

कें.प्र.अ. (प्रक्रिया) नियम. 22 वाले नियम 22 के अन्तर्गत निःशुल्क प्राप्त

28

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 267& 268/2006

DATE OF ORDER: 29.12.2006

Rohitas Meena and anr : Applicants

Mr. Y.K. Sharma : Advocate for the Petitioners
VERSUS

The UOI & Ors. : Respondents

Mr. Vinit Mathur. : Counsel for the Respondents 1 to 4



CORAM:

Hon'ble Mr. J K Kaushik, Judicial Member

**COMPARED &
CHECKED**

1. Whether Reporters of local papers may be allowed to see the Judgement? *ND*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Sd/-

[J.K.KAUSHIK]

MEMBER[J]

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NOS. 267 and 268 of 2006

Date of Order: 29.12.2006

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER

Rohitash Meena S/o Shri Birmal Meena, aged about 30 years, at present working as Sorting Assisting Sub Record Office (S.A.S.R.O.), R.M.S. Churu, resident of - Quarter No. 9, Postal Colony, Churu (Raj.).

...Applicant in OA No. 267/2006.

Sanwar Mal S/o Shri Daulat Ram, aged about 50 years, at present working as Sorting Assisting Sub Record Office (S.A.S.R.O.), R.M.S. Churu, resident of - Near Bhartiya Kua, Opp. Jangid PCO, Churu (Raj.).

...Applicant in OA No. 268/2006.

Mr. Y.K. Sharma, counsel for the applicants in all OAs.

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Communication, Department of Post, New Delhi.
2. The Post Master General, Rajasthan Western Region, Jodhpur (Raj.).
3. The Superintendent, Railway Mail Services (RMS), Jodhpur Division, Jodhpur.
4. Director Postal Services, Rajasthan Western Region, JODHPUR. ...Respondents.

Mr. Vinit Mathur, counsel for the respondents in all OAs.

ORDER

Per Mr. J. K. KAUSHIK, JUDICIAL MEMBER

Shri Rohitash Meena and Sanwar Mal have undertaken second journey to this bench of Tribunal, in the same matter and filed their individual Original Applications No. 267 and 268 of 2006 respectively, wherein they have questioned the validity of orders dated 5.7.2006 (A/1) and 7.11.2006 (A/2) by which they are ordered to be posted from SRO Churu to HRO Jodhpur on the post of Sorting assistant. A

common question of fact and law is involved and therefore, these OAs are being decided by a single order.

2. I have heard the arguments advanced by the learned counsel representing the contesting parties and also carefully perused the pleadings as well the records of these cases. Certain orders, relating to subsequent development were also directed to be taken on records in the interest of justice.

3. The factual background is within a very narrow compass. Both the applicants are holding the post of Sorting Assistant in SRO Churu. They came on transfer from various places and joined at Churu in October 2002 and 1996, respectively. They, along with one Shri Puroshattam Lal Sharma were ordered to be transferred through the order dated 5.7.2006 from Churu to Jodhpur in the interest of service to meet the acute shortage of staff at HRO Jodhpur. They filed their individual cases earlier which came to be disposed of with direction to the respondents to decide the matter on merits vide order dated 5.10.2006 at Annexure A/4. The impugned orders have been assailed on diverse grounds e.g. some of the SA in SRO Churu are working for the last about 25 years without any transfer, the applicants are the shortest stayee at Churu, transfer should not ordinarily be made in mid-academic school session, applicants are faced with certain peculiar domestic problems, the impugned orders are void ab initio, no transfer policy has been produced etc.

4. Per contra, the respondents have filed counter reply to the OAs and have contested the cases. It has been averred that HRO Jodhpur is short of 28 Group C officials and the incumbents posted at HRO



Jodhpur cannot cope up with the workload. The officials from other offices had to be posted to meet the acute shortages to get going clearing the public mail. The SRO Churu has an establishment of 17 posts of SA and the strength was full at the time of issuance of the impugned order. The applicants have been transferred by the competent authority in the administrative exigencies and in public interest. It has also been averred that transfer of the employees on the basis of longest stay can only be made when there is a request from other official for posting him/them at that particular place or station as per Annexure R/1/2. The scope of judicial review in transfer matters has also been narrated and the other grounds generally refuted. During pendency of these cases, the second respondent has passed an order dated 22.12.2006 by which the representations of applicants have been rejected on the ground that in case a post is declared surplus, the junior most person has to be transferred and that is the reason the seniors have not been transferred. The RMS wing staff is liable to be transferred anywhere in the division. Normally RMS Wing staff is transferred in different offices at the same station.

