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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 142/2003

Date of Decision : this the 10th day of March, 2004.

Hon'ble Mr. J.K. Kaushik, Judicial member
Hon'ble Mr. M.K. Misra, Administrative Member

Shri Hassan Mohammed S/o Sh. Ahmad Khan,
Aged 42 years, R/o Shiv Basti, Baldev Nagar,
Masuriay, Jodhpur, working as a Gardner in
The office of Branch Recruitment Officer,
Ratanada, Jodhpur.

[By Mr. S.K.M. Vyas, counsel for applicant]

.....Applicant

vs.

1. Union of India through the Secretary,
Ministry of Defence, Army Bhawan,
Army Headquarter, New Delhi.



2. The Additional DTE (General) of Recruiting
Adjutant General Branch,
Army Headquarter,
West Block III, R.K. Puram,
New Delhi.

3. The Headquarter Recruiting Zone,
Post Box No. 35, Post Office Shastri Nagar,
Jaipur.

4. The Branch Recruiting Officer,
Ratanada, Jodhpur

5. Shri Mahaveer Prashad
Gardner in the office of
Branch Recruiting Officer, Alwar.

[By Advocate Mr. Vineet Kumar Mathur, for respondent 1 to 4]

.....Respondents

.....

ORDER [ORAL]
(By J.K.Kaushik, Judl. Member)

Shri Has-an Mohammed, has filed this case under section 19 of the Administrative Tribunals Act, 1985, and has assailed the order dated 14.6.2003 (Annex.A/1).

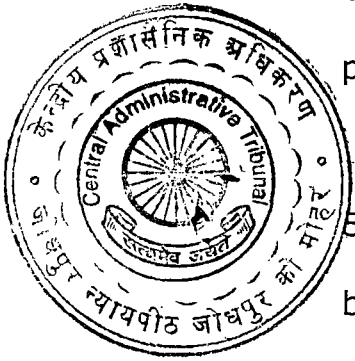
2. The case was listed for admission today and with the consent of both the learned counsel for both the parties, the same has been heard for final disposal at the admission stage. We have carefully perused the pleadings and the records of the case.



3. The indubitable facts as may be succinctly put, are that applicant is holding the post of Gardner (Group 'D') for over twelve years and was employed in the office of Branch Recruiting Officer (BRO). An order dated 14.6.2003 has been issued wherein five Gardners have been transferred and it is a case of cross transfers. Applicant has been ordered to be transferred from BRO, Jodhpur to BRO Alwar. The order of transfer makes a mention that no TA-DA will be admissible but, it is averred in para (1) of the reply that TA shall be admissible as per rules.

4. As regards the variances, it is the case of applicant that Group 'D' employees could not be transferred even after expiry of two years unless exigencies of service or grave misconduct warrants their posting out, but, in the case in hand, no such type of

circumstances are germane. Applicant's wife is suffering from a Pelvic Ultra disease for which she is under medical treatment. His children are also studying at Jodhpur. A representation was specifically made on 23.8.2002 to the competent authority. The order of transfer does not contain any annotation like administrative exigency and looking to the economic condition of the employee as a matter of fact, applicant is a low paid employee, he should not have been transferred at a distant place. The transfer order has been challenged on diverse grounds mentioned in Para 5 and its sub paras which we shall deal later.



5. As regards the variance on the part of the respondents, it has been submitted that the current policy which regulate transfers, was issued on 20.11.2001 at Annex.R/1 wherein, the rotational transfer is required to be done keeping in view the sensitiveness of the BROs. It is also averred that this Tribunal would not like to interfere in the matter of transfer inasmuch as, he has not been singled out that he is one amongst five persons transferred vide the impugned order. There is no mala fide intention/ action of the respondents. The impugned order has been lawfully passed. Transfer is an incident of service and there is no prohibitions regarding transfer of a group 'D' employee. It is also averred that the representation of the applicant was considered by the competent authority and the same has been turned down.

6. Both the learned counsel for the parties have reiterated their pleadings. Mr. Vyas, has submitted that there is no mention regarding the administrative exigency or administrative interest in the impugned order and, therefore, transfer order cannot be said to be in the interest of administration. He has also submitted that applicant is faced with certain peculiar domestic problems inasmuch as his wife remains under constant treatment and his children are studying in the school. He has also submitted that applicant is working on a group 'D' post and is a low paid employee, hence, his transfer may disturb his family. Mr. Mathur, has submitted that applicant is working on a sensitive post in the BRO and rotational transfer is essential keeping in view the long stay at Jodhpur for over twelve years. He has also submitted that a judicial notice may be taken in the fact that day in and day out, there is a discussion/criticism regarding the working of the office of BROs in particular and other similar sensitive offices in general, regarding certain mal practices and, therefore, there can be no better administrative interest than in the one in instant case. He has also reiterated that it is a joint transfer and if this Tribunal interferes in any one of them, that would tantamount to jamming the wheels of the administration besides creating paramount confusion. His further contention is that there is absolutely no ground for interfering with the transfer order inasmuch as there is no mala fide alleged against



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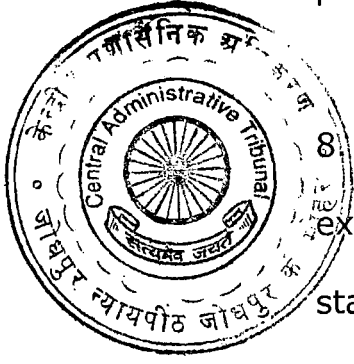
anybody or the transfer order is not said to be against the statutory provisions. Thus, the O.A. cannot be sustained as such.

7. We are aware of limited scope of judicial review in the transfer matters. This Tribunal can interfere only in certain exceptional circumstances specially when there is a mala fide transfer or the transfer is against some statutory rules or there is some other perversity. No doubt, the Tribunal is not handicapped in setting right the wrong, if it so appears to the mind of the Tribunal, but, in the instant case, we do not find any reason to interfere. As regards the medical treatment of wife of the applicant is concerned and certain other contingencies, these can be plea of clemency and it is for the executives to consider but, there is no legal right as such. A plea has also been taken that children of the applicant are studying in school. We find that the order has been issued only in the month of June and perhaps that would be more than enough to satisfy his contention inasmuch as it cannot be construed to be a mid academic session transfer. Now, argument of the learned counsel for applicant regarding non-mentioning the word 'Administrative Interest' in transfer order, it is by now well settled that the transfer order need not be a speaking order and until otherwise stated, there shall be presumption that transfer order is in the administrative interest. Thus, this ground too is groundless and the same cannot be sustained. Thus, the contention of the learned



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counsel for the applicant cannot be sustained and we are not persuaded with the grounds raised in the application.



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The result is rather very unfortunate but, we have no option except to dismiss the O.A. The interim order earlier granted, shall stand vacated forthwith. No order as to costs.

(M.K.Misra)
Adm.Member

(J.K.Kaushik)
Judl.Member

Jrm

Received copy
E. J. W. J.
15/8/12

R/copy

M.
12/3/04

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer (1) as per
order dated 18/10/2013

[Signature]
Section officer (Record) 23.10.2013