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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 197/2009

Date of order: 16-4-2010

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.

Geeta W/o Shri Rakesh Kumar, aged 31 years, LDC in the office of Door Darshan Anurakhan Kendra, Shri Ganganagar R/o 47, Ward No.6, Ravi Chowk, Old Abadi, Shri Ganganagar.

: applicant

Rep. By Mr. Vijay Mehta: Counsel for the applicant.

Versus

1. Bhartiya Prasarn Nigam, Akashwani Bhawan, Parliament Street, New Delhi-110 001, Through its Director General.
2. Kendra Nideshak, Bhartiya Prasaran Nigam, Akashwani, Jaipur.
3. Kendra Adhiyaksha, Door Darsan Anurakashan Kendra, Shri Ganganagar.

: Respondents.

Rep. By Mr. K.D.S. Charan, proxy counsel for Mr. Kuldeep Mathur : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Smt. Geeta Jagga has filed present O.A against the order of respondent 2 dated 24.07.2009 (Ann.A/1). The applicant has sought reliefs that are as follows:-

"The applicant prays that order Ann.A-1 may kindly be quashed and the respondent may kindly be restrained from implementing the same. Any other order may kindly be passed giving relief to the applicant."

2. The nature of the case in brief is that the applicant is working in Prasar Bharti Nigam under respondent 3 at Sri Ganganagar since 2005. She was transferred from Sri Ganganagar to Suratgarh vide orders of respondent 2 dt 24.7.2009 (Ann.A-1). Applicant submitted a representation on 30.7.2009 to respdt 2 to cancel her transfer

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(Ann.A-2, A-3); the respondent 2 instructed respondent 3 not to relieve applicant (by fax dt 05.8.2009; Ann.A-4). On 07.9.2009, respondent 2 cancelled this order dt 05.8.2009, directing respdnt 3 to relieve the applicant (Ann.A-5). Applicant submitted a representation on 25.8.2009 to respdnt 1 (Ann.A-6); she submitted medical certificate dt 05.4.2006 (Ann.A-7) & transfer policy for employees of Akashwani (Ann.A-8) in which it is laid down that locally recruited low paid employees would normally not be transferred. The transfer of applicant is made in utter violation of transfer policy & no reasons are mentioned for affecting the transfer. Her daughter was pursuing her studies at Sri Ganganagar & the academic year has not yet closed. The applicant has prayed to quash the order Ann A-1 & the respondents be restrained from implementing the same.

3(a). The respondents in written reply have narrated the facts that the courts should not interfere in transfer made in public interest & for public reasons. A Govt. servant holding a transferable post has no vested right to remain posted at one place. The affected party should approach higher authorities in the department. A transfer is a general incident of public services & person performing duties in a public deptt is liable to be transferred in administrative exigency. There is no malafide in the present case & transfer is made in public interest. The service condition of post on which applicant is working presently provides for transfer to a place anywhere in India. The applicant has not impleaded Sri S.K. Chugh, LDC, AIR being a necessary party as respondent. Sri S.K. Chugh is transferred at applicant's place, so as affected person; he should be impleaded as

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necessary party. The applicant is transferred from Sri Ganganagar as she had completed her tenure as per transfer guidelines. The transfer order is made on 24.7.2009 which is beginning of the academic session in Rajasthan Zone. The transfer is made keeping in view the transfer policy recommendations made by JEC Members. The applicant cannot claim transfer/posting at a specific place as a matter of right. Sri S.K. Chugh is transferred at applicant's place as he has completed his tenure at difficult station.

3(b). The respondents have no jurisdiction to pass the transfer order as it is malafide in view of transfer policy & not in public interest. The transfer policy emphasizes that locally recruited & low paid employees should not be transferred except on request. The JEC under respdt 2 met on 19.01.2009, it was decided not to harass the employees. It is apparent that the applicant is transferred to accommodate Sri S.K. Chugh, which amounts to malice in law.



