

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

\*\*\*

ORIGINAL APPLICATION NOS. 139, 140 & 141 of 2006,  
Date of Order: 05.10.2006

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

\*\*\*

Purshotam Lal Sharma S/o Shri Khem Chand Sharma, aged about 46 years, at present working as Sorting Assisting Sub Record Office (S.A.S.R.O.), R.M.S. Churu, resident of Post Office Dudiya Khara Station, Bhram Nagar, Distt. Churu (Raj.).

...Applicant in OA No. 139/2006.

✓ 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. 140/2006.

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. 141/2006.

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.

...Respondents.

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

**ORDER**

**Per Mr. J. K. KAUSHIK, JUDICIAL MEMBER**

Shri Purshotam Lal Sharma, Rohitash Meena and Sanwar Mal have filed their individual Original Applications No. 139, 140 and 141 of 2006 respectively, wherein they have questioned the validity of



COMPARED &  
CHECKED  
30/

order dated 5.7.2006, by which they are 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 leaned counsel representing the contesting parties and also carefully perused the pleadings as well the records of these cases.

3. The factual background is within a very narrow compass. All the applicants are holding the post of Sorting Assistant in SRO Churu. They came on transfer from various places and joined at Churu in June 2005, October 2002 and 1996, respectively. They have been ordered to be transferred through the impugned order from Churu to Jodhpur in the interest of service to meet the acute shortage of staff at HRO Jodhpur. The impugned order has 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, applicant in OA No. 139/2006 has completed only about one year at Churu, transfer should not ordinarily to be made in mid-academic school session, applicants are faced with certain peculiar domestic problems.

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 in 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 competent authority in the administrative exigencies and in public interest has transferred the applicants. The representations of the applicants have been forwarded to the higher authority for disposal and the OAs are therefore premature. It has also been averred that transfer the employees on the basis of longest (sic longer) stay can only be made when there a request pending of other official for posting them at that particular place or station. The scope of judicial review has also been narrated and the other grounds generally refuted.



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 which lays 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 direction and seeking time for the same. He also submitted that the copy of rotational transfer policy produced on behalf of the respondents at the time of hearing of this case, is not being given effect to and the peculiar situation has been created.

512

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. Para 16 of the very Rotational Transfer policy Guidelines (for brevity policy) envisages that one could be transferred in the interest of service even though one may not fall within the purview of the same. Thus no fault can be fastened with the action of the respondents. As regards the non-following of the policy, he is perhaps not equipped with the requisite details.

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 the having shorter stay at Churu station and there are number of officials holding the post of SA having stay of about 25 years even i.e. much more than that of the applicants. 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. 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



-5-

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.

4/13

9. It can only be said that the rotational policy is only on papers seem 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 respondents have not specifically pleaded the practice of transferring first the shortest stayee to another station. 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



TH

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 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."

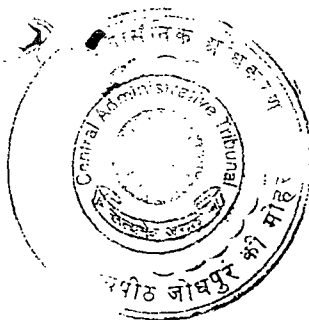
11. There is yet another facet of the same issue, if the principle for transferring the shortest stayee is adopted, there shall be no minimum tenure of posting and that would be in contradiction to the recommendations No. 25.7 of 5th CPC, which reads as under:

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).

10/11/15

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 2<sup>nd</sup> respondent with whom applicants' representations are also pending decision and direct the said authority to decide the matter by passing a 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 and OAs stand disposed of. Interim order granted earlier in OA No. 139/2006 shall continue till then. No costs.

Let a copy of this order be placed in O.A.M. 1408/14/2006.



jsv

Sd/-

[J.K.KAUSHIK]

MEMBER[J]

CERTIFIED TRUE COPY


Dated 9-6-2006

oe-1

बनुभास अधिकारी (न्याय.)  
Section Officer (Judl.)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
जोधपुर न्यायपीठ, जोधपुर  
Jodhpur Bench, Jodhpur.

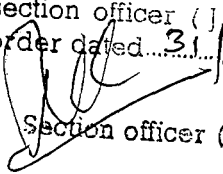
Part II and III destroyed  
In my presence on.....  
under the supervision of  
section officer ( ) as per  
order dated...../.....

Section officer (Record)

Received COPY  
  
09/18/06

  
10/10

Part II and III destroyed  
in my presence on 11/4/14  
under the supervision of  
section officer (J) as per  
order dated 3/1/01

  
Section officer (Records)