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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 165 of 2002
~~Ex-XXXNS.~~

b9x

DATE OF DECISION 31.01.2003

Ajam Ali

Petitioner

Mr. Kuldeep Mathur

Advocate for the Petitioner (s)

Versus

U.O.I. & Ors.

Respondents

Mr. K.K. Vyas, for respondent Advocate for the Respondent (s)
No. 1 to 3.

None present for respondent no. 4.

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 ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

J.K. Kaushik
(J.K. KAUSHIK)
Judicial Member

**CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR**

..... Date of Order : 31.01.2003

O.A. NO. 165 OF 2002

Ajam Ali S/o Shri Sroofu Khan, aged 28 years, R/o Athuna Mohalla, Teliyan-ka-Kuwa-ke-pass, Ward no.8, Churu (Raj). (Presently the petitioner is holding the post of Gateeman under Station Superintendent, Churu).

.....Applicant
versus

1. The Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner (Rajasthan).
3. Assistant Personnel Officer, Northern Railway, Bikaner (Rajasthan).
4. Manoj Kumar (Gateeman), S/o Shri Gyarsa, through PWI-I, Northern Railway, Churu (Rajasthan).
5. Umed Kumar S/o Shri Puran Mal (Gateeman), through PWI - I, Northern Railway, Churu (Rajasthan).

.....Respondents.

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CORAM :

Honourable Mr. J. K. Kaushik,
Judicial Member

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Mr. Kuldeep Mathur, Advocate, present for the applicant.
Mr. K.K. Vyas, Advocate, present for respondents 1 to 3.
None is present for and on behalf of the private parties.

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O R D E R

[Mr. J.K. Kaushik, Judicial Member]

Shri Ajam Ali, has assailed his transfer order dated 28.6.2002 (Annex.A/1) by which he has been ordered to be transferred on the post of Gateman from Churu to Sadulpur.

2. The admitted facts involved in the case as per the pleadings of the parties are that the applicant was allowed transfer on his own request as per the priority name noting from Sadulpur to work on the post of Gateman at Gate No. 167-A, 'C' Churu, vide order dated 1.4.2002 (Annex.A/2). He was duly relieved from Sadulpur and joined at Churu on 27.4.2002. This transfer was made against the post of Gateman at said gate which was taken over by the Traffic Branch as per the order dated 14.1.2002 (Annex.A/4), earlier this gate was under the control of Engineering Department. There were three vacant posts of Gateman in the traffic department as per the said communication.

3. Earlier, the respondents No. 4 and 5, who belonged to Engineering Department, were working on the post of Gatemen at Churu at Gate No. 167-A 'C' and were in consequence of the ibid order (Annex.A/4), ordered to be transferred to work at Gate No. 168- 'C' at Churu and at SE (PW) Ratangarh, respectively vide order dated 18.4.2002 (Annex.A/5). After working for a period of two months an order dated 28.6.2002 (Annex.A/1), was passed wherein, it has been ordered that the competent authority has now taken a

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decision to post the Gatemen of Engineering Department along with post on the above Gate [No. 167-A 'C'] at Churu and respondents No. 4 and 5 have been ordered to be posted against these posts at Churu. As a consequence of this order, the applicant has been ordered to be sent back to Sadulpur from where he was allowed on his request transfer about two months' back.

4. The Original Application has been filed on number of grounds; that, the transfer has been made for harassing the applicant without any reason, the applicant has shifted his family from Churu to Sadulpur and the model employer is required to act in a fair and democratic manner which they have not and the whole action has been taken to accommodate the respondents No. 4 and 5, who were earlier ordered to be transferred in the interest of administration.

5. The Respondents No. 1 to 3 have contested the application. On the other hand, respondents No. 4 and 5 have not chosen to contest the case. They were sent the notices by registered post/speed post and an affidavit to this effect has been filed on behalf of the applicant. After thirty days, the service on them is presumed, since there has been no intimation regarding non-service of the same.

