it was incumbent upon the applicant to countenance his assertion with a cogent evidence, I am constrained to observe that there is no pleadings to this effect in the O.A. and even the case is not based on such ground. However, the respondents have supplied certain material in this respect which clearly indicates that Bikaner is a tenure/hard station only in respect of Group "C" & "D" category to which the applicant does not belong. Thus, the contention of the learned counsel for the applicant that Bikaner is a tenure station and the applicant ought to have been at his choice place does not stand scrutiny of the law and the same is not sustainable. As regards the mid term academic session when study of the child of the applicant, the contention of the learned counsel for the applicant are nothing but volta-face in as much as one side the applicant is ready to go on posting but as per his choice and other side he has taken the plea that the studies of the child shall be damaged. I find that the learned counsel for the respondents has also rightly pointed out the same. Further the applicant has been transferred in June and this cannot be said to be even mid term academic session transfer.

13. As regards the grounds of administrative exigencies, it is for the department as to who should be posted where and the court has no power to direct the authority to post a particular person at a particular place. The Tribunal or the Court has certain limitation in regard to the transfer matters and would not sit in judgement over the satisfaction of the competent authority on the point that certain public servant has to be transferred in



the exigencies of service and replace the judgement of administrative authority by his own finding. The Court or a Judicial Forum can intervene and set aside the transfer order if the same is found to be malafide or in breach of constitutional provisions or binding administrative instructions, statutory rules or is capricious and based on extraneous considerations or is in colourable exercise of power. Since there is none in the present case, no interference in the impugned transfer order is called for.

14. Lastly, as regards the signing of the pleadings on behalf of the respondents, the contention of the respondents that the same has been signed by a person who is duly authorized cannot be disbelieved. However, even if the reply of the respondents is totally ignored, I can safely assert that in view of the facts and circumstances of this case, I would have reached to the same conclusion independent of reply and therefore I do not find that there is any illegality and impropriety in the action of the respondents.

15. In view of the foregoing discussion, the Original Application is devoid of any merit and substance and the same fails and is hereby dismissed but without any order as to costs.


(J.K. KAUSHIK)
Judl. Member

Kumawat

W. B. H.
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R/COPY
on 4/9/03
RM

Part II and III destroyed
in my presence on 26.2.09
under the supervision of
section officer () as per
order dated 13/2/09

Section officer (Name)