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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

Original Application. No. 129/2007

Date of order: 17.08.2007

Hon'ble Mr. Tarsem Lal, Administrative Member

Kanhaiya Lal Khatri, S/o Shri Rochi Ram by caste Khatri, aged about 55 years, at present working as Assistant Post Master (D), Sri Ganganagar, resident of 1/34, Housing Board, Sri Ganganagar

: Applicant.

Rep. By Mr. C.S. Kotwani, Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communications, Department of Post, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Sri Ganganagar Division, Sri Ganganagar.

: Respondents.

Rep. By Mr. Vinit Mathur : Counsel for the respondents.

ORDER

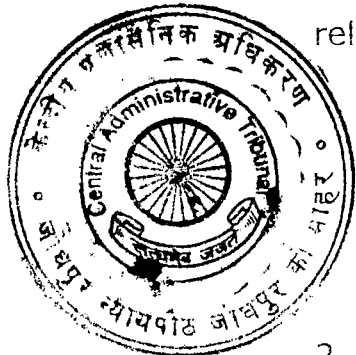
Per Mr. Tarsem Lal, Administrative Member.

The applicant has filed this application seeking the following

reliefs:

" (A) by an order or direction in the appropriate nature, the order dated 23rd April 2007 (Annex. A/1) as well as the letter dated 20th June 2007 (Annex. A/2) may kindly be quashed and set aside with all consequential benefits and the respondents may kindly be directed to keep the humble applicant at Sri Ganganagar in the interest of justice."

2. The applicant has stated that vide impugned order Annex. A/1 dated 23rd April 2007, he has been transferred from Sri Ganganagar to Sangaria and he is presently working as Assistant

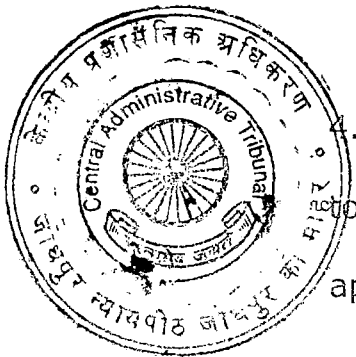


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Post Master at Sri Ganganagar. His wife Smt. Meera Kumari is also working as a Teacher at Government Upper Primary School No.3 at Sri Ganganagar. He further stated that he is suffering from heart disease and got his Ecocardiography done at Jaipur and his treatment for the said disease is still continuing at Sri Ganganagar.

3. He was posted at Sri Ganganagar on 18.07.2005 and the performance of the applicant remained satisfactory throughout his career. He has also stated that his major son has expired untimely on 26.04.2006 and therefore he himself and his wife could not move out of Sri Ganganagar to join at Sangaria. He further stated that vacancies are still available at Sri Ganganagar and therefore he can be adjusted by the departmental authorities at Sri Ganganagar itself. He explained that after the issuance of the impugned order at Annex. A/1, he has submitted a representation on 25.04.2007 and thereafter he also submitted reminders dated 19.05.2007 and 19.06.2007. The said representation was rejected by the authorities vide letter dated 20.06.2007 without due application of mind. Aggrieved by the above orders the present O. A has been filed asking for the relief mentioned at para 1 above.

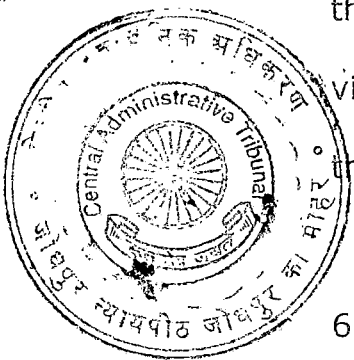


On the contrary, the respondents have filed a detailed reply to the O.A. The respondents have explained that the applicant was appointed as Postal Assistant on 05.04.1973 at Sri Ganganagar where he remained till the date of relief i.e. on 09.05.2007, except for a brief period from 04.07.1982 to 20.03.1985, when he was

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posted at Chunawad which is ⁻³⁻ also 18 KMs away from Sri Ganganagar. The representation dated 25.04.2007, submitted by the applicant has been considered by the competent authority and the same was rejected vide letter dated 15.06.2007 and the outcome of the same has been intimated to the applicant vide letter dated 20.06.2007.

5. The respondents explained that the applicant has been transferred after rendering 31 years of service at one place and as far as transfers are concerned it is a service incident and as the applicant is having transfer liability, there is nothing bad or wrong in ordering the transfer of the applicant and the transfer order has been issued in the administrative exigencies. It is also stated that it is within the domain of the employer to get the best service from the employees. Therefore this Hon'ble Tribunal would not like to interfere into the lawful order passed by the competent authority. It is further stated that the Hon'ble Apex Court, in a catena of judgements had held that the Tribunals and High Courts should restrain their hand in interfering into the transfer matters unless the transfer orders are issued by incompetent authority or in violation of rules and with malafide intention. It is averred that all the above three aspects are missing in this case.



