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

ORIGINAL APPLICATION NO. 121/2005

DATE OF DECISION: 31.05.2005

Shri N R Meena : Petitioner

Mr. Kamal Dave : Advocate for the Petitioner

V E R S U S

Union of India & Ors. : Respondents

Mr. Vinit Mathur : Advocate for the respondents



CORAM:

THE 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)
Judl. Member

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JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 121/2005

Date of Decision: 31 .05.2005

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

Shri N R Meena s/o Shri Akramji, aged 59 years, R/o 12, Gyatri Nagar, Pali, Official Address- Assistant Commissioner of Income Tax, Pali, Jodhpur.

..Applicant.

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

Versus



1. Union of India through the Secretary, Ministry of Finance, Ayakar Bhawan, Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Jaipur.
3. The Chief Commissioner of Income Tax, Paota C Road, Jodhpur.

...Respondents

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

ORDER

BY J K KAUSHIK, JUDICIAL MEMBER:

Shri N R Meena has questioned the validity of his transfer orders dated 11.4.2005 (A/1) and order dated 12.4.2005 (A/2) through which he has been transferred from Pali to Barmer to ~~Bikaner~~ and has, 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 i.e. 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. I have carefully considered the pleadings and records of the same.

3. Skipping the variances, the indubitable material facts, as deduced from the pleadings of the parties, are that the applicant was transferred to Pali with effect from 24.10.2003 as Assistant Commissioner of Income Tax and has been there for about one year and six months. He is going to retire from service on attaining the age of superannuation on dated 31.12.2006. He has been ordered to be transferred from Pali to Barmer vide order dated 11.4.2004 with further posting as Asst Commr of Income Tax Circle, Barmer vide order dated 12.4.2005. By now he has rendered over 36 years of unblemished service and is left to serve only for a period of one year and eight months.



4. As regards the variances of facts, as per the version of applicant a transfer policy has been framed by the competent authority in respect of Group A officers of Central Board of Revenue. It has been envisaged that the minimum tenure at Pali is supposed to be two years since Pali falls in class C stations. This tenure of two years can be extended further. The impugned order has been issued much before the completion of two years tenure and therefore it is in

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contravention to the policy in vogue. The case of the applicant also does not fall within the ambit of provisions relating to transfer in the interest of administration. The applicant has certain additional liability to look after the family of his deceased brother as well as his old aged mother residing at a distance of about 80 KM and a representation to this effect has been made to the competent authority. The same has not been properly considered despite having been duly recommended by the next higher authority.

5. Per contra, the respondents in their reply have averred that the applicant has been transferred in public interest and in the exigency of service, calling for no interference from this bench of tribunal. It was necessary to streamline the action plan targets, which were lagging behind at Pali. The policy guidelines placed at Annexure A/3 are only draft guidelines and not yet accepted by the Board. Still, the present transfer is in consonance with para 5.4 of the same since he has completed two years service as per the provisions thereof. Otherwise also such policies are only guidelines and cannot override the public interest or administrative exigency. Equally is true in regard to family problems, which cannot get precedence over public interest.



6. The learned counsel for both the parties have reiterated the facts and grounds mentioned in the respective pleadings of the parties. Mr. Dave, learned counsel for the applicant has endeavoured to persuade me that the Transfer Policy at Annexure

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A/3 is the relevant statutory Transfer policy and the impugned order has been issued in contravention of para 5.4 and 9.1 of the same. These provisions are mandatory in substance. He has also placed reliance on the judgement of Hon'ble Rajasthan High Court Jodhpur in case of **Dr (Smt) Pushpa Mehta Vs. Raj. Civil Services Appellate Tribunal and Ors 2000 (2) WLC 725** and has submitted that the same applies to this case in as much as the applicant is at the verge of retirement and left to serve for less than two years.

7. On the other hand Mr. Mathur, learned counsel for the respondents has with equal vehemence contended that the respondents have not contravened any policy and the applicant has been transferred in public interest and in the exigency of service. He has placed reliance on one of the recent decision of this very bench of the tribunal passed on dated 7.1.2005 in case of **Sushil Khandalwal Vs. Union of India and Ors OA No. 263/2004**, wherein similar controversies were decided holding that there is no total prohibition of transfer at the verge of retirement and also the guidelines are not mandatory. The scope of judicial review in respect of transfer matter has also been summarised there. The same covers up the controversy on all fours and the OA deserved to be dismissed.

