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Central Administrative Tribunal  
Jodhpur Bench, Jodhpur

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Date of Order : 31.12.2002

1. O.A. No. 320/2002
2. O.A. No. 321/2002.

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Chandrapal Singh S/o Shri Parmanand aged about 48 years, Resident of C/o Sardar Besakha Singh, H.No. 1170, Behind Old Abadi Police Station, Sriganganagar (Rajasthan). Presently working on the post of Senior Scientific Assistant-III (SSA-III) in the office of Central Integrated Pest Management Centre (CIPMC) at Sriganganagar (Rajasthan)

Applicant in OA 320/2002

Om Prakash S/o Shri Vijay Singh aged about 45 years, by caste Brahmin, Resident of 15, Basant Vihar, Near Sector VIII Jawahar Nagar, Sriganganagar (Rajasthan) Presently working on the post of Senior Scientific Assistant-III (SSA-III) in the office of Central Integrated Pest Management Centre (CIPMC) at Sriganganagar (Rajasthan),

Applicant in OA 321/2002

Versus

1. Union of India through the Secretary, Ministry of Agriculture, Department of Agriculture and Co-ops, Krishi Bhawan, New Delhi.

2. Plant Protection Advisor to Government of India, Directorate of Plant Protection Quarantine and Storage, National Highway-IV, Faridabad (Haryana).

3. Deputy Secretary and Chief Administrative Officer, Directorate of Plant Protection Quarantine and Storage, National Highway-IV, Faridabad (Haryana).

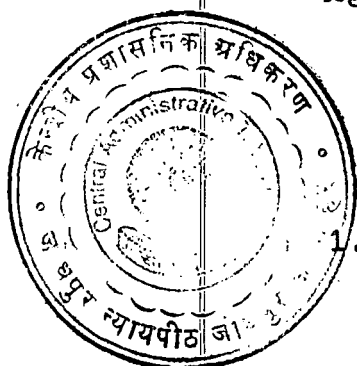
Respondents in OAs 320 & 321 of 2002.

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CORAM :

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

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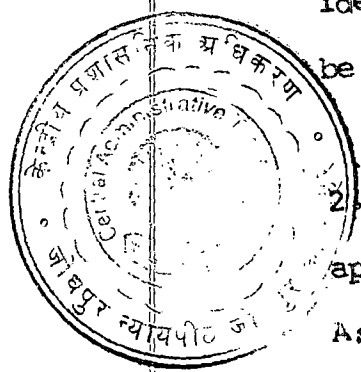
Mr. S.K. Malik, counsel for the applicants.  
Mr. S.K. Vyas, counsel for the respondents.

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ORDER

MR. J. K. KAUSHIK, JUDL. MEMBER :

The Original Applications No. 320 and 321 of 2002 have been filed by Shri Chandrapal Singh and Shri Om Prakash respectively, challenging their common transfer order dated 16/21st of August, 2002 (Annexure A/1) vide which they have been ordered to be transferred from Central Integrated Pest Management Centre (CIPMC) Sriganaganagar to CIPMC, Bhubneshwar. The facts and grounds are almost identical in both these O.As and, therefore, they are being decided by this common order.

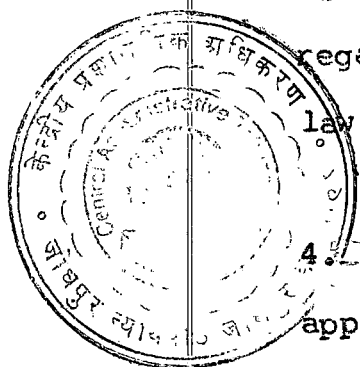


2. The in-dubitable facts of these cases are that applicants have been working on the post of Senior Scientific Assistant-III (SSA-III) in the office of CIPMC at Sriganaganagar. Both of them have been ordered to be transferred to Bhubneshwar by shifting of the headquarter of their permanent post. They submitted detailed representations against the same and projected certain illegality as well as apprised the authorities regarding their domestic problems, studies of their children and the humanatarion matters relating to their medication/disease suffered by them. After consideration, applicant No.1 Shri Chandrapal Singh has been granted extension of his stay up to 31st December, 2002. On the other hand, no order has been passed in respect

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of applicant No. 2 Shri Om Prakash on his representation. However, they are being continued at Sriganganagar till date.

