

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

I/8

ORIGINAL APPLICATION NO.263/2004

Date of decision: 07.01.2005

Sushil Khandelwal Applicant

Mr. Kamal Dave Advocate for the Applicant

V E R S U S

UOI and ors Respondents.

Mr. Vinit Mathur Advocate for Respondents.

CORAM:

Hon'ble M. J.K. Kaushik : Judicial Member.



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

J K Kaushik
(J K Kaushik)

Judicial Member.

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JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 263/2004

Date of Decision: 07.01.2005

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

Sushil Khandalwal S/o Late Shri G.D. Khandalwal, aged 58 years, R/o Quarter No. 4/4, Income Tax Colony, Mandor Road, Jodhpur Official Address Assistant Commissioner of Income Tax, Central Circle-I, Jodhpur.

...Applicant.

(By Advocate Mr. Kamal Dave, Counsel for applicant)

Versus

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. Director General Income Tax (Investigations) Jaipur 1st.
3. Commissioner of Income Tax (Central), 2nd Floor, New Central Revenue Building (Annexe) Statute Circle, Jaipur.
4. (sic - 5) Joint Commissioner of Income Tax, (Central), Aya Kar Bhawan, Paota C Road, Jodhpur.



...Respondents

(By Advocate Mr. Vinit Mathur, Counsel for respondents)

ORDER

BY J K KAUSHIK, JUDICIAL MEMBER:

Shri Sushil Khandelwal has questioned the validity of his transfer order dated 20.10.2004 through which he has been transferred from Jodhpur to Bikaner and inter alia prayed for setting aside the same amongst other reliefs.

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2. With the consent of the learned counsel for both the parties; Mr. Kamal Dave and Mr. Vinit Mathur, respectively, I have heard the arguments for final disposal at the admission stage keeping in view the urgency of the matter and pleadings being complete. Though the issue lies in a narrow compass, wide-ranging arguments were addressed by the learned counsel in this case. I have carefully considered the pleadings and records of the same. Mr. Vinit Mathur has made available the relevant files for perusal of this court.

3. Filtering out the unnecessary details, the material facts, as deduced from the pleadings adduced on behalf of the applicant, are that the applicant started his career from the post of LDC and attained the post of Asst. Commissioner of Income Tax on the basis of select panel prepared by the UPSC. By now he has rendered over 39 years of unblemished service and is left to serve only for a period of two years and four months; his superannuation date being 31.1.2007. While working on the post of Asst. Commissioner of Income Tax under CCIT Jaipur, he was asked to submit his three choices for posting which he gave as 1. Bhilwara 2. Jodhpur and 3. Udaipur. He was ordered to be posted to Jodhpur but the same came to be modified to the extent that he was ordered to be posted in the office of D G Income Tax at Jaipur vide order dated 14.5.2004 which was cancelled vide letter dated 3.6.2004.

A handwritten signature in black ink, appearing to be 'S. K. J.' followed by a stylized flourish.

4. The further facts of the case are that the applicant was transferred from Jaipur to Jodhpur to the office of D G (Investigation) Jodhpur vide order dated 2.7.2004, in pursuance of which he joined at Jodhpur on 19.7.2004. There was some confusion regarding his date of joining and he was asked to seek one day leave and his date of joining became as 20.7.2004. While, he could hardly, get settled at Jodhpur, he has been further ordered to be transferred from Jodhpur to Bikaner vide order dated 20.10.2004. The transfer order has been issued due to administrative bias and not out of any compelling administrative necessity. The following instances have been indicated -

(a) The Jt. Commissioner of Income Tax has developed a sense of bias against him in as much as she gave permission to meet the CIT (Central) camping at Jodhpur in connection with difficulties faced by him, only when the said officer had already left the office. However, he could meet and apprised (sic appraised) his difficulties to the said officer, who earlier appreciated his working in MP, but the same authority communicated his displeasure vide letter dated 27.9.2004 and 8.10.2004. He was even threatened of the compulsory retirement.

(b). The respondents department called the applicant for the training for which he was nominated by the competent authority. The 4th (sic 5th) respondent objected that the D.G of Income Tax



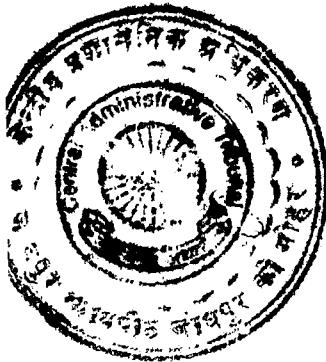
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has not recommended his case and he was asked to return the advance taken by him, which he immediately deposited.