4(a). Learned counsel for the applicant has stated in arguments that applicant's transfer was made on 24.7.2009 from Sri Ganganagar to Suratgarh, no reasons were given for affecting the transfer. The applicant is a low paid employee, she met with an accident. Being local low paid employee, she should not be transferred as per transfer policy. The transfer should not be made as a matter of routine; ordinarily grade D & low paid employees should not be transferred & harassed unnecessarily. No specific reasons are given; only ground for transfer made as an administrative exigency. The applicant was transferred to accommodate Sri S K Chugh, LDC,

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which is clearly malafide. The transfer is said to be made by JEC members, but no contents are given. In support of his contentions, applicant's counsel has relied on 1978 AIR (SC) 851. The validity of the order is judged from its contents: OA 226/2008, in which an authority of Mahavir Singh Gill is quoted. As no reasons specified in the transfer order, it cannot be supplemented, thus Ann A-1 order needs to be quashed. Sri S.K. Chugh filed MA no.19/2010, which was rejected on 15.02.2010. In the present transfer case, the public interest is not clarified, no reasonable grounds are shown: 1992 (2)

RLR 441 Kailash Chandra Sharam vs. D.S. & W. Raj. & Ors. The respondents are supposed to place full material before court; the power of transfer is misused: 20 ATC 66 Mahinder Kishore vs. UOI & others. The transfer is arbitrary & made without justification: 31 ATC 327. This is an arbitrary & colourful exercise of power which amounts to malice in law: 1997 AIR (SC) 1228.

4(b). Learned counsel for respdts in arguments stated that a limited scope existed in transfer matters. This transfer is of general nature, after completing her term, applicant was shifted to Surat- garh (65 kms. from Sri Ganganagar). Sri S.K. Chugh, LDC is not made respdt, being necessary party. The school term is over; no loss to the education of her daughter is caused. The transfer is made as per recommendations of JEC. A person serving in Govt., there is no choice for her as a matter of right: (1989) 3 SCC 447 UOI & ors vs. H.N. Kirtani, & (2005) 1 CDR 698. The respdts have mainly relied on Shilpi Bose vs. State of Bihar reported in 1991 Supp. (2) SCC 659.

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5. The facts of the case are narrated at length; the applicant was working in Prasar Bharati Nigam under respondent 3 for past 05 years at Sri Ganganagar. She was transferred by order of respondent 2 dt 24.7.2009 (Ann A-1) from Sri Ganganagar to Suratgarh. Sri Ganganagar is categorized as 'C' category station by the applicant, normal tenure at 'C' station is for 02 years, for A, B stations, the tenure is for a span of 04 years. As the applicant was posted at Sri Ganganagar for a period of 05 years, her case for transfer came up before the Joint Establishment Committee (JEC) for consideration. The JEC recommended her case for transfer, she was shifted from Sri Ganganagar to Suratgarh vide order dt 24.7.2009 by respondent

2. She gave a representation to respondent 3 on 30.7.2009 in which she has quoted the ground of her daughter's education, her own medical condition due to fracture in her right knee, related family matters etc. Accordingly, on the recommendations of respondent 3 vide order dt 05.8.2009, she was not relieved from Sri Ganganagar; but later respondent 3 revoked this order (dt 05.8.2009) vide order dt 07.9.2009 by which she was asked to be relieved. Again on 25.8.2009, she wrote to D.G. Admin Akashwani, New Delhi, but in vain. She was in the orbit of transfer for having completed 04 years at Sri Ganganagar. On the other hand, Shri S.K. Chugh LDC was posted at Suratgarh, supposed to be a difficult station; thus as per policy he was brought to applicant's place. The applicant's version is that after completion of 04 years, she was transferred in a routine way in violation of instruction (iv) of transfer policy. She being low paid local person, she was not to be transferred as per instructions

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(iii) of transfer policy. In fact, these instructions (iii) and (iv) speak of transfer under normal conditions. Applicant having completed 04 years on the present post at Sri Ganganagar was attracted in the orbit of transfer. These transfers were affected as per recommendations of JEC after giving a serious thought to the whole matter. It is worth mentioning that Suratgarh is just 65 km. from Sri Ganganagar, thus she cannot treat this as a case of undue harassment as she has completed her tenure at Sri Ganganagar. Applicant has drawn attention towards clause (xvi) as regards a provision of six months before expiry of normal tenure of posting at a station, an employee may indicate his choice of minimum three different stations where he/she would like to be preferably posted. This is an important provision indeed, but in the present context would not matter much, as the applicant is posted to place not very far off.

