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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR

ORIGINAL APPLICATION NO: 153/2004.
And Misc. Application No. 65/2004

21.7.2004
Date of decision:

Ghewar Singh Applicant

Mr. G K Vyas Advocate for the Applicant.

VERSUS

Secretary ICAR and Others Respondents.

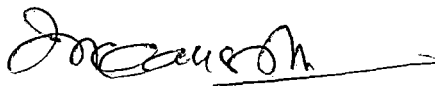
Mr. V.S. Gurjar Advocate for Respondents.

CORAM:

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

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




[J.K. KAUSHIK]
Judicial Member.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No. 153/2004
And Misc./ Application No. 65/2004**

Date of decision: 21.9.2004

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

Ghewar Singh, S/o Shri Dhool Singh, aged 57 years resident of Plot No. 25-C Shramik Pura, Masuria, Jodhpur, Presently AAO under the control of Director CAZRI.

**: Applicant in O.A/
Respondent in MA**

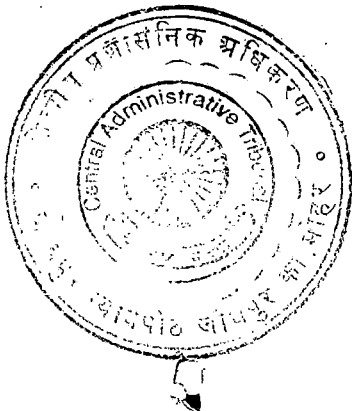
Rep. By Mr. G.K. Vyas: Counsel for the applicant.

Versus

1. Secretary, ICAR, Krishi Bhawan, New Delhi.
2. Director General, Indian Council for Agriculture Research Krishi Bhawan, New Delhi.
3. Director General Arid Zone Research Institute, Marudhar Industrial Area, Basni, Jodhpur.
4. Indian Council for Agriculture Research, Central Arid Zone Research Institute through its Senior Administrative Officer, Marudhar Industrial Area, Basni, Jodhpur.

**: Respondents in O.A
Applicants in M.A.**

Rep. By Mr. V.S. Gurjar: Counsel for the respondents.



ORDER

Mr. J K Kaushik, Judicial Member.

Shri Ghewar Singh has assailed the order dated 29.05.2004(Annex. A/1) and has inter alia prayed for setting it aside with a direction to the respondents to allow him to work at Jodhpur. The case was listed for admission today. With the consent of the learned counsel for the parties the same was

taken up for final disposal at the stage of admission keeping in view that the pleadings are complete and also the urgency involved in the matter.

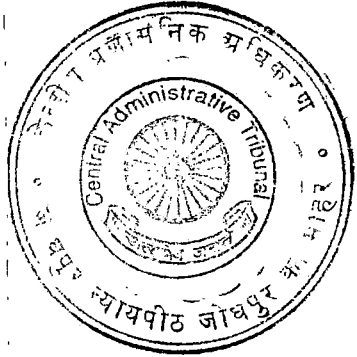
2. I have heard the learned counsel for the parties and have anxiously considered the pleadings and records of this case. Shorn of the superfluities, the material facts necessary for resolving the controversy involved in the case as borne out in the pleadings of the parties are that the applicant was initially appointed on the post of LDC vide order dated 17.11.66 at Jodhpur. It seems that he enjoyed his promotion to the post of Assistant. Subsequently vide Office Order dated 26.12.1988; he was transferred in public interest to CAZRI Regional Research Station, Pali. Thereafter, he was allowed on request transfer for posting at Jodhpur, vide letter dated 03.03.90 (Annex. R/4). He enjoyed his promotion to the post of Assistant Administrative Officer with effect from 17.03.2003 and was posted at Jaisalmer, where he served upto 15.12.2003, when he was relieved to join at Jodhpur on his own request in pursuance of the transfer order dated 21.11.2003. The case of the applicant is that he is a chronic patient of heart disease and to this effect he filed a discharge ticket indicating his admission in M.G. hospital, Jodhpur from 21.08.2003 to 28.08.2003. It is on the basis of his representation his request for transfer to Jodhpur was acceded to. It is also indicated that the said request was made to the then Labour Minister to the Union Government, New Delhi.



