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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 104/2003
T.A. No.

199

DATE OF DECISION 8.10.2003

T.D. Soni

Petitioner

MR. S. K. MALIK

Advocate for the Petitioner (s)

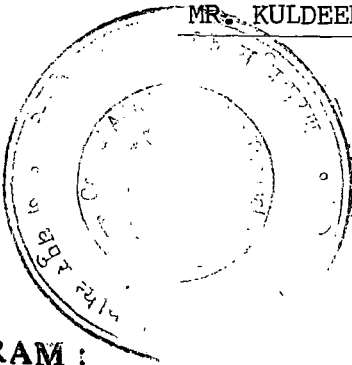
Versus

Special Secy. to Govt. of India
New Delhi and Ors.

Respondent

MR. KULDEEP MATHUR

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. J. K. KAUSHIK, JUDICIAL MEMBER

The Hon'ble Mr. —

1. Whether Reporters of local papers may be allowed to see the Judgement? *NO*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

(J.K. Kaushik)
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 104/2003
Date of Decision : this the 8th of October, 2003

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

T.D. Soni S/o Shri Champa Lal Ji, aged about 51 years,
R/o Quarter No. 3/4, Special Bureau Complex,
Subhash Nagar, Pal Road, Jodhpur,
Presently working on the post of Sr. Field Assistant,
SFA (MT) in the office of Additional Commissioner,
Special Bureau,
Jodhpur

....Applicant.

(By Mr. S.K. Malik, for the applicant)

versus



The Special Secretary to the Government of India,
Cabinet Secretariat, Room no. 7,
Bikaner House, Sahajaha Road, New Delhi.

The Additional Commissioner,
Special Bureau, Jodhpur (Raj).

3. The Dy. Commissioner,
Special Bureau, Sriganganagar.

4. Shri Sohan Singh Karamsot,
Sr. Field Assistant,
Special Bureau,
Sri Ganganagar (Raj).

....Respondents.

(By Mr. Kuldeep Mathur, for the respondents)

ORDER (ORAL)

Shri T.B. Soni, has filed this O.A. wherein the orders dated
18.2.2003 (Annex./1), 27.2.2003 (Annex.A/2) and 30.4.2003
(Annex.A/3) by which, the applicant has been ordered to be transferred

from the D.C. Office, S.B., Jodhpur to FIP, Kesrisinghpur, have been assailed.

2. With the consent of the parties, the case was taken up for final hearing at the admission stage. I have heard the learned counsel for both the parties and have carefully perused the records of this case.

3. The material and admitted facts of the case as per the pleadings of the parties are that the applicant was transferred from Bhuj to Jodhpur on 15.10.2001. This transfer was necessitated since due to the disastrous result of the earth quake in Gujarat on 26.1.2001 of which the applicant and his family were the victims. This was in view of a decision by the Government to post such victims to their native places and since then, the applicant has been serving at Jodhpur.



4. The further facts of the case are that applicant was ordered to be transferred in the first instance from Jodhpur to Sri Ganganagar vide letter dated 18.2.2003 which followed by another order whereby he was transferred to FIP Kesrisinghpur. However, the earlier transfer order was not implemented and the subsequent transfer order was issued. A representation was moved to the higher authority in the matter and the same has been turned down vide order dated 30.4.2003 (Annex.A/3) wherein, the applicant has been advised to avoid taking liquor or intoxication and in case he does not improve his behavior, a disciplinary action shall be taken against him and in case there is improvement in his behavior, he can be brought back to Jodhpur after a period of two years. The applicant has also placed on record certain medical certificates indicating that he has been suffering from

[Signature]

Tuberculosis and his wife is also suffering from I.H.D. Anemia and are under constant treatment.

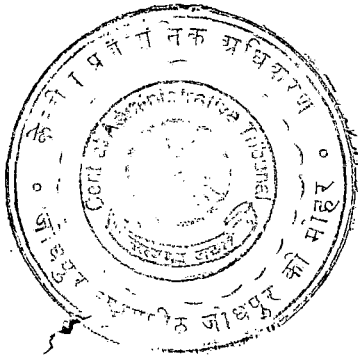
5. On the other hand, as per the reply of the respondents, the terminology used in the aforesaid rejection letter has been repeated. It has been submitted that the applicant has been transferred to Sri Ganganagar and the other posting order is only an operational requirement. It is also the defence of the respondents that a drunken person cannot be deployed for sensitive operational matters. The applicant is required to improve his behaviour and desist from consumption of alcohol during the office hours and only a lenient view has been taken but in case he does not improve, a disciplinary action would be taken against him.



6. Both the learned counsel appearing for the parties have reiterated their pleadings. The learned counsel for the applicant has emphasized the ground that the impugned order is punitive in substance and one cannot be punished except after following the procedure established by law and in the present case, no such procedure has been adopted. He has also submitted that the applicant has been transferred due to extraneous reasons and there was absolutely no administrative interest involved in this case. The applicant has been transferred just to accommodate the respondent No. 4 who is being brought from Sri Ganganagar to Jodhpur. The applicant has hardly completed three years and has not even been properly re-settled after facing disastrous calamity at Bhuj in Gujarat. He is being transferred on flimsy ground and even a finding of guilt has been given without conducting any inquiry, thus, the very transfer order is stigmatic and the same deserves to be quashed.