(c). The respondent No.4 (sic 5) made a mention in a communication of dated 16/17.9.2004 to the applicant that he had been able to find time to participate in Hindi Divas, therefore cases must have been completed and ready for approval.

5. The impugned order has been assailed on diverse grounds, namely- it is case of frequent transfers, he is going to superannuate within a period of two years and 4 months and as per the verdicts of Hon'ble High Court in various cases, one is required to be accommodated to the place of his choice but in this case his option has been ignored, the impugned order is stigmatic in view of the aforesaid communications which has influenced the authority and an act of administrative bias against the applicant, his complete family is affected besides he being a chronic patient of diabetes and prostrate etc.

6. The respondents have resisted the claim of the applicant and have filed a detailed reply followed by an additional affidavit. It has been averred that the scope of judicial review in transfer matter is very limited and the persons against whom the mala fide has been alleged have not been impleaded as party respondents. The pleas of mala fide and administrative bias are unfounded. The impugned order has also been passed by the competent authority and the same needs no interference.



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There have been several complaints against the applicant in past in respect of his competency, the details of which are available in his personal file. The order of his transfer was passed by the DG and the CIT Jodhpur on dated 20.7.2004 gave further posting. It is not a case of frequent transfer since the transfers were not given effect to. The applicant has misled the court by stating that he was not relieved and obtained the stay order on dated 26.10.2004 whereas he was already relieved on 25.10.2004 itself and thus has not approached the Court with clean hands and the OA is liable to be dismissed on this grounds itself.

7. The further defence of the respondents as set out in the reply is that the transfer of the applicant was necessary in the administrative exigency for which the respondents are the best judge who are to post an employee having regards to requirements of work, work load, quantum of work, sensitiveness, better utilization of services of the individuals and best interest of revenue etc. There is nothing to suggest that any mala fide or bias is being practiced against the applicant. Equally is untrue the ground of delayed permission to meet the CIT (C) who had no option except to issue the letter dated 8.10.2004 since the applicant continued to make flagrant violation of orders of superiors. The final order of nomination for training was required to be issued by Hqrs., which was not agreeable to, but still the applicant of his own moved for training. There was no occasion for any harassment in view of

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Hindi Diwas and the applicant was reluctant to discuss and put up orders. The applicant was found lacking in dealing with the search and seizure and other important cases. The workload at Jodhpur being heavy, the applicant was shifted to Bikaner to shoulder a lighter charge. The grounds narrated in the OA have been generally denied with an assertion that transfer has been made absolutely in public interest and in the exigency of service and no mala fide is made out in absence ^{of} any material in support thereof. Family problems cannot come in the way of transfer. The OA therefore deserves to be dismissed.

8. A detailed and exhaustive rejoinder has been filed on behalf of the applicant almost reiterating and elaborating the facts and grounds mentioned in the OA. The facts and grounds indicated in the reply of the respondents have been refuted. The same is followed by an additional affidavit from the side of respondents. It has been stated therein that the applicant was sitting late in the office alone with the assesses without any supporting staff despite sensitive seized material was involved. He conducted the hearing till 1'O clock night and 11.30 p.m despite specific advices to refrain from doing such undesirable acts. He also served summons to assesses passed in the midnight on 26.9.2004.

9. Mr. Dave has reiterated the facts and grounds narrated in the pleadings of the applicant as noticed above in extenso. He



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has contended that there is no necessity to implead any individual by name in case where administrative bias is pleaded, which is the case here. He next contended that the applicant's transfer just after three months itself indicates the biasness and extent of harassment practiced by the respondents. He also emphasized on the peculiar domestic as well the medication problems faced by him. He was confronted with a specific question by the court as to whether there is any allegation of bias or mala fide against the authority that has issued the order of transfer. No direct answer was forthcoming except that it was a case of administrative bias. He has placed heavy reliance on the decision of the Supreme Court in cases of The **State of Punjab vs. Ramji Lal and ors.** [AIR 1971 SC 1228= 1971(2) SCR 550]; **Smt. S.R.Venkataraman vs. Union of India and ors.** [AIR 1979 SC 49 = 1979(2) SCR 202]; **Rajendra Roy vs. Union of India and Anr.** [AIR 1993 SC 1236]. The first one lays down that in case of administrative bias there is no need impleading any individual as party respondent. The other two described the malice as well as lays down that in certain cases it may not be possible to establish malice in fact in a straight cut manner. It may be possible to draw reasonable inference of malafide action from the pleadings, antecedents facts and circumstances.

10. Per contra, Mr. Mathur has strenuously opposed the contentions raised by the learned counsel for the applicant and

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reiterated the defence of the respondents as noticed above. He has cited number of decisions of this very bench of the tribunal on the scope of judicial review in transfer cases and has submitted that there has been neither violation of any statutory rules nor any ground of mala fide has been substantiated. He has also contended that the applicant has been transferred in the interest of administration and no interference is warranted by this Tribunal.

