

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

I/8

**ORIGINAL APPLICATION NO. 120/2005
&
Misc. Application No. 89/2005**

Date of decision: 25.7.2005

Thomas K.I.

...Applicant

Mr. Kamal Dave

...Advocate for the Applicant

VERSUS

UOI and ors

...Respondents.

**Mr. Vinit Mathur ...Advocate for Respondents No.1 to 3
None present for respondent No. 4.**

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? *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
(J K Kaushik)
Judicial Member.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
UDAIPUR BENCH**

**ORIGINAL APPLICATION NO. 120/2005
&
Miscellaneous Application No. 89/2005**

Date of Decision: 25.7.2005

CORAM

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

Thomas K.I. S/o Late Shri Idicula aged about 56 years R/o 13, Gyatri Colony, Ganseh Nagar, University Road, Udaipur official address L.D.C. In the office of Labour Enforcement Officer (Central), Tirupati Bhawan, Bohra Ganseh Road, Udaipur.
.....Applicant.

(Mr. Kamal Dave, Counsel for the applicant)

VERSUS

1. The Union of India through:
The Secretary, Ministry of Labour,
Government of India, Shram-Shakti Bhawan, Rafi Marg,
New Delhi.
2. The Regional Labour Commissioner (Central), Kendriya
Shram Sadan, Haribhau Upadhyay Nagar, Extn.
Pushkar Road, Ajmer.
3. The Labour Enforcement Officer (Central), Tirupati Bhawan,
Bohra Ganseh Road, Udaipur.
4. Shri Prakash Maurya (L.D.C) C/o Regional Labour
Commissioner, (Central), Kendriya Shram Sadan, Haribhau
Upadhyay Nagar, Extn. Pushkar Road, Ajmer.
.....Respondents.

(Mr. Vinit Mathur, Counsel for the respondents.)



ORDER

By Mr. J.K. Kaushik, Judicial Member

Shri Thomas KI has questioned the propriety of order dated 20.04.2005 at Annex. A/1 vide which he has been ordered to be transferred from Udaipur to Ajmer. It has been further prayed that the said order may be set aside with a direction to the respondents to allow the applicant to serve at Udaipur and an alternative prayer has also been made that the respondents may be restrained from relieving him so that he could move a representation for sympathetic consideration.

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2. With the consent of the learned counsel for the applicant as well as the counsel who is representing the official respondent No. 2 and 3 i.e. contesting parties. The case was taken up for final disposal at the stage of admission; keeping in view the urgency in the matter and pleadings being complete. I have accordingly heard the arguments advanced at par by the learned counsel and also anxiously considered the pleadings as well as the records of this case.

3. The abridged facts of this case as averred by the applicant are that he came to be initially appointed in the respondent department as LDC on 20.07.1971 and ever since his appointment, he has been discharging his duties to the entire satisfaction of the authorities. He has already rendered 34 years of service and is left to serve only four years before attaining the age of superannuation. The applicant has planned to settled at Udaipur after superannuation. He has faced with a peculiar domestic circumstances. He has an old aged mother suffering from serious ailments. The applicant is the only son to look after her. He has two children with him at Udaipur prosecuting their post-graduation and schooling at Udaipur. His wife is also in the service of the State of Rajasthan.

4. The further facts of the case are that the applicant although is not served with any transfer order but came to know that he has been ordered to be transferred from Udaipur to Ajmer vice one Shri Prakash Maurya i.e. respondent No. 4 is sought to be transferred from Ajmer to Udaipur. The peculiar procedure has been adopted in the case of the applicant and



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even he was not allowed to make a representation since he was simultaneously relieved. The transfer is not effected in administrative exigency but it is due to a complaint made against him. The complaint was duly examined by the competent authority and found to be without substance but still the applicant has been transferred. The Original Application has been filed on diverse grounds e.g. The transfer order has been issued without application of mind. The transfer is punitive in nature. The applicant is faced with peculiar domestic problems. He was desirous of making representation but he has been served with the order of transfer and simultaneously relieved.



5. The respondents have contested the case and filed a detailed and exhaustive reply. It has been averred that family problems cannot come in the way of transfer of Government servant. There is no embargo to transfer an employee of ground one is left to service four years more before superannuation. Educational facilities are very much available at Ajmer. The order of the transfer could not be served on the applicant since he was on leave. He was informed about the transfer. It has never never the practice to accede transfers of the LDCs and UDCs of the Department on their requests. the transfer of the applicant has been made in public interest and administrative exigencies and the so-called complaint has not been the reason for transfer of the applicant and if there is any substance in the complaint, the appropriate action would be taken in accordance with the rules. The grounds raised in the Original Application have been generally denied.

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6. A rejoinder has been filed on behalf of the applicant

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containing the details of certain subsequent events after passing the order of the transfer. It has been averred that normally no transfers are made in the Department and the employees are allowed to serve at the same place. The applicant has also moved an Miscellaneous Application No. 89/2005 wherein it has been prayed that the file containing the complaint and further proceedings thereof may be called from the respondent's Department.



7. The learned counsel for the applicant in addition to reiterating the facts and grounds raised in the Original Application has submitted that the applicant has been transferred due to a false complaint against him. He has also submitted that the applicant is faced with peculiar domestic problems inasmuch as he has old aged mother who is suffering from multiple diseases. His children are studying at Udaipur and he has only four years service before superannuation. A clarification was sought from the learned counsel for the applicant regarding the period of stay of the applicant at Udaipur. It was fairly replied that ever since his appointment, the applicant is continuing discharging his duties at Udaipur and the period of stay is about 34 years at Udaipur. He has also strived hard to submit that the relevant file where complaint against the applicant was dealt with, be summoned and that would unfold the factual position. He has cited number of authorities in support of his contentions which I shall deal a little later in this order.