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3. Another letter dated 29.05.2004 at Annex. A/1 has been issued vide which the applicant has been ordered to be transferred to Bikaner from Jodhpur in public interest with due TTA and joining time as per rules. The order is said to have been passed malafidely and arbitrarily. The factual aspect of the case have been repeated and made as a ground of attack of the impugned order. It has been averred that he has to be under regular medical treatment. It is also averred that it means a case of frequent transfer, which has also put the applicant immense hardship and inconvenience.

4. As regards the variances, the respondents have filed enormous preliminary objections as well as reply to the facts of this case with lot of legal pleadings. It has been averred that the applicant has exerted political pressure to get him re-transferred to Jodhpur, which act is violative of Rule 20 of the CCS (CCA) Rules, 1965. He was also issued with a memo calling explanations and a charge sheet has been issued. As per his initial order of appointment on the post of LDC, there is a condition that the applicant shall be liable to be posted anywhere in India. During his 38 years service career, he was posted at Pali, which is 80 KMs from Jodhpur and was re-transferred back to Jodhpur just within 15 months in the year 1990 and thereafter for a period of 8 months he was posted to Jaisalmer on promotion in Public interest and again retransferred back to Jodhpur. Since the Administrative Officer at Bikaner had retired



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on 31.01.2004, he has been transferred in public interest considering all the relevant factors including the medical facilities available at Bikaner city. The grounds raised in the OA have generally been denied.

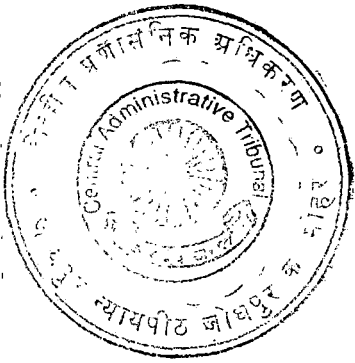
5. An exhaustive rejoinder has been filed on behalf of the applicant almost reiterating the facts mentioned in the OA and refuting the defence of the respondents as set out in the reply. Certain additional pleadings have been made regarding harassment to the son of the applicant who is also an employee of the same department. It is also averred that one Shri T.N. Shivadasan, who is working at Jodhpur since his initial appointment was posted against R.R.S. Bhuj and he is still continuing at Jodhpur and therefore the said Shivadasan ought to have been posted at Bikaner.



6. The learned counsel for the respondents has submitted that Shri T.N. Shivadasan, has neither been impleaded as a party respondent nor there are any pleadings to this effect in the main O.A and additional facts cannot be pleaded in the rejoinder. However, he has submitted a copy of the order dated 03.12.94, through which Shri T.N. Shivadasan was promoted to the post of Assistant Administrative Officer and the same is taken on record and it is surprising that he is never been posted to Bhuj or against the post at Bhuj and the applicant has made a false statement.

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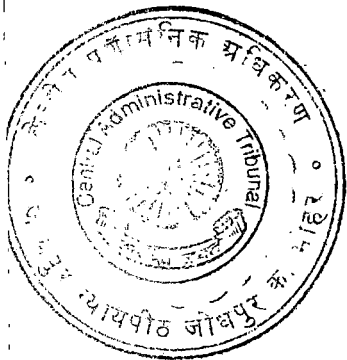
7. The learned counsel for the applicant has reiterated the pleadings of the applicant as noticed above. He has made available a copy of the judgement of this Tribunal in O.A. No. 13/2003 dated 14.02.2003 Prithvi Singh vs. ICAR and others and that was case wherein Rule 20 of the CCA (CCA) Rules, 1965 for making direct communication with higher authorities have been dealt with and similar controversy came to be adjudicated therein. In that case, the applicant there in is his own son. He has endeavored hard to persuade me that one Shivadasan is being continued at Jodhpur ever since his appointment but the applicant has been ordered to be shifted out of Jodhpur within a period of about five months when there being no administrative exigencies. He has also tried to link up the dates regarding his earlier transfer order and submitted that the applicant has been re-transferred to Jodhpur at his own request. He has also laid stress that the applicant has not been served with any order or memo like Annex. R.1 or R.2 so far and such could not have been ground for his transfer.