8. I have anxiously considered the rival contentions put forth on behalf of both the parties. As far as Transfer Guide Lines at Annexure A/3 is concerned, the same does not seem to be

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statutory guidelines since full particulars have not been placed on records. It does not indicate as to when the same came to be issued and as to who has issued them. In any case, I am satisfied that even these guidelines have been adhered to and the impugned order has been issued well in consonance with the same as would be evident from subsequent paras. To appreciate the contentions raised in this case, I find it expedient to refer to the relevant para of the same as under:

"5.4. The continuous stay of a Group A officer should not exceed six years in class A station, four years in Group B station and should not be less than two years in Class C Station. A stay of more than three months in a station will be treated as a complete year, the period of stay getting counted from date of joining.

9.1. TRANSFER ON ADMINISTRATIVE GROUNDS

Transfer may be made in the following cases for administrative reasons:

(a). An officer against whom the CVC recommends initiation of vigilance proceedings, should be posted or remain posted at the station where cause of the vigilance proceedings originated. This restriction will remain in operation till such time the vigilance matter is not closed."



9. The scope of judicial review in the transfer matters is quite limited. The transfer of an employee is an incidence of service and order of transfer is not vulnerable or to be lightly interfered with 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. No doubt, the Tribunal is not handicapped in setting right the wrong, if it so appears to the mind of the Tribunal. The powers of the courts/Tribunal have been amply explained in the judgement of Hon'ble the Supreme Court in case of **State of**

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U.P. and others Vs. Gobardhan Lal AIR 2004 SC 2165,

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."

Similarly in case of **Union of India and others V. Janardhan Debanath & Anr (2004) 4 SCC 245**, their Lordships of Supreme Court have observed as under:

" 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 another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless as order of transfer is 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 tribunal normally cannot interfere with such orders as a matter of routine, as though they were appellant authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of service concerned. This position was highlighted by this court in National Hydroelectric Power Corp Ltd V. Shri Bhagwan (2001) 8 SCC 574."

10. Testing the facts of this case on the touchstone of above principles, we do not find there any ground of mala fide, incompetence of authority that issued the order of transfer or regarding violation of any statutory rule, which could be said to have been made out. A bare very para 5.4 of the guidelines reveals that a stay of more than three months will be treated as complete year and the applicant having admittedly, completed more than three months in a year, the impugned order is well in



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consonance with the said guidelines. Thus the same cannot be faulted with on this count. As regards para 9.1 of the guidelines, the same contain only few instances and the list is not exhaustive. It also does not include the cases of public interest transfer, which is the case here. Thus, I do not find the impugned order contravenes any of the provisions of the said guidelines.

11. As regards the transfer during last few years of retirement on superannuation from service is concerned, the learned counsel for the applicant has not quoted any statutory rule in support of his contention. Even the so-called transfer policy does not envisage any provision in this respect. The judgement in case of **Dr (Smt) Pushpa Mehta** supra is of no help to the case of applicant for number of reasons, namely the facts of that case are dissimilar in as much as in that case the transfer was found to be not in public interest, there was a policy for transfer which provided that ordinarily one should not be transferred at the verge of retirement and the transfer order was passed to accommodate someone else. But in the present case there is nothing as such. There is no such policy in this respect and the transfer has been issued in accordance with the guidelines and that too in public interest. However, I notice that 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, one should not be transferred. There is no complete embargo on the transfer and the word 'as far as possible' has been used,



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meaning thereby the transfers in the interest of administration or public exigencies could always be made. On the other hand I am find that the controversies involved in this case have been lucidly dealt with in case of **Sushil Kandelwal** supra and do not remain res integra. I also notice that in the instant case, thirty officers have been transferred through the impugned order and most of the transfers made are chain transfers. There is allegation of mala fides against anyone. The matter regarding personal problems is the plea of clemency needing no adjudication from a court of law. Thus I do not find that there is any ground to interfere with the impugned transfer order on any count.



12. In the circumspsect of the aforesaid discussion, I come to an inescapable conclusion that the Original Application sans merits and the same stands dismissed, accordingly. The interim order already granted earlier stands vacated forthwith. No costs. It is scarcely necessary to mention here that this order shall not prevent the applicant to pursue his representation, regarding his legitimate personal difficulties, with the competent authority.


(J K KAUSHIK)
JUDICIAL MEMBER

kumawat

Part II and III destroyed
in my presence on 09/11/2014
Under the supervision of
station officer (TJ) as per
dated 18/12/2013

[Signature]
Station officer (Record)
9/11/14

R/c
Ashok Makwana (H/O)
02/06/14

R/c
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