5. The learned counsel for the applicants has reiterated the facts and grounds enunciated in the pleadings in respective OAs, as noticed above. He has contended that the respondents have not produced any policy laying down that the shortest stayee at the station shall be first transferred and not the longest stayee. If the respondents were permitted to adopt such whimsical and arbitrary procedure, the longest stayee would enjoy immunity from transfer and the junior most i.e. official having shortest stay can be made as shuttlecock. He stressed that there is no such written policy and this is precisely the reason that the respondents did not produce it despite specific

- 6 -

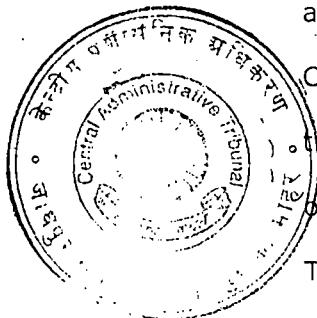
direction and seeking time for the same. He also submitted that the copy of rotational transfer policy is not being given effect to and the peculiar situation has been created. He has also submitted that the direction of this bench of the Tribunal have been totally disregarded and the representations have been turned down on an irrelevant ground without any factual basis in as much as theory of 'would be surplus' has been introduced. The applicants are not transferred because they are surplus but to meet the administrative urgency, as there is an acute shortage of staff at Jodhpur. The whole exercise is meant to favour the longest stayees at Churu due to some extraneous reasons. There are about seven employees who are having shorter stay of 1-3 years at Churu than that of the applicants but they are not subjected to transfer by applying the aforesaid rule of 'would be surplus.' The observations of this bench of the Tribunal have been deliberately given go-bye and not even considered and there can be no better example than the instance case where the order of this court has been so disgracefully disregarded.

6. The learned counsel for the respondents has reaffirmed the grounds of defence as set out in the reply. He has submitted that the scope of judicial review in transfer matters is quite limited. Independent of any transfer policy, one could be transferred in the interest of service. The applicants have been transferred in the exigencies of service to meet the urgent requirement at Jodhpur. Thus no fault can be fastened with the action of the respondents. As regards the non-following of the policy, he submitted that order that has been subsequently passed gives complete statistical details with the reasoning thereof. He has submitted in respect of one Shri Puroshattam Lal Sharma, the transfer order has been cancelled as he

did not complete his normal tenure keeping in view the observations of this bench of Tribunal made in order dated 5.10.2006 (A/4). The applicants have completed their normal tenure at Churu, therefore, no injustice can be said to have been done to them. As regards the transfer policy is concerned, the available policy was submitted in earlier cases.

7. I have considered the rival contentions put forth on behalf of contesting parties. As far as the factual aspect of matter is concerned, it is true that applicants are neither having shortest stay nor longest stay at Churu station. There are number of officials holding the post of SA having stay of about 10-25 years at Churu i.e. much more than that of the applicants, but are continuing at Churu. There are about seven employees who are having shorter stay of 1-3 years at Churu than that of the applicants but they are not subjected to transfer by applying the rule of surplus. In any case, it is not the case of any party that cadre strength at Churu has been changed/reduced. Therefore, the theory of surplus is based on conjecture and surmises and not on facts. There is no dispute that the transfer is necessitated to meet the acute shortage of staff at HRO Jodhpur which is in the exigencies of service.

8. As far as the legal position in regard to the scope of judicial review in case of transfer matters is concerned, it is well settled that the question of transfer of a public servant is to be decided by the competent authorities. The court will not sit in judgment over the satisfaction of the competent authorities on the point that certain public servant has to be transferred in the interest of service and replace the judgment of administrative authority by its own findings.



This is, however, not to say that there is no scope for judicial intervention in the case of transfer. The court or a judicial forum can intervene and set aside the transfer order if the same is found to be mala fide or in breach of Constitutional provisions or binding administrative instructions and statutory rule or is capricious and based on extraneous considerations or is in colourable exercise of powers.

9. I may hasten to add that a transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. Therefore, the exercise of the power of transfer must be just and fair.

A Division Bench of the Bombay High Court in case of **Seshrao Nagorao Umap V. State of Maharashtra** (1985) II LLJ 73, in brief passage but with admirable comprehensiveness has summarized the law on this aspect as under:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair." (Underlining ours).