6. The applicant has been transferred in the interest of service, because his services are needed at Sangaria, District Hanumangarh. The order relating to keeping the husband and wife

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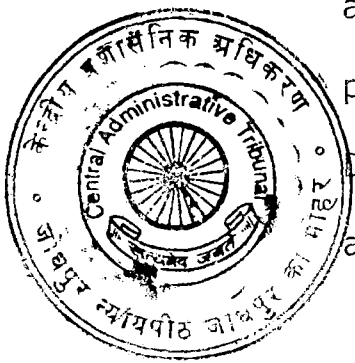
at the same place would be applicable only when both of them are working in the same department and it is a guideline and as far as possible condition is also there. The applicant out of his 34 years of service with the department remained at Sri Ganganagar for more than 31 years and no one can claim as a matter of right that one should always kept at the station where his spouse is working.

7. The department has shown full sympathy on the untimely death of his son but at the same time the transfer and posting policy cannot be changed. The public servants are posted on the places where their services are highly needed and further the department is facing shortage of staff and in that situation willingness of every one cannot be fulfilled. Therefore it is stated by the respondents that their action is just and reasonable and holds good and therefore the applicant is not entitled to get any relief from this Tribunal. They have prayed that the O.A has no merit and the same may be dismissed.

8. I have heard the learned counsel appearing for both parties. The learned counsel for the applicant has reiterated the arguments advanced in the O.A. The learned counsel for the applicant pleaded that orders have been issued by the Government of India, DOPT, on 12.06.97, on the subject of Posting of Husband and wife at the same station which stipulates as under:

" The undersigned is directed to say that on the subject mentioned above, government had issued detailed guidelines vide OM NO. 28034/7/86- Estt (A) dated 03.04.86. the Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it

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has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in OM NO. 28034/7/86 Estt (A) dated 03.04.86 while deciding on the requests for posting husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence.

The learned counsel for the applicant has pleaded that in view of the above government orders, the impugned order dated 23.04.2007 (Annex. A/1) may be quashed and set aside.

9. The learned counsel for the respondents pleaded that the transfer order issued can be interfered with by the Courts/Tribunals only on the following grounds:

- i) when transfer order has been issued by the incompetent authority
- ii) transfer orders have been issued with mala fide intentions
- iii) transfer orders have been issued by violating the statutory orders.

10. He further pleaded that as per the transfer guidelines of the department, an employee can stay at a particular station for four years only, whereas the applicant had stayed at Sri Ganganagar for more than 31 years out of his total 34 years of service. As regards the medical problem, no specialist has recommended that the applicant is not eligible for posting outside Sri Ganganagar. The learned counsel also relied on a decision of the Apex Court in the



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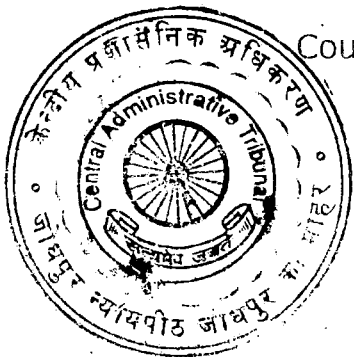
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remained at the same station with his wife for 31 years and his present transfer has been ordered in exigency of service. Therefore, he cannot claim the above benefit for an indefinite period

13. In this regard the Apex Court in the case of **State of UP and Others vs. Gobardhan Lal and D.B. Singh vs. D.K. Shukla and others** reported in 2004 (3) SLJ 244 = 2005 SCC (L&S) 55, has held as under: -

"6. 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 of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford 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 of 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.

14. In the case of **Shilpi Bose (Mrs) v. State of Bihar** reported in 1991 Supp (2) SCC 659, their Lordships of the Hon'ble Apex Court held as under:



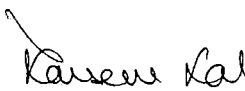
"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders

issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

15. In Union of India vs. S.L. Abbas [(1993) 4 SCC 357 at page 359 para -7, the Supreme Court observed that :-

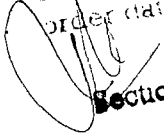
"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

16. In view of the settled position of law and the long stay of the applicant at Sri Ganganagar, this Tribunal would not like to interfere in the transfer order issued by the competent authority. Therefore, I am of the considered opinion that this O.A is devoid of any merit and it has to be dismissed. Accordingly, it is dismissed with no order as to costs.


(Tarsem Lal)
Administrative Member.

Jsv.

Part II and III described
in my presence on 04-6-14
under the supervision of
section officer [unclear] per
order dated 26-5-14



Section officer (Records)

COPY REQUEST
[unclear]
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