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7. On the contrary, the learned counsel for the respondents with his usual patience strenuously endeavored to defend the case of the respondents. He has taken me to the grounds of defence set out in the reply. He has fairly submitted that the applicant has been transferred on account of his peculiar behavior especially drunkenness during the office hours and has also submitted that in case he improves his behavior at the new place of posting, respondents would seriously consider his case for bringing him back at Jodhpur. He has also submitted that if applicant restrict his claim for posting only to Sri Ganganagar as per Annexure A/1, the respondents would have no difficulty in acceding to his request. In order to ensure safety in a sensitive operational matter, the applicant had to be transferred and is transferred in the interest of administration and not as a measure of punishment. He has also submitted that a lenient view has been taken in the matter and applicant is left only with the transfer. The O.A. deserves to be dismissed since otherwise also, there is no ground of mala fide against any individual so as to call any interference in the matter.

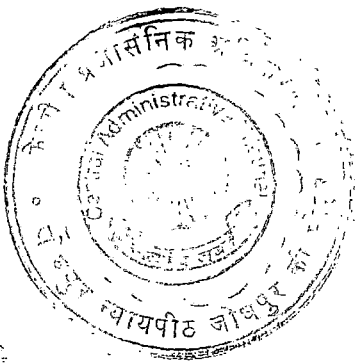


8. I have considered the rival contentions. The admitted position of the case is that the applicant has been ordered to be transferred on account of his alleged behavior and drunkenness during the office hours. A specific finding of guilt has been given to this effect. It is also true that no inquiry whatsoever, has been held in the matter and the applicant has not been given any opportunity of hearing before arriving at such finding of guilt against him, therefore, it could safely be concluded that the impugned orders are punitive in substance and the same have not been issued in administrative exigencies. The

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transfer order, rather, causes stigma. The statement of law on this point has been settled long back through a celebrated judgement of Full Bench of the Tribunal in the case of Shri Kamlesh Trivedi Versus Indian Council of Agricultural Research & Another reported in ATR 1988 (2) C.A.T. 116, wherein following has been held :-

“No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a charge sheet is issued and statement regarding imputation of I misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the “operative reason” for transfer, it is liable to be quashed.”



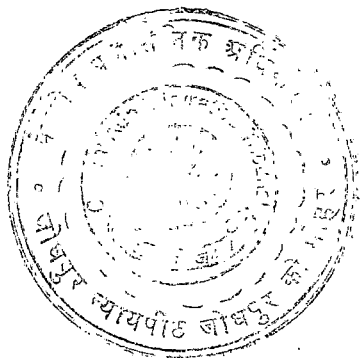
9. Considering the instant case in the spirit of aforesaid findings, the transfer order is required to be quashed as the operative reason for the transfer is the very alleged misconduct on which finding of the guilt has been arrived at without giving any prior opportunity of hearing to the applicant.

10. Examining the matter from yet another angle. I have carried out incisive analysis by wading the records of this case and am of firm opinion that the applicant has been transferred due to extraneous reasons and the transfer order is not in administrative interest. It causes anxiety and doubt

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as to how the applicant is likely to change his behavior and improve his condition and also stop intoxication by mere transferring to other place. Even, I also do not find any material in support of the allegations which could countenance the assertion made on behalf of the respondents. However, the discretionary power vested in the public authority, has to be exercised in a fair manner taking into account the relevant material and the same cannot be exercised for an unauthorized purpose. I am supported of this view from a judgement of Hon'ble the Supreme Court in the case of S.R. Venkataraman versus Union of India reported in AIR 1979 SC 49, wherein their lordships has held as under (Paras 6 & 7) :-



“6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by lord Goddard, C.J., in Pilling Vs. Abergele Urban District Council, (1950) 1 KB 636, where a duty to determine a question, is concerned on an authority which state their reasons for the decision, “and the reasons which they state show that they have taken into account matters which they ought not to have taken into account or that they have failed to take matters into account which they ought to have taken into account the Court to which an appeal lies can and ought to adjudicate on the matter.”

7. The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in The Queen on the Prosecution of Richard Wesbrood vs. The Vestry of St. Pancras (18900 24 QBD 371, at p. 375.

“if people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of law they have not exercised their discretion.”

This view has been followed in Sedler v. Sheffield Corporation, (1924) 1 Ch 483.”

11. Examining this case on the touch stone of the principles of law propounded above, I find that thee is absolutely no nexus of transfer of the applicant with the object sought to be achieved and it seems that the same

has been used as a short-cut to the disciplinary proceedings or/else certain grounds have been adduced just to justify the defence of the respondents. In this view of the matter, the submissions of the learned counsel for the applicant have my concurrence and there is substance in this application.



12. The upshot of the aforesaid discussions is that the Original Application merits **acceptance**. The same stands allowed. The rule already issued, is made absolute. However, there shall be no order as to costs.

{ J.K.Kaushik}
Judicial Member

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for
(Dawson)
JH

Part II and III destroyed
in my presence on
under the supervision of
section officer (C) as per
order dated

Section officer (Record)