

I/6

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**Original Application No. 367/2005**

Date of Decision: 23<sup>rd</sup> January 2006

**CORAM:**

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

Murli Manohar Singh S/o Shri Ajit Singh Ji, aged about 43 years, resident of – Plot No.81, Khasra No.24, Nandri Fanta, Ajmer Road, Jodhpur, at present employed on the post of Clerk in the office of Regional Audit Officer (M.E.S), Jodhpur (Raj.).

..Applicant

(Mr. B.Khan, Counsel for the applicant.)

**VERSUS**

1. Union of India, through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Controller General of Defence Accounts, R.K.Puram, New Delhi.
3. P.C.D.A. (Principal & Controller of Defence Accounts), Southern Command, Pune-1, Finance Road, Pune-01.
4. R.A.O. (M.E.S), Prem Niwas, Polo-II, Mandore Road, Jodhpur (Raj.).

..Respondents.

(Mr. Girish Joshi, Counsel for the respondents.)



**ORDER**

**Mr. J.K. Kaushik, Judicial Member**

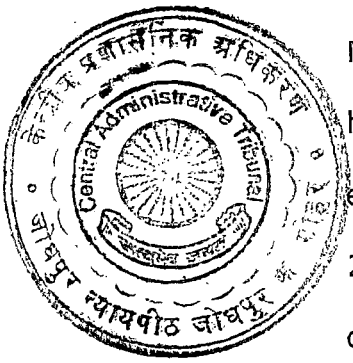
Shri Manohar Singh has assailed the order dt. 5.07.2005 (Annexure A/1) and 25.10.2005 (Annex. A/2) and has prayed for quashing and setting aside the same, amongst other reliefs.

2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission keeping in view the urgency and short controversy involved in this case. I have accordingly heard the arguments advanced at the Bar by the

learned counsel and anxiously considered the pleadings as well as the records of this case.

3. The factual matrix of this case as pleaded on behalf of the applicant depicts that the applicant is holding the post of Clerk and was transferred from Kota to Jodhpur in the Office of Local Audit Office, Army vide letter dt. 04.09.2003. He was subsequently transferred in the Office of R.A.O. (M.E.S.) Jodhpur vide letter dt. 25.11.2004. Just after about 7 months, he has been again ordered to be transferred at P.A.O. (O.R.S.) ARTY, Nasik vide order dt. 5.7.2005. There are number of persons who have been working at Jodhpur station from a much earlier period but applicant has been singled out. No option was called from him as per the transfer policy in vogue. He has two sons, studying in Class Xth at Jodhpur and the board examination are to scheduled to be held in the month of March/April, 2006. The wife of the applicant has also undergone a major operation of Galbladder and she is under constant treatment at Jodhpur. The applicant took up the matter for cancellation of his transfer order, and if not possible, then for deferment for one year. His deferment has been accepted but only in part i.e. upto 31.12.2005. However, his problems continue to subsist. His request has been refused in a mechanical way without application of mind and through a non-speaking order. The OA has been filed on multiple grounds mentioned in Para 5 and its sub paras.

4. The respondents have contested the case and filed a detailed and exhaustive reply to the Original Application. The scope of the judicial review in transfer matters has been narrated as part of preliminary objection and it has been mentioned that there is no



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evidence of malafide found in transfer order by which the applicant was transferred from Jodhpur to Nasik. It has also been averred that applicant has not disclosed the penalty imposed on him and complaints made against him. He has also accepted the deferment. The applicant has been transferred on administrative ground and not on the basis of station seniority. After due consideration, the decision to grant him deferment upto 31.12.2005 has been taken. There are certain complaints against the applicant warranting disciplinary action and the same is under consideration. The grounds mentioned in Para 5 and its sub paras have been generally denied. The reply is followed by a short rejoinder; almost reiterating the facts narrated in the O.A.



5. The learned counsel for the applicant has submitted that the so-called penalty imposed on applicant is of much earlier period, that too only a minor penalty which has no relevancy to the instant case. He has also submitted that subsequent complaints (i.e. after the date of transfer order) on which the respondents have placed reliance are also of no consequence as far as validity of the transfer order is concerned. However, he has submitted that the transfer cannot be a substitute for or a short cut to disciplinary proceedings. If applicant has committed any misconduct, the due procedure ought to have been followed. He has, however, submitted the applicant that though the transfer order is punitive in substance, he would not stick to challenge the impugned order as such, in case his alternative prayer for keeping the impugned order in abeyance till 31.03.2006 is considered and accepted. He has also submitted that the competent authority has not given any reason as to why the deferment of the applicant has not been accepted upto 31.3.2006. The position in this respect is not improved even in the reply despite specific pleadings from the side of the applicant. He has

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lastly contended that there is no such administrative urgency that the applicant's transfer order cannot be kept in abeyance till 31.03.2006.

6. Per contra, the learned counsel for the respondents has vehemently contended that the applicant is being transferred in the interest of administration. The transfer is made due to misconduct of the applicant and an employee can very well be transferred due to misbehaviour or inefficiency as per the verdict of Apex Court in **Union of India vs. Janardhan Debnath and Anr 2004 (4) SCC 245**. He made me to traverse through various paras of the said judgment and specially invited my attention to para 14. He was questioned as to whether there is so much administrative necessity or urgency in the matter that the respondents cannot retain the applicant in Jodhpur up to the end of the academic session. The learned counsel for the respondents took a little time and consulted the officer-in-charge and thereafter expressed his inability to make any assertion on this point.




7. I have considered the rival submissions put forth on behalf of both the parties. I find that the validity of the impugned order need not be gone into in detail since the learned counsel for the applicant was fair enough in submitting that his request for continuing the applicant at Jodhpur up to 31.03.2006 may be considered. Therefore, the only question that requires consideration is as to whether there is any such urgency that the applicant has to be moved out immediately and cannot be continued up to the end of the present academic session. A comprehensive reading of pleadings and records do not indicate such urgency. The competent authority has considered the facts and passed the deferment order but has not disclosed any reasons for or urgency in the matter. After passing of the impugned

transfer order, by now more than 6 months have already elapsed and now it is a matter of about two months and few days more to reach to 31.3.2006. On the basis of material on the file, I do not think that there is such administrative urgency that the applicant cannot be kept at Jodhpur for such a short period. In such circumstances, one should be continued on the last place of posting by keeping the transfer order in abeyance until the end of the academic session. I am fortified of this view from the verdict of Apex Court in Case of **Director of School Education V. O Karuppa Thevan 1996 (1) SLR 225 (SC)**.



8. In view of what has been said and discussed above, the Original Application is partly allowed. The respondents are directed to keep the impugned orders Annex. A/1 and Annex. A/2 in abeyance until 31.03.2006. The interim order already granted is merged with this order. No costs.

  
(J.K. KAUSHIK)  
JUDICIAL MEMBER

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Munir Khan

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Adp.

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In my presence on 3/4/14  
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order dated 31/11/2014  
Section officer (Records)  
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