10. It would be pertinent to mention here that I am not scribing on a clean slate and the issue was dealt with in depth but due to some factual discrepancies the matter had to be left to the wisdom of

- 7 -

215

respondent No. 2. Therefore to appreciate the same I consider it expedient to give an extract of few relevant paras, to be treated as a part of this order, from the earlier decision on this bench of the Tribunal passed on dated 5.10.2006 (A/4) as under:

"7. xxx. The normal tenure for rotational transfer for non-gazetted officials has not been indicated in *ibid* policy dated 19.2.97. However, para 5 of the same provides as under:

"(5). Whenever any official/officer is sent out of a station on administrative grounds or due to rotation, he will be transferred on the criterion of longest stay at the station."

8. The rotational transfer has got certain distinct objects. The matter relating to rotational transfer came up for consideration before a constitution bench of Apex court in case of P.G. Joshi and Ors. etc. etc. Vs. The Director General, Posts and Telegraphs, New Delhi, etc. AIR 1975 SC page 1, wherein their Lordships have observed that the expression, in the context, can only mean transfer from one post to another and, after the member has spent some time in the post to which he has been transferred, he should be brought back to the original post. This would involve an element of rotation.

9. It can only be said that the rotational policy is only on papers seems to be not given effect to. There is no need to discuss since admittedly, it is no body's case that transfer has been made under the said policy. There is no other transfer policy. The question of any clause like transferring first the shortest stayee in case of transfer in the administrative grounds does not arise. Such provision would obviously be otherwise repugnant to the aforesaid specific provision under para 5 of policy, which provides that in transferring officials from one station to another, the longest stayee is to be transferred first. I find some force in the submissions of the learned counsel for the applicants that respondents have withheld the requisite details. In these cases the respondents also took special interest and even resorted to filing of caveat which is normally not done in service matters. The practice of transferring first the shortest stayee to another station has not been specifically pleaded by the respondents. The station seniority list has also not been placed on the records by any of the party. If there is no such written policy, its propriety cannot be adjudged. In any case once specific mode of doing a thing has been prescribed, other modes of doing it are prohibited. It is unnecessary to refer to the long line of decisions commencing from **Taylor v. Taylor**, (1875) 1 Ch. D. 426; **Nazir Ahmed V. Emperor**, AIR 1936 PC 253 and **Ramachandra Keshar Adke v. Gavind Joti Chavare**, AIR 1975 SC 915, laying down hitherto uncontroversial legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

10. Looking the issue from yet another angle, if the authorities adopt any undisclosed or un-established mode, that would be in contravention to the doctrine of predictability as illustrated propounded by the apex Court in case of **S. G. Jaisinghani V. Union of India and ors**, AIR 1967 SC 1427. The contents of relevant para are extracted as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by

5-16

rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—"Law of the Constitution"-Tenth Edn., Introduction ex). "Law has reached its finest moments", stated Douglas, J. United States v. Wunderlick (1), "when it has freed man from the unlimited discretion of some ruler..... Where discretion; absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (2), "means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful."

11. There is yet another facet of the same issue, if the principle for transferring the shortest stayee is adopted, there shall be no minimum tenure of posting and that would be in contradiction to the recommendations No. 25.7 of 5th CPC, which reads as under:

25.7 To ensure administrative continuity and stability to incumbents, frequent transfer should be discouraged and a **minimum tenure for each posting of officers should be predetermined** and it should normally be 3 to 5 years, except in cases where longer tenures are justified on functional requirements like continued availability of certain specialised skills. In the case of sensitive posts, where opportunities exist for developing vested interests, the tenure of posting should be defined for a shorter period, which may be 2 to 3 years. (Emphasis supplied).



12. The upshot of the aforesaid discussion is that the pleading of both the parties are scanty and relevant materials were not made available/disclosed to this bench of the Tribunal so as make proper adjudication. Therefore, I am left with no option except to remit the matter to the 2nd respondents with whom applicants' representations are also pending decision and direct the said authority to decide the matter by passing an speaking order, keeping in view the observations made above at the earliest and in any case not later than four week from the receipt of a copy of this order. Ordered accordingly. Interim order granted earlier in OA No. 139/2006 shall continue till then. No costs. Let a copy of this order be placed in OA No. 140 and 141 of 2006."

