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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Original Application No. 119/2006

Date of Decision: 22-09-2006

CORAM

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

HON'BLE MR. J P SHUKLA, ADMINISTRATIVE MEMBER.

Colvin Sunil Singh, S/o Shri Bellicent Singh, aged about 42 years, presently working as Laboratory Technician, Desert Medicine Research Centre, Jodhpur, resident of plot No. 141, Baldev Nagar, Jodhpur.

: Applicant.

Rep. by Mr. Manoj Bhandari, Counsel for the Applicant.

VERSUS

1. The Union of India through the Director General, Indian Council of Medical Research, Ansari Naqar, New Delhi.
2. The Officer In-charge of Desert Medicine Research Centre, New Pali Road, Post Bag No. 122, Jodhpur.
3. The Deputy Director of Desert Medicine Research Centre, New Pali Road, Post Bag No. 122, Jodhpur.
4. Shri R.C. Sharma, Officer In Charge of Desert Medicine Research Centre, New Pali Road, Post Bag No. 122, Jodhpur.

: Respondents.

Rep. by Mr. Vineet Mathur, Counsel for the respondents.

ORDER

Per Mr. J.K. KAUSHIK, JUDICIAL MEMBER

The applicant has inter alia questioned the validity of orders dated 26.5.2006 (Annex A/2) and 6.6.2006 (Annex A/1) and has sought for setting aside the same amongst other reliefs.

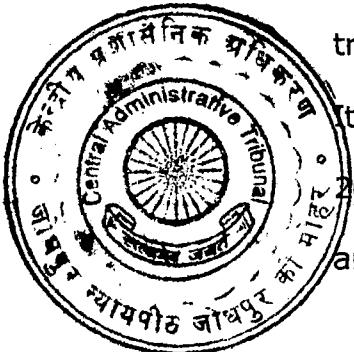
2. With the consent of both the parties, the case was taken for final disposal at the stage of admission. We have heard the elaborate arguments advanced by the learned counsel representing both the contesting parties at a considerable length and earnestly considered the pleadings as well as the records of this case,



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3. The factual panorama of this case is that the applicant was initially appointed to the post of Laboratory Technician in the office of Desert Medicine Research Centre, Jodhpur (for brevity DMRC) vide order-dated 18.12.1985. The terms and conditions are mentioned therein and there is no mention regarding transfer. The respondent No. 2/4 made certain temporary transfers of official posted at Jodhpur to Field Stations, CHC Ramgarh, Jaisalmer etc. The new device of temporary transfer was used contrary to terms and conditions mentioned in the appointment order. Since June 2005, 6/7 employees were subjected to such transfer initially for a period of one and a half months with subsequent extensions. Similarly, the applicant was also transferred to one of the said field stations vide order dated 1.9.2005. It was challenged before this bench of the Tribunal in OA No. 266/2005 but the same was disposed of as infructuous since there was an interim order in favour of applicant.



4. The applicant has further averred that 4th respondent has again deputed the applicant to go on temporary transfer vide letter dated 26.5.2006; the period of transfer being from 21.6.2006 to 2.7.2006 and 24.7.2006 to 4.8.2006. He represented against the same but his representation has been termed down with an annotation that refusal to go on field duty would amount to a misconduct. It is also averred that additional staff is engaged for field duties and there is need for deputing the permanent staff. The impugned order has been passed by the Head of the Office whereas the appointing authority is Director/Dy Director DMRC Jodhpur. The impugned order has been assailed on diverse grounds enunciated in para 5 and its sub-paras. It

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has been said that it a clear-cut case of mala fide exercise of power.

The respondent No. 4 is bent upon oust the minority and SC/ST persons from Jodhpur. There is no administrative reason and exigencies of service which require that the applicant should be posted at Neem Ka Thana and Sangod. The order of rejection A/1 smacks of punitiveness. References of certain cases filed before Hon'ble High Court and this Bench of the Tribunal have been also mentioned in support of grounds indicated above.

5. The respondents have contested the case and have filed an exhaustive reply to the OA. In introduction paras, the brief particulars of objective and functioning of DMRC have been given. The defence version of respondents as set out in the reply depicts that the impugned order dated 26.5.2006 is not a transfer order but a tour programme. It is wrong to contend that the applicant alone has been subjected to such temporary transfer. The reply contains certain technical details of project work and it has been averred that such arrangements are imperative in the administrative exigencies as well in public interest. The applicant is a central government servant and has got all India transfer liability also. The 4th respondent is competent to arrange such research programme and deploy the staff for achieving the desired goal. The various places where the fieldwork was scheduled fall within the jurisdiction of the 4th respondent. The grounds mentioned in OA have been generally denied.

6. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant. He has endeavoured hard to demonstrate that a grave injustice is being done to the applicant. He tried to give reference of few subsequent events



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but the same was objected by the other side. Per contra the learned counsel for the respondents submitted firstly it was not a permanent transfer. Secondly even in transfer matters, the scope of judicial review by a court of law is quite limited. An emphasis was laid that the applicant has so far not undertaken any such tour while other employees have cooperated without any protest. There is no question of indifferent behaviour with any minority or SC/ST employee, by any of the authorities least to say the 4th respondent. Such types of temporary transfers are being made in respect of all employees irrespective of classes. He has emphasised the defence version as set out in the reply. The very OA is misconceived and meant to misuse the legal forum due to some oblique motive.

7. We have considered the rival submissions put forward by the learned Counsel for the parties. The material facts are as indicated above and there are no major variances. The law relating to the transfer of the Government servants has been fairly settled by various Courts including the Hon'ble Supreme Court. We may refer to one of the illustrative judgement of the Apex court in the case of State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402, at page 406, wherein their Lordships have held as under:

7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type



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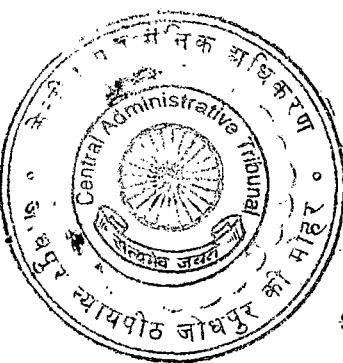
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of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policy at best may not give an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale or pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed *supra*, shown to be vitiated by *mala fides* or is made in violation of any statutory provision.

8. 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 conjecture or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

8. Before adjudging the propriety of the impugned orders, we may point out that this OA could also be said to have become infructuous since the applicant did not carry out the impugned orders on one pretext or the other and there remains nothing in the matter. However, we do not want to repeat the history and would like to set at rest the controversy and avoid its perpetual recurrence.

9. Adverting to the crux of this case, we would test the facts of the instant case on the touchstone laid down by the Apex Court in the aforesaid case. Taking the ground of *mala fide*, we may point out that the Tribunal is not to proceed on the line of proving morale indicated in one of Aesop's Fable of the Lamb and the wolf when the complaint was that the stream was being polluted by the lamb and if not by it, by any of its forefathers. There is always a presumption in favour of administration that it exercises powers in good faith and for

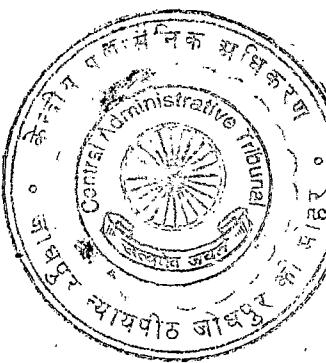


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public benefit. It is well settled the burden of establishing mala fide is very heavy on the person who alleges it. The allegations of mala fide are often more easily made than proved, though such allegations demand proof of a high credibility. The plea of mala fide is based on the assertion that certain cases have been filed against the 4th respondent before various courts. The applicant also filed two cases by impleading him as a respondent in person. The other allegation is that he is bent upon ousting from Jodhpur the minority and SC/ST employees. There is serious objection to the tone and tenor of the language used in Annexure A/1. We find that all the employees have carried out the temporary transfer and that too without any protest and it is only the applicant who was averse to the same. We fail to understand as to how by merely filing numbers of cases against an officer, the allegation of mala fide could be said to be proved. We find that the applicant has himself used irksome language in his representation. In totality, we can assert that the pleadings are totally insufficient to substantiate the plea of mala fide. The plea of mala fide is not supported by any cogent evidence and the court would therefore be slow to draw dubious inference from incomplete facts placed before it. In this view of the position, no interference on the said ground is called for.

10. Now turning to the other points, no doubt there is no mention regarding transfer liability in the appointment letter, but in progressive societies, there is a march from contract to status. The service conditions of a government servant are governed by specific rules, which may be changed unilaterally. We find from the Memorandum of Association, Rules, Regulations and Bylaws issued by ICMR that powers have been delegated to deploy the employees throughout the



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country. In any case, we are satisfied that the 4th respondent has powers to arrange various research programme within his jurisdiction and the plea of incompetence is raised only to be rejected which we do.

11. We have no reason to disbelieve the version of the respondents that the temporary transfers were made in the administrative exigencies. Otherwise also, we find that the applicant seems too adamant and has not undertaken the tours despite the fact that there was no stay in his favour. The OA can aptly be termed as frivolous and without any basis. The court cannot remain a mere spectator and allow the jamming of the wheel of the administration. Such practice is required to be curbed forthwith. However, this time we are leaving the applicant with nominal costs but he should be very careful in future.

12. In the circumspect of the aforesaid discussion, we come to an inescapable conclusion that the Original Application sans merits and the same stands dismissed with costs which is quantified at Rs. 1000/- to be recovered from applicant's salary in next month's pay bill.




(J P SHUKLA)

ADMINISTRATIVE MEMBER


(J K KAUSHIK)

JUDICIAL MEMBER

Jsv.

Part A and B are destroyed
in fully supervised on 11/01/14
under the supervision of
Section officer (J) as per
order dated 31/01/14

Section officer (Record)

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