6. The main defence set out in the reply by the respondents is that the impugned order Annexure A/1 is self-explanatory which contains the reasons that it became essential to re-transfer the

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applicant from Churu to Sadulpur because three posts of Gateman of Engineering Department were transferred to Traffic Department and the applicant, who was belonged to Traffic Department, was transferred to Churu Station at his own request. But, later on, it was decided by the competent authority to post the Gatemen of Engineering Department against these posts along with post and the respondents had to transfer the applicant from Churu to Sadulpur on account of administrative interest and not on public interest. His earlier transfer on request does not give him any right to remain at Churu. An employee is required to be transferred at any place as the transfer is an incidence of service and the administration has an absolute right to transfer its staff. It has been reiterated that the employees belonging to Engineering Department should be posted to Gate No. 167-A 'C' and for this reason, the applicant has been re-transferred to Sadulpur. The private respondents 4 and 5 belonged to Engineering Department and they have been again posted as Gatemen on gate No. 167-A 'C' at Churu with the result that applicant being the junior most Gateman of Traffic Department was transferred from Churu to Sadulpur along with Shri Subhash Chandra who was posted to Ganganagar and the impugned order has been passed on the ground of administrative exigencies and on account of policy decision. Another ground of defence as set-out in the reply is that, no particulars of the family members, have been disclosed and it is totally incorrect that order has been passed with ulterior motive to accommodate respondents No. 4 and 5. Thus, the O.A. deserves to be dismissed.

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7. A rejoinder to the reply was also filed wherein certain additional details in regard to the subsequent action of the respondents in respect of respondents No. 4 and 5 has been enunciated.

8. I have heard the learned counsel for the parties and have bestowed my due consideration to the arguments, pleadings and the records of the case.

9. The learned counsel for the applicant has reiterated the facts and the grounds mentioned in the pleadings and has submitted that the applicant was allowed on request transfer which he carried-out and joined at Churu after incurring lot of expenses and changing his position. The Gate No. 167-A 'C' was manned by Engineering Department and was transferred to Traffic Department vide order dated 14.1.2002 which has already been executed. Now, the respondents cannot turn about and take a diametrically opposite stand. He has next argued that the whole exercise has been to extend special favour to the private respondents and on one pretext or the other, the competent authority has been made to review its own administrative decision even at the cost of reverse the ir-reverseable position which resulted from the very order of the respondents. It has been submitted that there has been no application of mind and the whole exercise has been done due to extraneous reasons best known to the authorities. There is absolutely no public interest or administrative exigency is involved. No reason least to say cogent reason has been disclosed for issuance of impugned order.

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10. On the contrary, the learned counsel for the respondents has straneously made efforts to repudiate and repel the arguments submitted on behalf of the applicant. He has submitted that the action of the authorities is fair and has been taken in furtherence of the administrative interest. He has also emphasized and reiterated his stand narrated in the reply and has stressed that the transfer is an incidence of service and in the present case, neither any mala fide nor any arbitrariness is made-out and thus judicial review is uncalled for. He has also submitted that an employee has to sacrifice and the administrative interest is to out-weigh the personal inconveniences. The situation in the present case has arisen because the earlier decision of transfer of the control of the post from Engineering Department to Traffic Department, was reviewed and changed by the competent authority. He has stressed on the wordings of the impugned order that the fresh decision has been taken to post the Gatemen of Engineering Department along with post to Traffic Department. As a consequence of fresh decision, the re-transfer of applicant became inevitable. The O.A. is, therefore, merit-less and, therefore, no interference is called in the matter.

11. I have considered the rival contentions. Before averting to the crux of the matter, it would be pertinent to mention that there is a total unanimity of judicial precedence in regard to the transfer matter of a public servant and the further question that whether, the transfer is in the interest of service or in the public interest is to be decided by the competent authority. The Court will not sit in judgement over the decision 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 there is no scope of judicial intervention in case 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 a constitutional provision binding administrative instructions, statutory rule or is capricious and based on extraneous considerations or is in colourable exercise of power.

12. Keeping in view the aforesaid statement of law, the controversy in the present case is required to be examined. Adverting to the factual position, Gate No. 167-A 'C' was brought under the administrative control of Traffic Department on 14.1.2002 and three posts of Gateman were said to be vacant at Churu on that date. Thereafter, the respondents No. 4 and 5 were posted out from there since they belonged to Engineering Department and the said posts were to be filled in by the Gatemen of Traffic Department. The impugned order dated 26.6.2002 (Annex.A/1), makes a mention that earlier three posts of Gateman of Engineering Department were ordered to be transferred to the Traffic Department and in view of the same, the private respondents No. 4 and 5, have been re-posted at Churu. It is also amazing to note that once the very post has been put under the Traffic Branch and

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has gone out of the control of the Engineering Branch, how the question will arise for filling up such posts from the persons who are under the administrative control of Engineering Department. What will be the fate of their seniority and can a person remain under administrative control of two departments. The action of the respondents is *ex facie* incongruous and not in consonance with the sound principles of administration.

