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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 20/07

Date of decision: 29.01.2007

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

Hon'ble Mr. R R Bhandari, Administrative Member.

Anand Prakash, S/o Shri Hulash Chandra R/o 2/621, Kudi Bhagtasni,
Housing Board, Jodhpur. Official Address: Driver Gr. I, in the Central
Ground Water Board, C-8 Saraswati Nagar, Pali Road, Jodhpur.

: Applicant.

Rep. by Mr. Kamal Dave: Counsel for the applicant.

VERSUS



1. The Union of India through the Secretary, Ministry of Water Resources, Government of India, New Delhi.
2. The Regional Director, Central Ground Water Board (CGWB), Western Region, Jaipur.
3. The Executive Engineer, Central Ground Water Board, C-8 Saraswati Nagar, Pali Road, Jodhpur.
4. The Regional Director, Central Ground Water Board, North Sector Jammu.
5. Dr. S.C. Dhiman, Regional Director, Central Ground Water Board North Sector, Jammu.

: Respondents.

Rep. by Mr. Vinit Mathur and Mr. M. Godara: Counsel for the respondents 1 to 4

None present for respondent No. 5.

ORDER

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

Shri Anand Prakash has preferred this O.A assailing the order dated 25.09.2006 and 15.11.2006 and has sought for quashing and setting aside the same with further direction to the respondents to allow him to serve at Jodhpur.

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2. The case was listed for admission as well as on arguments on the prayer for interim relief. On the request of both the learned counsel representing the contesting parties, the case was heard for final disposal at the stage of admission itself. Arguments were accordingly heard and we have carefully perused the pleadings as well as records of this case.

3.. The brief facts of this case are at a very narrow compass. The applicant, Anand Prakash came to be initially appointed on 24.03.87, as Motor Truck Driver and posted at Hyderabad. He possesses driving licence No. 47906, which was initially issued for three wheeler and tempo in the year 1981. HT vehicle was also endorsed. The same was further endorsed to MLV and motorcycle in the year 1992. It has been averred that instructions have been issued for endorsement of Tractor i.e. for specific class of vehicles for which the licence is necessary. It has been further averred that the applicant was transferred and posted to Jodhpur in the State Unit office in December 1990. From there he was transferred to Nagpur in the year 1998, but the said transfer order came to be cancelled. In July 2001, he was transferred from the State Unit Office Jodhpur to Division XI Jodhpur under respondent No. 3. He was further subjected to transfer to Dharamsala in the year 2003, which was carried out by the applicant. While serving at Dharamsala he was transferred to Chandigarh in the Month of February 2004, but the same was cancelled and the applicant was posted to Regional Office at Jaipur vide order-dated 22.01.2004. However, he was relieved from Dharamsala only on 12.04.2004 and the delay was due to biasness of his controlling officer viz Dr. S.C. Dhiman. From Jaipur again he was transferred to Division XI at Jodhpur and he joined at Jodhpur on 08.09.2004.



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4. The further facts of the case are that the impugned order dated 25.09.2006 came to be issued by which the applicant was deputed to Jammu on temporary duty in respect of exploration duty in Kashmir Valley. When the applicant reached to his new place of temporary posting he found that no work relating to driving of rig/truck was available at that time. He was directed to drive tractor in hilly area to carry water tank of about 8000 litres. Incidentally, the same officer i.e. Dr.S.C. Dhiman was in charge/Regional Director in Jammu, who was biased towards the applicant. He apprised the authorities that for driving tractor and auto rickshaw it was mandatory to have specific endorsement of such special category vehicles and there is no endorsement to that effect in the licence issued to the applicant. Certain allegations have been made against the 5th respondents. At one occasion the applicant was asked to explain regarding his refusal to drive the tractor. He was again and again asked to go and work in Kashmir Valley and the last letter/order was issued in this respect on 15.12.2006. The applicant is also faced with certain medical problems. He also came to know that at the temporary posting site, i.e. at Kashmir Valley, he will have to again drive the tractor. The Original Application has been grounded on numerous grounds mentioned in para 5 and its sub paras.



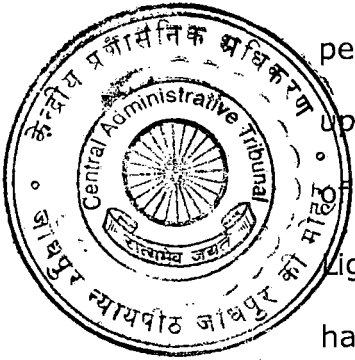
5. The official respondents have filed their reply to the Original Application confining it to the grant of interim relief. It has been averred that the orders directing the applicant to proceed and perform the duties at Jammu are perfectly just and proper. The applicant is holding heavy motor vehicle licence. Presently he is working as Driver Gr. I. The chart containing the duties and responsibilities of the driver

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in the respondents department clearly prescribes that one is required to drive all kind of vehicles available with the department. No prima facie case is made out in favour of the applicant.

6. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application and has categorically submitted that on the proposed place of temporary duties of the applicant, he is required to drive the tractor with water tank for which he does not have requisite and valid licence and there is no annotation or endorsement of the same in his driving licence. He has demonstrated from the driving licence that he is authorized to drive LMVs Transport, MCY Gr vehicles from the documents mentioned therein. He has heavily relied upon Annex. A/3 and submitted that as per the rules regarding the grant of driving licence, it is incumbent upon the individual to have the endorsement in the licence in respect of driving tractor or auto rickshaw which are in the special category of Light Motor vehicles. He has contended that the applicant is not having the requisite knowledge of the same and the licensing authority on the licence has made no endorsement. Therefore the driving of tractor with water tank would be unauthorized as well as endangering his limb and life as well as that of others. He has also tried to embark upon other grounds that he was very frequently sent on temporary transfer, whereas there are number of other drivers who have not been so far subjected to temporary transfer.



7. Per contra, the learned counsel for the respondents has strongly opposed the contentions raised on behalf of the applicant and submitted that once the applicant is having driving licence for driving heavy vehicles as well as LMVs, there is no further requirement of any

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endorsement in respect of tractor driving since tractor also falls under the LMV category. He has also invited our attention to the duties and responsibilities chart mentioned for the post of driver and contended that in the respondent department, a driver is required to drive all types of vehicles owned and available in the department. Therefore, sending of the applicant on temporary posting to drive tractor with water tank cannot be said to be improper or whimsical. He has also submitted that the scope of judicial review in transfer matters is very limited and it has to be left to the wisdom of executives. It may be easy to allege mala fide but it is difficult to prove the same. Therefore no interference in the instant case is warranted.



8. We have considered the rival contentions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, it is the admitted fact that the applicant is a driver and possesses driving licence with endorsement of LMV HMV. It is also the fact that there is no endorsement to drive tractor, which falls under specific special category of vehicle i.e. in the category of light motor vehicle. It is also an admitted fact that the applicant is being sent on temporary transfer vide the impugned orders to Jammu to work in Kashmir Valley and to drive tractor with water tank during his stay there.

9. As far as the legal aspect of the matter is concerned, by now it is well settled that the scope of judicial review in transfer matters is quite limited. The Courts will not sit in judgement over the wisdom of the competent authorities on the point of running of certain public service and if the transfer is in the exigencies of service, Courts or Tribunals cannot sit over the judgement of the administrative

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authorities by recording its own findings. Nevertheless, the Court or judicial forum can intervene and set aside the transfer order if the same is found to be actuated with mala fide or is in breach of constitutional provisions, or administrative instructions or against statutory rules or capriciously passed on extraneous considerations or is in colourable exercise of power.

10. In the instant case, the basic issue for our determination is as to whether a person who has got driving licence for driving heavy motor vehicles as well as light motor vehicles is required to have an endorsement of the competent authority with a view to drive tractor, which falls under a special category of "light motor vehicle". If the answer to this question comes in affirmative, the applicant will swim otherwise he will sink. The issue does not require any elaborate discussion since the competent authority has issued specific instructions in this respect vide Annex. A.3 (para 5). A bare perusal of the said instructions would reveal that a provision has been made in unequivocal as well as in unambiguous terms that the licensing authority will make an endorsement in the licence for driving the tractor, which falls under a special category of LMV. Nothing contrary to the same has been shown to us. In this view of the matter, the answer to the question shall have to be in affirmative and if that were so, the plea of the applicant is well founded and deserves our concurrence. In other words, we are not impressed with the defence version of the respondents on this ground. In the result, the applicant cannot be compelled to drive the tractor or tractor with water tank, unless the requirement as envisaged in the ibid order Annex. A/3 is fulfilled and it is certified as trained by the competent authority. Therefore, deputing the applicant for driving the tractor vide the



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impugned orders cannot be justified being in contravention of the traffic regulations.

11. In view of the aforesaid positive finding, there is no necessity to examine the other grounds/issues involved in the instant case. In normal circumstances, we would not have quashed the impugned temporary transfer orders but in the instant case, both the parties projected that the applicant is being deputed to Jammu to work in Kashmir Valley to drive the tractor with water tank. Therefore permitting the respondents to send the applicant in pursuance of the impugned orders would result in absurdity in as much as the same would be offensive as well may endanger the applicant in particular and others in general.



12. In the premises, the O.A succeeds and the same stands allowed. The impugned orders dated 25.09.2006 and 15.12.2006 are hereby quashed. However, it is scarcely necessary to mention here that this order shall not foreclose the respondents from utilizing the services of the applicant on the vehicles, which are endorsed in his licence at any place (s) including Kashmir valley. In facts and circumstances of this case, there shall be no order as to costs.

R R Bhandari


(R R Bhandari)
Administrative Member

Jsv.

J K Kaushik

(J K Kaushik)
Judicial Member.

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Part II and III destroyed
in my presence on 2/6/14
under the supervision of
section officer as per
order dated 2/6/13/14

Sec: _____ (Record)

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