Secondly, her tenure at Sri Ganganagar expired long back; even then the respondents did not consider her case for transfer. The applicant knew well she had already completed 04 years and was in the zone of consideration, it was imperative her part to have given the choice postings. Now after transfer orders are affected, she cannot shift blame on respondents' shoulders. Thus, no malice is manifest in this matter from the official respondents' side.

6. It is a fact that the applicant is a low paid female employee; thus she has been posted to a nearby place. From record perusal, she was not shifted out so as to accommodate Sri S.K. Chugh LDC, who was posted at more difficult station Suratgarh, as per policy, he was shifted to Sri Ganganagar. The transfer is made in public

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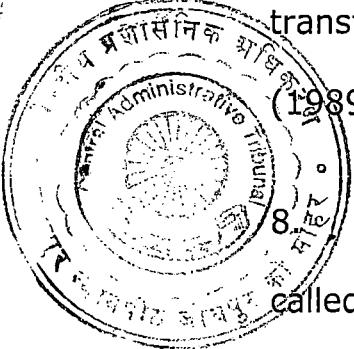
interest and in administrative exigencies. A govt servant holding a transferable post has no vested interest/right to remain posted at one place, the applicant cannot claim posting at Sri Ganganagar as a matter of right. The Court/Tribunal should not normally interfere in transfer and posting matters, otherwise the situation would be chaotic. At the outset, no malafide is manifest on respondents' part. Even, if Sri S.K. Chugh is not impleaded as necessary party, this does not have much impact on the case, as transfer is carried out in administrative need & public interest. On technical matters of trivial nature, tribunal should not forget the larger domain, in the interest of justice, non-joinder of Sri S.K. Chugh would not cast reflection on the present case. The respondents' reliance on the case of *Shilpi Bose (Mrs) vs. UOI & Anr (1991) Supp 2 SCC 659* is squarely applicable in the present context. The contention of the applicant that the transfer order dt 24.7.2009 is non-speaking and devoid of reasoning, is not to be accepted. The transfer is made on the recommendations of Joint Establishment Committee, is clearly indicative of grounds for transfer. The transfer is not made as a colourful exercise of power, nor in an arbitrary manner. There is no misuse of transfer power so as to harass the applicant; no such proof or documentary evidence is produced by her to substantiate her contention, no malice is manifest on the respondents' part.

7. The applicant has stated that the transfer is said to be made in public interest, which is not clarified, nor disclosed. In support of his contention, the applicant has quoted the citation of Rajasthan High Court 1992 (2) RLR 441. But on perusal of record, this is clear

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that power of transfer is not arbitrarily misused, the rulings put forth by the applicant namely 20 ATC 66 & 31 ATC 327 would not come to her rescue. The power of transfer is not used in an arbitrary manner, nor is any differential treatment meted out to her. No colourful exercise of power is manifest on respondents' part. It cannot be accepted that the transfer was made without justification, nor any malice in law is perceptible on the face of record, the apex Court's citation (1997) AIR (SC) 1228 is not applicable in the present case. The applicant as a government employee cannot argue or pressurize respondents to post her at a particular place; the courts should normally not intervene in the matters relating to transfer as specified in the apex Court's rulings (2005) 1 CDR 698 & (1989) 3 SCC 447 UOI & ors vs. H.N. Kirtania.

 In the light of deliberations made above, no interference is called for the order of respondent 2 dated 24.07.2009 (Ann.A/1). Resultantly, the present OA is dismissed, no order as to costs. Accordingly, the interim relief given by this Tribunal on 10.09.2009 and extended till further dates is hereby vacated.

[Signature]
[V.K. Kapoor]
Administrative Member.

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दिनांक 17/2/15
मेरी ज्यामुखीय प्रशासनिक अधिकारी
को भग-III का अधिकार दिया गया।
MC

अनुपाम अधिकारी
कोन्स्ट्रीय प्रशासनिक अधिकार
जोधपुर ज्यामुखीय, जोधपुर