Before analysing and examining the proprietary of the impugned order, it is necessary to point-out a mis-conception which seems to have arisen in this case inasmuch as in fact one Gate No. 167-A 'C' was to be under the Traffic Department. This gate was under the control of the Engineering Department prior to the decision taken on 19.8.1998. The said gate remains at Churu at the same place. As a result of change of the administrative control of the said gate, the necessity arose of posting three Gateman from Traffic Department and which was accordingly done. The respondents seems to be using the term transfer of the post which is *ex facie* a mis-nomer. It is also an admitted position that despite the impugned order the said gate remains under the administrative control of the Traffic Department. Otherwise also, there is no provision in the relevant rules to transfer a post (Albeit there is no such transfer here) from one place to another. I have taken judicial notice of the relevant rules in regard to the

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transfers of Railway servant. As per the delegation of powers, there are provisions ~~except~~ for creation/abolition of posts, transfer of a Railway servant from one place to another, transfer of Headquarter of a Railway servant, Floating of a post especially when one is promoted to a higher post having less than two years to his credit to the date of his superannuation etc. Once there is no power to transfer a post, the question of transferring along with post of a Railway servant does not arise. This position of the law is fortified from a decision of the Tribunal in Dharampal Singh Versus Union of India and Others reported in 1990 (3) SLR (CAT) 213.

13. Adverting to the main question regarding the proprietary, viz., what was the objective and consequence of bringing the Gate No. 167-A 'C' under the control of Traffic Department, whether by the impugned order the said objective would be achieved or not, if not, whether there is any cogent reason for passing the impugned order or the impugned order is issued due to arbitrary exercise of power or due to extraneous consideration. I propose to examine these issues in seriatum as under :

As regards the objective of bringing the Gate No. 167-A 'C' under the control of Traffic Department, this was a policy decision taken by the competent authority and it is not for the Courts to intervene in such matters. As regards the consequences, it has been



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elaborately discussed in the preceding paras and once the gate has been brought under the control of Traffic Department, the same is required to be manned by the Gatemen of Traffic Department only.

The reply to the next question is emphatically no. Once the very control of the Gate No. 167-A 'C' is with the Traffic Department filling of the posts of Gatemen from other department i.e. Engineering Department cannot be said to be in consonance with the sound administrative working. The elaborate reasons have already been discussed in earlier paras.

As regards the next issue, a perusal of the very impugned order as well as the complete reply and also the arguments led on behalf of the respondents, I do not find that at any place, the respondents have disclosed as to what was the reason for filling-up the post admittedly belonging to Traffic Department by posting persons from the other department i.e. Engineering Department. The pleadings only disclosed that a decision has been taken to transfer the Gatemen of Engineering Department along with posts to Traffic Department which is not even permissible under the law as per the decision rendered in Dharampal Singh's case (supra). On the other hand, the contention of the learned counsel for the applicant seems to be having ample weight and force that, the whole exercise has been carried out to favour the private

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respondents No. 4 and 5. It would otherwise also be safe to infer that there was no cogent reason inasmuch as the applicant was allowed own request transfer from Sadulpur to Churu and he had hardly worked for few months at Churu and simply asked to return back to Churu un-settling up his complete affairs just because an authority has taken to reverse its previous decision. If such theme is adopted, the public servants are likely to lose confidence in the administration. Another ancillary question also arises as to whether the administrative authority has any power to review its own order. A review of an order can be carried out as per the statutory rules and there is no statutory rule permitting an administrative authority to review its own order. In this view of the matter also, the respondents had no power to review its own order and pass a fresh order i.e. Annex. A/1 dated 28.6.2002.

14. The Other left-out questions are taken together for examination. Once the respondents have not at all disclosed any reason for such a peculiar decision and keeping in view the aforesaid discussions, I am of the firm opinion that in the present case, the impugned order has been issued in an arbitrary manner and due to extraneous reasons. The Law is well settled regarding exercising of power by Hon'ble the Supreme Court. The Beacon Guideline is provided by the Hon'ble Supreme Court in a Constitution Bench judgement in S.G. Jaisinghani

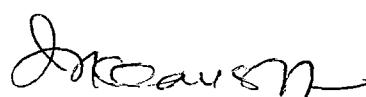
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Versus Union of India and others, reported in AIR 1967 SC 1427, wherein, their Lordships in Para 14 has held as under :-

"The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be continued within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

The aforesaid verdict applies in the present case and there is a force in the Original Application.

5. In view of what has been discussed and said above, I am left with no option except to accept the O.A. and the same is hereby allowed. The impugned order dated 28th June, 2002 at Annex. A/1, is hereby quashed in toto and the applicant shall be allowed ~~all~~ all consequential benefits. In the facts and circumstances of the case, the parties are left to bear their own costs.


[J.K. KAUSHIK]
Judicial Member

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