3. These Applications have been filed on multiple grounds for e.g., children of the applicants are studying in M.A. at Sriganganagar whose academic session will be over by May 2003 and as per the mandate of the Apex Court mid-term transfers should be avoided, no post of SSA-III has been in operation at Bhubneshwar for the last 25-30 years, as per the transfer policy, applicants could not have been transferred out of zone, there were number of employees having longest stay but applicants have been chosen for transfer, they are faced with a Chronic disease, the post of SSA-III is lying vacant at number of places in the northern zone itself, the action of the respondents is the out-come of colourable exercise of power which is regarded as mala fide exercise of power in the eye of law etc.



4. The respondents have resisted the claim of the applicant and have filed a detailed counter reply to the O.A. The defence as set-out in the reply is that applicants are being redeployed in compliance with the directions received from the Ministry of Finance. They are required to be transferred anywhere in India as per the service conditions. The re-deployment of the applicants has been ordered due to exigencies of work which has been duly approved by the Expenditure Finance Committee (EFC) Memo of the Scheme. The applicants have the longest stayee at the same station but they have tried to mis-lead this Tribunal by stating that Shri Sahoo had a longer stayee. Bhubneshwar is a big city and the follow up treatment can be taken there.

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5. With the consent of both the learned counsel for the parties, the matter was heard finally at the stage of admission.

6. I have considered the rival contentions pleaded on behalf of both the parties and have carefully perused the pleadings and the records of the cases.

7. The learned counsel for the applicants has submitted that the representation of the applicants have not been considered by the authorities in the spirit required inasmuch as no heed has been paid to the fact that children of the applicants in both the OAs are studying in M.A. and there is no urgency for giving effect to the transfer at present and there was no administrative exigencies or urgency in disturbing them instantly. He has also stressed that the transfer order is a mala fide exercise of power inasmuch as number of persons who have longest stayee of even 20 years, are being continued at the headquarter Faridabad as well as at the other stations including that of Sriganganagar. But applicants have been chosen arbitrarily and are being sent at a distance of 2300 Kms. without any rhythm or reason. He has also contended that the very statutory transfer policy which has been annexed as Annexure A/8 has not been followed. As per the said policy the officials working in Group 'C' category, should, as far as possible, be transferred within the same zone or maximum to the next zone. Further, normally, as far as possible, the transfers should be affected after academic session is over. He has also invited my attention to the representations made to the authorities for cancellation of the transfer order in view of such humanitarian grounds mentioned therein.

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8. On the contrary, the learned counsel for the respondents has opposed the contentions of the learned counsel for the applicants with as usual vehemence. It has been submitted that no mala fide has been alleged against any individual and it is the prerogative of the competent authority as regards who should be employed where. As regards the humanitarian grounds, it is for the competent authority to consider the same and it does not call for any interference from this Tribunal since the same is not subjected to any judicial review. As regards the urgency of the transfer order, his defence was that keeping in view the urgency only, the impugned order was issued and it is not incumbent on the competent authority to narrate or indicate the detailed reasons on the transfer order or any order passed on the representation thereof.

In the present case, there is no infirmity or illegality in the impugned order and the O.A. deserves to be dismissed with cost.