11. I have considered the rival submissions put forward by the learned Counsel for the parties and have perused the material on record. The law relating to the transfer of the Government servants has been fairly settled by Courts as well as the Hon'ble Supreme Court and some of them are **Union of India v. S. L. Abbas, 1994 SCC (L&S) 230, Rajendra Roy v. Union of India, AIR 1993 SC 1236, Mrs. Shilpi Bose v. State of Bihar, AIR 1991 SC 532, State of U.P. and others Vs. Gobardhan Lal AIR 2004 SC 2165 etc.** In nut shell it may be put that an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of Law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had no competence to pass the order.



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12. In the instant case, the main ground on which Mr. Dave has stressed is that of bias of the administration, which may be aptly termed as mala fide. It is not the case of the applicant that the impugned order has been issued in contravention to any statutory rules or issued by an incompetent authority. Admittedly there is no plea of any mala fide against the competent authority that issued the impugned transfer order. The pleas regarding personal inconvenience or domestic problems are plea of clemency and can not be permitted to override the administrative or public interest and they to be considered by the departmental authorities and cannot be adjudicated by a court of law. As regards the objection of the respondents that the plea of bias or mala fide can not be examined until the particular individual is impleaded, the law is well settled that in case of personal bias of mala fide the particular individual is required to be impleaded as party respondent (ref. **Federation of Railway Officers Association and ors. vs. Union of India** – Para 20- AIR 2003 SC 1344) but in case of administrative bias such requirement is not there and the decisions cited by Mr. Dave in case of **Ramjilal** (supra) lay down the binding precedent. Thus non-impleadment of the individuals as party respondents would not make any difference.

13. Before advertiring further in the matter on merits, I may point out that the Tribunal is not to proceed on the line of proving morale indicated in one of Aescop's Fable of the Lamb



and the wolf when the complaint was that the stream was being polluted by the lamb and if not by it, by any of its forefathers. There is always a presumption in favour of administration that it exercises powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest of the mala fides of the concerned authority and it is not easy to discharge the same.

14. I have gone through the departmental records. The records clearly show that the nomination of the applicant for training was not approved by the competent authority. The records also show that none of the alleged incident put forth in support of contention of bias has been taken into account by the competent authority while issuing the transfer order. The administrative reasons for transfer, as disclosed in the reply read with the one enunciated in the additional affidavit, as noticed above, finds support and are emanated and fortified from the records. Keeping in view of the entire facts and circumstances of this case I find myself unable to persuade my self that there was any administrative bias in issuance of impugned order. Therefore, the decisions cited by Mr. Dave do not support the case of applicant.

15. Prima facie it looked as if it was a case scribbling on a clean slate and the applicant was being put to a humiliation by transferring him just after a period of three months but on lifting



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the corporate veil the facts revealed a sordid state of affairs. There are number of reports against the applicant's peculiar working. The court took a lenient view by accepting the plea of communication gap, on the date when stay was granted, regarding relieving of applicant with his counsel, as correct, but subsequent events depict a dismal picture in as much as the applicant resorted to issuance of summons to assesses on midnight of 26.9.2004, knowing fully well that he was relieved on 25.9.2004 itself and had no authority for the same. Such unusual act on the part of applicant also substantiates the defence of the respondents as regards his transfer in public interest.

16. As regards the transfer during last few years of service is concerned, the learned counsel for the applicant has neither placed any decision nor quoted any rule in support of his contention. However, it was one of the recommendations by the 4th Pay Commission that during last three years of the service of an employee, as far as possible, should not be transferred. There is no complete embargo on the transfer and the word 'as far as possible' has been used, meaning thereby the transfers in the interest of administration or public exigencies could always be made. Thus I do not find that there is any ground to interfere with the impugned transfer order on any count.

[Signature]



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17. In the circumspect of the aforesaid discussion, I come to an inescapable conclusion that the Original Application sans merits and the same stands dismissed, accordingly. However, in the facts and circumstances of this case, the parties are directed to bear their respective costs. It is scarcely necessary to mention here that this order shall not prevent the applicant to represent the competent authority regarding his legitimate personal difficulties.



J K Kaushik
(J K KAUSHIK)

JUDICIAL MEMBER

Jsv

R/C copy
10/10/05

10/10/05
Part II and III destroyed
under supervision of
Section Officer (Record)
18/12/2013

Part II and III destroyed
in my presence on 08/01/2014
under the supervision of
Section Officer (Record)
as per
order dated 18/12/2013

Section Officer (Record)

8/11/14