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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 158/2005

Date of Order: 02.08.2005

CORAM

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

K.C. Soni S/o Shri Sua Lal Ji, aged about 51 years, 40, Det Engineer Park, 1105 FMA Jasai Barmer (Raj.), at present employed on the post of U.D.C. Under G.E. Engineer Part, Jodhpur (Raj.)

.....Applicant.

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

VERSUS

1. The Union of India through the Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, (H.Q.), Southern Command, Pune.
3. Engineering in Chief, Army Headquarter, Kashmiry House, New Delhi.
4. Garrison Engineer, Engineer Park, Jodhpur (Raj.).
5. Barrack Store office (B.S.O), Det Engineer Part, 1105 FMA, Jasai, Barmer (Raj.).

.....Respondents.

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



ORDER

By Mr. J.K. Kaushik, Judicial Member

Shri K.C. Soni has assailed the validity of order dated 12.04.2004 at Annexure A/1 by which he has been ordered to be transferred from Jassai to Kota and sought for quashing of the same amongst other reliefs including that his case be considered for transfer to Jaipur which is his first option as per the policy in vogue.

2. As agreed by both the learned counsel for the parties, the case was taken up for final disposal at the stage of admission since a short controversy is involved and the matter being

urgent which relates to the transfer as well as an interim order is operation in this case. I have accordingly heard the arguments advanced at the Bar by both the learned counsel for the parties and very carefully perused the pleadings and records of this case.

3. The pleadings are quite bulky but controversy involved falls within a very narrow compass. The applicant while working at hard station at Jassai on the post of UDC, was ordered to be transferred to Kota vide letter dt. 12.04.2004 . The case of the applicant is that as per the transfer policy in vogue the person who has completed his tenure at the hard station is required to be posted at a place of his choice for which three options are invariably called for. The applicant submitted his option viz. Jaipur as option No. 1 ,Ajmer as second option and Kota the third option. The policy goes little further inasmuch as it says that in case there is no clear vacancy exist at any of the choice stations, then as per the E-in-C's guide lines/Policy the longest stayee should be posted out to make room for the tenure completed person at hard stations to accommodate him at his choice station. In the instant case, the applicant's case was considered as per the policy in vogue but he has been transferred to Kota which was his third choice and not to Jaipur which was his first choice, despite there being a clear vacancy at Jaipur.



4. Learned Counsel for the applicant has tried to demonstrate that the applicant has not been allowed to enjoy his first option despite the fact that there has been a clear vacancy

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at Jaipur and the correct position is borne out from the very Annexure A/1 wherein the person at serial No. 11 Shri Babulal Raigar has been posted from Jaisalmer to Jaipur but no explanation is forthcoming from the official respondents in this regard. The pleadings on this point was confusing inasmuch at one point of time, it has been stated that the applicant could not be accommodated at Jaipur for want of vacancy and on the other occasion, it has been submitted that there was only one vacancy on which Shri Babu Lal Raigar was adjusted. Now the respondents have filed an additional affidavit wherein it has been stated that there was no vacancy at Jaipur from the very beginning; rather there was one surplus UDC in Jaipur complex. In this view of the matter, it is evident from the records that the action of the respondents are not consistent and different versions have been taken up by the respondents at different times and therefore, the applicant's case has been treated in an arbitrary manner.



5. On the other hand, the learned counsel for the respondents has fairly submitted that he has gathered the correct information in the matter and submitted that there was one surplus UDC at Jaipur at the time when the applicant was ordered to be transferred and the same has increased and by now about 10 UDCs are surplus at Jaipur. He has further submitted that in any case, the applicant cannot be accommodated at Jaipur. However, he has submitted that the fact remains that there is no change in the position of the manpower especially in relation to the posts of UDCs.

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6. I have considered the rival submissions put forth on behalf of both the parties. As far as legal aspect of the matter is concerned, the scope of the judicial review in respect of the transfer matter is quite limited. Admittedly, in the instant case, no mala fide has been alleged against any individual nor any such individual has been impleaded as party respondent. It is also not the case of the applicant that there is violation of any statutory rules. The only question is regarding that there was a vacancy at Jaipur and the applicant's case has not been considered. It is settled law position that it is for the competent authority as to who should be posted where since it is not for the courts or tribunal to interfere in such type of matters and substitute its decision over the one taken by the Competent Authority, like that of appellate authority.



7. In the instant case, I find that the stand of the respondents in regard to the vacancy position of UDC at Jaipur, has not been consistent and different versions have been coming even in affidavit which has been filed on behalf of the respondents and perhaps that is the reason why the anxiety is caused in the mind of the applicant that some unfairness is being done. However, since the correct position regarding the transfer of the applicant has now been clearly brought to light I find that there remains no ambiguity. Even if there is some communication gap or some contradictions that would not warrant issuance of any mandate in favour of the applicant since that would perpetuate the illegality if at all any existed. Since 10 UDCs are surplus at present in Jaipur and in no case, it would be justified to post the applicant there, now. I also

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find that the applicant should be happy since he has got the posting as per his option, may be against his third option. Incidentally, Shri Babu Lal has not been impleaded as party respondent and the complete particulars of the Babu Lal are not available before me, it would not be appropriate to examine the matter from that aspect. The respondents are expected to keep their houses clean and should be careful in future so as to avoid any unpleasant order.



8. In the result, the Original Application is hereby dismissed being devoid of any substance or merits. The interim order already granted stands vacated forthwith. No costs.


(J.K. Kaushik)
Judicial Member

LG/-



RIC
Saini Kumar
570105
For - K. K. Singh
R. K.

R/C copy
on 27/12/15
R. K.

Part II and III destroyed
in my presence on 17/12/15
under the supervision of
section officer () as per
order dated 18/12/15

Section officer (Record)