11. In the instant cases, the concept of transfer of surplus staff has been introduced by the 2nd respondent without there being any basis for the same. The concept of surplus relates to a particular cadre and whenever there is a reduction in the cadre strength, the question of re-deployment or otherwise in respect of junior most persons arises. Admittedly, there are 28 Group 'C' staff is said to be short at Jodhpur HRO, how there could be a question of surplus? Thus very concept of surplus is misconceived. I confess that I felt bit dismayed with the

2-17

so-called reasoning given by the 2nd respondent in rejecting their representations. It can aptly be asserted that the total decision is illogical, based on ipsi dixit of the concerned authority in addition to some undisclosed extraneous material. The reasons adduced are volte face in as much as one side the general rule which applies to the person declared surplus is said to applicable and other side the rule is not applied in respect of number of juniors to the applicants. The order dated 22.12.2006 has been issued by applying rule of thumb and is not founded on the rule of law. In the instant case the OM dated 08.11.85 Annex. R/2 has been relied upon and that OM was applicable only for the transfers being made during 1986-1987. There is no indication as to whether the same had been extended further. Another policy 19.02.1997 regarding rotational transfer produced before this Tribunal in the earlier case was for the year 1997-1978 and certain portions of it are reproduced in the aforesaid order. Its further application or extension has not been apprised to the Court. It would be no exaggeration to say that there has been concealment of relevant circulars/instruction and case has been dealt in a perfunctory manner. In such a situation action of the respondents cannot be said to be fair.

12. The least that can be said is that the 2nd respondent was to gather the requisite details and keeping in view the principles of law along with their policy as observed in the decision dated 5.10.2006 ibid, and take a decision in the matter. Unfortunately, that has not been done and the very direction/observation, as would be safe to say, has been thrown overboard. The policy in vogue prescribes that the transfer in administrative interest would be on the basis of longest stayee at the station to be transferred first. The said provision is neither controverted nor is any reason forthcoming for non-adherence

to the same. Nothing has been said regarding the doctrine of predictability. The impugned orders cannot be sustained and shall have to be held as inoperative, illegal and arbitrary. The same are rather issued in colourable exercise of power by taking extraneous material into consideration.

13. Before parting with this order I have few words of caution for the respondents. Firstly, they would be well advised to go through the orders/decisions/judgements passed by any court of law and adhere to the same in the true spirit and objective. Paradoxical version does not give a good signal and it may put a question mark on the wisdom of the decision making authority and may also invite unpleasant situation. I hope and trust that they would be careful in future and avoid repetition of the same.

14. In the result, the Original Application Nos. 267 and 268 of 2006 have ample force and stand allowed accordingly. The impugned orders dated 5.7.2006 (A/2), 7.11.2006 (A/1) and subsequent order dated 22.12.2006 are hereby quashed. This order shall be complied forthwith and in any case not later than one month from today.

*Pl (OPY
821107*

Note: The registry is directed to send a certified copy of this order to **'The Secretary, Postal Board, Min. of Communication, Department of Post, Dak Bhawan, New Delhi'** for their information and taking appropriate corrective action.

Sd/-

[J.K. KAUSHIK]

jsv **CERTIFIED TRUE COPY MEMBER[J]**
Dated 02.1.2007

[Signature]

अनुदान अधिकारी (जॉधपुर)

Section Officer (Jodhpur)

केंद्रीय प्रशासनिक अधिकारी

Central Administrative Tribunal

जोधपुर न्यायग्रीन, जोधपुर

Jodhpur Bench, Jodhpur.

For O.A. 268/06

I-19
For CA

कानूनी विवरण

कानूनी विवरण

Signature

**CENTRAL ADMINISTRATIVE TIRBUNAL
JODHPUR BENCH, JODHPUR**

**COPY OF ORDER DATED: 04-04-2007 PASSED IN
CP NO. 06/2007 IN O.A. NO. 268/2006**

SAWAR MAL Vs. D.K.CHOUHAN & Ors.

Mr.Y.K.Sharma, counsel for applicant.

**This CP has been moved for the non-compliance of
the order passed in OA 267/2006 and a batch - Rohitash
Meena and another Vs. UOI & Ors. by this Tribunal on 29th
December, 2006. The learned counsel has stated that the
said order has now been complied with by the respondents,
therefore, he does not press this contempt petition.**

**In view of the matter the
present Contempt Petition is
dismissed as not pressed.**

**COMPARED &
ECKED**

**Sd/-
[R.R.Bhandari]
Member[A]**

**Sd/-
[Kuldeep Singh]
Vice Chairman**

**CERTIFIED TRUE COPY
Dated 09-04-2007**

अनुसन्धान विभाग (व्याप.)
Section Officer (Jud.)
केन्द्रीय विधायक अधिकारी
Central Administrative Tribunal
जोधपुर अधिनियंत्रण, जोधपुर
Jodhpur Bench, Jodhpur.

Part I and II destroyed
in my presence on
under the supervision of
Section Officer () as per
order dated

Section Officer (Record)

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
Section Officer () as per
order dated 31/01/14

Section Officer (Record)