9. In so far as the impugned orders are concerned, it would be pertinent to notice that it is well settled that the question of transfer of a public servant and the further question that it is in the exigencies of service or in the interest of service or public interest, to transfer a particular public servant, is to be decided by the competent authorities. The Court will not sit in judgement over the satisfaction of the competent authorities on the point that a certain public servant has to be transferred in the exigencies of service and replace the judgement of the administrative authority by its own findings. This is, however, not to say that

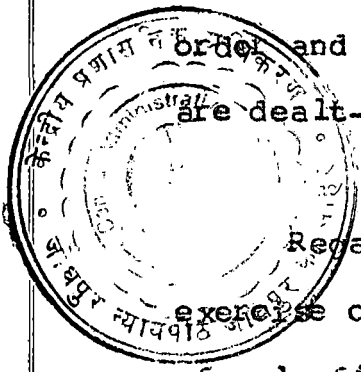
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there is no scope for judicial intervention in the cases of transfer. The Court or a judicial forum can intervene and set aside the transfer order if the same is found to be mala fide or in breach of the Constitutional provisions or binding administrative instructions/statutory rules or is capricious and based on extraneous considerations or is a colourable exercise of powers.

10. The applicants have impeached the impugned order as being mala fide and issued in colourable exercise of power, infraction of statutory administrative instructions, having force of law and in mid-term of the academic session without any urgency for giving effect to the transfer order and also on certain humanitarian grounds. These grounds are dealt-with as under :

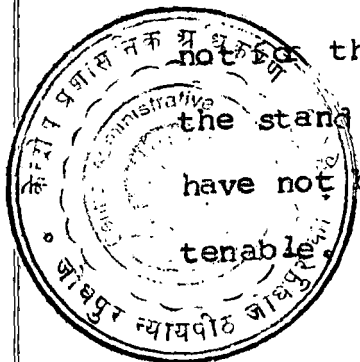


Regarding the ground of mala fide and colourable exercise of power, it may be stated that the allegations of mala fides are easier to make than to substantiate and that a fairly high degree of proof is required to substantiate such allegations. In the present case, allegation of mala fide is made in a passing way. Neither any one has been impleaded by name as a party nor there are any specific allegation of mala fide against any party. The similar is the position with colourable exercise of power. Thus the same is groundless.

A good deal of stress was led on the administrative instructions containing the provisions that Group 'C' employees should normally be transferred within the zone or near to his zone whereas, in the present case, applicants are being sent to a different zone without any cogent reason.

It is submitted that these instructions have the statutory force and at least the respondents should follow their own instructions if at all they are non-statutory instructions. I am afraid that treating such instructions as mandatory would have the pernicious effects of jamming to an appreciable extent the degrees of administration. Admittedly, having not been issued by any authority under the rule making power and they are only directory and thus, there is no infraction of any statutory instructions. the contention of the applicants stands repelled.

As regards the humanitarian grounds, the contention of the learned counsel for the respondents has force and it is for the competent authority to consider the same and not for the Court which deals with the legal issues. Thus, the stand of the applicants that the humanitarian grounds have not been considered by the respondents, are not tenable.



11. Lastly, contentions of the applicants that it is a mid-academic transfer and would cause undue hardship to them as well as damage the studies of their children, have force especially when there is no urgency of their instant move to Bhubneshwar on transfer. ~~Waxxxx~~ It may be pertinent to mention here that no urgency for move of the applicants to the transferred place instantly, has been indicated in the pleadings. I am fortified of my view with the verdict of Apex Court in Director of School Education Versus O. Karuppa Thevan, reported in 1996 (1) SLR 225 (SC), wherein their Lordships have held that

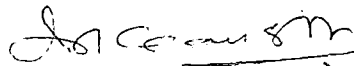
"although there is no such rule, we are of the view that

in effecting transfers, the fact that the children of an employee are studying should be given due weight, if the exigencies of service are not urgent."

12. In this view of the matter, the ends of justice would meet if the applicants transfer order are kept in abeyance till 15th of May, 2003 i.e. the end of the current academic session.

13. In the premises, the Original Applications ~~are partly~~ are partly allowed. The impugned order dated 16/21st of August, 2002 at Annexure A/1 in both the Applications, whereby, the applicants have been ordered to be transferred from Sriganaganagar to Bhubneshwar is ordered to be kept in abeyance till 15th May, 2003 and the applicants shall be continued at Sriganaganagar till May 15th, 2003. It is scarcely necessary to mention that they shall positively move and carry-out the order of transfer after the said date.

14. There shall be no order as to costs.

  
( J.K. Kaushik )  
Judicial Member

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