8. On the other hand the learned counsel for the respondents have submitted that the applicant has not alleged any malafide against any individual officer and no such person has been impleaded as party respondent. He has also submitted that the applicant had to be transferred in administrative interest in as much as the post at Bikaner fell vacant due to retirement of the

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incumbent and therefore the applicant had to be transferred. The learned counsel has reiterated the long stay aspect of the applicant at Jodhpur. He has submitted that the applicant had hardly remained outside Jodhpur for about 2 years out of his entire career of 38 years. In addition to the judgements which have been referred to in the pleadings of the respondents, the learned counsel has referred to one of the recent judgement of the Apex Court passed on 13.02.2004 in the case of Janardhan Debnath and another and has pointed out that their Lordships have held that the respondents therein can be transferred to another division and it is a matter for the employer to consider the administrative exigencies and post a person and it is not for this Court to direct one way or the other.

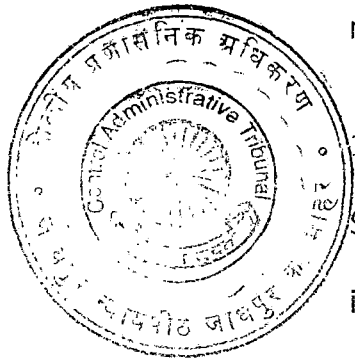


9. I have considered the rival submissions put forward by the learned Counsel for the parties and have perused the material on records. Numerous decisions have been cited on the same preposition on behalf of the Respondents but I am referring to some of them to avoid multiplicity. The law relating to the transfer of the Government servants has been laid down in a number of decisions by the various High Courts as well as the Hon'ble Supreme Court. In the case **Union of India v. S. L. Abbas**, [1994 SCC (L&S) 230,] it was observed that an order of transfer is an incidence of Government service. It was further observed that under Fundamental Rule 15 the President may transfer a Government servant from one post to another. It was then observed that who should be transferred where, is a matter

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for the proper authority to decide. Unless the order of transfer is vitiated by malafides and is made in violation of any statutory provisions the court cannot interfere with it.

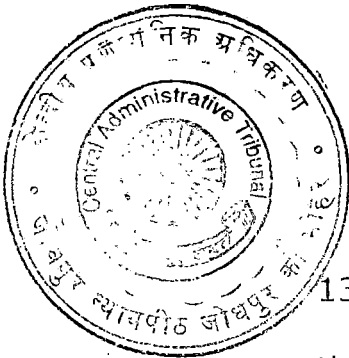
10. In the case **Rajendra Roy v. Union of India**, [AIR 1993 SC 1236], it was observed that it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee, but on that score the order of transfer is not liable to be struck down. It was further observed that unless such order is passed malafide or in violation of the rules of service and guidelines for transfer, without proper justification, the Court and the Tribunal should not interfere with the order of transfer.



11. In the case **Mrs. Shilpi Bose v. State of Bihar**, [AIR 1991 SC 532], it was observed that where a competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the Court, merely because the transfer orders were passed on the request of the employees concerned. It was further observed that the courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other

12. The powers of this Tribunal have been amply explained in the judgement of Hon'ble the Supreme Court reported in **AIR 2004 SC 2165 - [State of U.P. and others Vs. Gobardhan Lal.]** wherein, their Lordships have made the following observations :-

"9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."