8. On the other hand, the learned counsel for the respondents has submitted that the scope of judicial review in transfer matters is quite limited. He has further submitted in the instant

case, the transfer order of the applicant, who has served for a period of 34 years at the same place, cannot be interfered by this Bench of the Tribunal. There is no allegation of mala fide against any individual officer. He has next contended that the subsequent events which relate to the period after passing of the impugned order could not precisely be the ground for adjudging the propriety of the impugned transfer order. He has cited the decision of the Apex Court in case of State of **U.P. Vs. Siya Ram** AIR 2004 SC Page 4121 and has invited my attention to Para 5 and 6, apprising that the same applies to the facts of the instant case and, therefore, the Original Application deserves to be dismissed.



I have considered the rival submissions put forth on behalf of both the parties. Before coming to the crux of the matter, I would like to dispose of the M.A NO. 89/2005 wherein a prayer has been made for calling the file relating to the proceedings on complaint. Firstly, the respondents in their reply has categorically mentioned that the applicant has not been transferred on the basis of complaint. Secondly, there is no embargo to transfer a person on a complaint also and this proposition of law shall be examined in subsequent paras. I am otherwise satisfied for the reason indicated in the succeeding paras that there is no ground to interfere with the impugned transfer order. In this view of the matter, it is not considered expedient to accept the prayer of the applicant and, therefore, the M.A. NO. 89/2005 is hereby rejected.

10. Now advertent to the facts of the case, admittedly the applicant has served with the respondent Department at Udaipur

for a long period of 34 years without any interruption. The applicant has made averments regarding some complaint but no details of the same have been disclosed, even the nature of the complaint is not known. However, it is not the case of the applicant that any finding of guilt has been given against him. There is no such mention in the pleadings of either party. It is also not the case of the applicant that there has been violation of any statutory rules or the transfer order has not been passed by the competent authority. There is no plea of mala fide against the transferring authority and no one has been impleaded as party respondents by name. The learned counsel for the applicant has tried to project the peculiar domestic and personal problems of the applicant. These could be the plea of the clemency to be considered by the departmental authorities and not plea for adjudication. There is no rule or policy that one could not be transferred if he is left to serve for four years before attaining the age of superannuation. The applicant has already made a representation to the competent authority and no direction is required to be given to the respondents for deciding the same; rather the Tribunal is admittedly not meant for that since, its his basic function is to settle the legal rights and disputes of the parties. (Ref SLJ 2002(2) CAT 230 **G Muthusamy v. The Divisional Personnel Officer Southern Railway and Ors**).



11. As far as the judgments which are cited by the learned counsel for the applicant are concerned. The same are are of no help to the case of applicant in view of the following observations:-

1. **N.N. Singh Vs. General Manager (Cal.)** 1973 (1) SLR-that was a

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case where the order came to be passed in the garb of ostensible purpose of public interest. But the facts in the instant case are dissimilar and the same is of no help to the applicant.

2. **S.R. Venkataraman Vs. Union of India** AIR 1979 SC-that was a case where malice has been defined. But in the instant case, there is no plea of malice and the transfer order is not required to be a speaking order. Hence the same has got no relevance to the instant case.

3. **Sm. Pushpika Chatterjee Vs. State of West Bengal and Ors.** 1972 SLR-in that case an officer was transferred simply to retain the other officer. But in the instant case, the factual aspect is different inasmuch as the applicant has been transferred and another person has been transferred vice him. In this view of the matter, this Judgment also is of no help.

4. **Dr. P. Damodaran Vs. State of Kerala and Ors.** 1982 (1) LR-It was a case where transfer order was passed to accommodate another Govt. Servant without due regard to the interest of administration. In the instant case, the applicant as well as the private respondents have been transferred in the interest of administration and it is not a case where some one is brought on his own request and the applicant has been ousted. Thus, the ratio laid down in the said case also has not application and hence it is not applied to the instant case.



12. Now I would like to deal with the defence version of the respondents. Paras 5 and 6 of the judgment in case of **State of UP and Ors Vs. Siya Ram and Anr AIR 2004 SC 4121** and contents thereof would provide a complete answer to the scope of judicial review as well as the powers of the Tribunal to interfere in transfer matters. The contents of the same are extracted as under:-

"5 The High Court while exercising jurisdiction under Arts. 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer as shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corporation Ltd. V. Shri Bhagwan and another* (2001 (8) SCC 574).

"6. The above position was recently highlighted in *Union of India and others v. Janardhan Debanath and another* (2004 (4) SCC 243). It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

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13. The bare reading of the aforesaid and applying the said principles would show that there is absolutely no ground to interfere in the instant case inasmuch the order has been passed in the interest of administration which requires factual adjudication and invariably depend on peculiar circumstances of the case concerned. It is easy to take the plea of the mala fide but quite difficult to substantiate. In the instant case, there is no material to substantiate the version of the applicant that the transfer order is not in accordance with the rules.



14. I would deal with the ground which has been stressed the most by the learned counsel for the applicant that the order of the transfer was issued on the basis of the complaint and therefore, the same is punitive in nature. In this regard, the law is well settled by Full Bench of this 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 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."

Admittedly, in the instant case no finding of the guilt has

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been given against the applicant. Therefore, the submissions made by the learned counsel for the applicant are without any substance and the plea has to be rejected.



15. In view of what has been said and discussed above, the Original Application sans merits, the same fails and stands dismissed accordingly with no order as to costs. The Interim Order already granted stands vacated forthwith. It is scarcely necessary to mention that this order shall not preclude the competent authority to decide the representation in accordance with rules.


(J.K. Kaushik)
Judicial Member

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