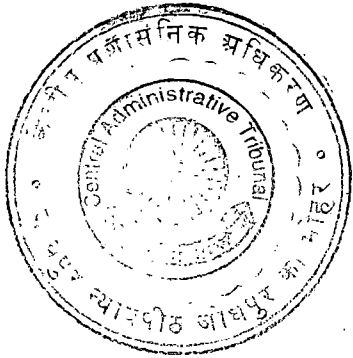
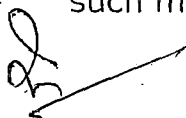
13. Examining the controversy involved in the instant case on the anvil of the aforesaid principle of law, I find that in the instant case, no mala fide has been alleged against any individual and no ^{one} has been impleaded as a party respondent by name. The plea that the transfer order has been issued for the reason that applicant's son won the case filed against the same respondents and that has irked the later, is not even remotely connected with the transfer of the applicant for obvious reasons. The said case was finalised on 14.2.2003. The applicant was promoted and posted to Jaisalmer on 17.3.2003 and reposted in

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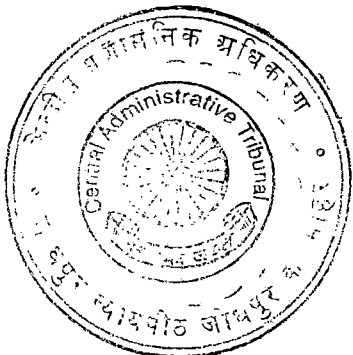
Nov. 2003. Thereafter the impugned order has been issued on 25.5.2004.

14. Another ground of frequent transfer has also no basis. The applicant was transferred on 17.3.2003 and posted at Jaisalmer and was allowed own request transfer in the month of Nov. 2003. How could it be case of frequent transfer? Great emphasis has been laid on the ground that the applicant is suffering from heart problem and that was the reason for acceptance of own request transfer. But there has not been any denial of the fact that the requisite facilities for treatment are available at Bikaner also and this fact has been specifically taken into account by the respondents while ordering his transfer to Bikaner.

15. I also find that there is no warrant for interference on the pretext that a direct communication was made by the applicant for seeking his transfer in as much as it was for posting to Jodhpur and it is not the case of any one that that transfer has been cancelled. The case is of fresh transfer from Jodhpur to Bikaner. It is unfortunate the case file has been overburdened with lot of irrelevant materials. The respondents have submitted that due to retirement on one of its AAO at Bikaner, the applicant had to be transferred to Bikaner to meet the administrative requirement and the scope of judicial review on such matter has already been penned down above.



16. There is yet another ground on which the learned counsel has embarked and laid enormous emphasis. It is regarding continuance of on Shri T N Shivdasan AAO at Jodhpur. Incidentally, this plea has been taken for the first time in rejoinder and that too without impleading the Shivdasan as respondent. It also not the case of applicant that he was not in know of the factual aspect required for making such plea in the OA. I do not think it would be apposite to adjudicate on such pleas and take the other parties by surprise besides material being scanty. At the most, case of the applicant could have been that he has been transferred just after few months of posting at Jodhpur; but then it is not a case where any tenure is provided for the transfer and there is violation of any statutory transfer policy. I am unable to get persuaded with any of the contentions of the learned counsel for the applicant and am of the firm opinion that the impugned order cannot be faulted with on any count.



17. Before parting with this case, I have noticed that the age of the applicant has been shown different at different placed. At some places it is shown as 52 years which is amended to 57 years without any initial, in medical records at page 20 of the paper book i.e. discharge certificate it is shown as 52 years. In another medical certificate at page 15 of the paper book it is shown as 55 years in the year 2003 and in the rejoinder it is

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shown as 57 years. However, since the applicant has not claimed any relief on the basis of age, I leave this matter.



18. The upshot of the aforesaid discussion is that the Original Application sans merits and the same stands dismissed accordingly. The stay already granted stands vacated forthwith. M.A. No. 65/2004 for vacation of stay order also stands disposed of. No costs.

(J K Kaushik)
Judicial Member

Jsv.

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