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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 116/2009

Date of Decision: 5 .03.2010

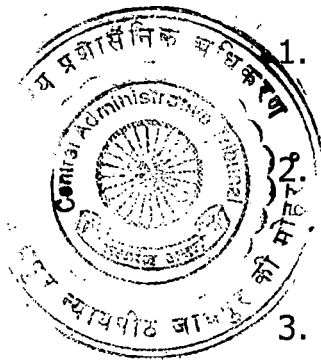
**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. V. K.Kapoor, Administrative Member.**

Sunil Kumar Joshi, S/o Shri B.K. Joshi, aged about 50 years, by caste Joshi, r/o kha-7 Housing Board colony, Vistar Yojna, Bhagat Ki Kothi, Jodhpur, presently working as Assistant Garrison Engineer (Building and Road) at G.E. Banar.

:Applicant.

Rep. By Mr. Manoj Bhandari : Counsel for the applicant.

Versus



1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, Government of India, New Delhi.
2. The Engineering-in-Chief, Military Engineering Services, Integrated Headquarter of MOD (Army) DHQ PO, New Delhi-11.
3. The Director General (Personnel) Military Engineering Services, Engineering-in-chief's Branch, Integrated Headquarter of MOD (Army) DHQ PO, New Delhi -11.
4. The Chief Engineer, Southern Command, Pune.
5. The Commanding Works Engineer (P) HQrs. [CWE-P] MES, Banar

: Respondents.

Rep. By Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Applicant S.K. Joshi who is presently working as Assistant Garrison Engineer (Building & Road), at G.E., Banar has preferred this O.A. for grant of following reliefs:

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"(i). By an appropriate order or direction, the order dated 20.3.2009 (Annex. A/1) passed by respondent No. 3 and order dated 13.4.2009 (Annex. A/2) passed by respondent no. 2 may kindly be declared illegal and be quashed and set aside.

(ii). By an appropriate order or direction, the respondents be directed to continue the applicant at Banar near Jodhpur or to post him at some nearby area from Jodhpur or defer the same upto January, 2010 so that he can accomplish his family responsibilities as stated in the memo of original application.

(iii). Any other appropriate order or direction which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The main grievance of the applicant is that the transfer of the applicant is premature and the complaint on the basis of which the applicant was transferred has been found false. His further contention is that the transfer order is against the policy adopted by the respondents in the matter of transfer.



On the other hand, the contention of the respondents is that transfer has been made in view of administrative exigencies and it is incorrect to say that on the basis of any complaint, the order of transfer was issued.

4. The learned advocate appearing for the applicant during the course of argument referred to Annexure A/6 i.e. a complaint filed by MES Builders Association of India (registered) Jodhpur Branch, against the applicant and submitted that this complaint became the basis of transfer of the applicant from Banar to a tenure/hard station "GE-881 EWS Surankot/Poonch in Jammu & Kashmir. He submitted that Annexure A/7 dated 16.4.2009 which is a letter issued by Chairman MES Builders Association of India (registered) Jodhpur

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Branch addressed to the Commander Works Engineer, Banar will show that the complaint which is at Annexure A/6 made against the applicant was found false and forged one on enquiry. His contention is that since the very basis of transfer was found false his transfer order is mala fide and the same being premature should be quashed.

5. On the other hand, the contention of the learned advocate of the respondents is that the order of transfer has been issued keeping in view the administrative exigencies and it is incorrect to say that the same was based on false complaint made against the applicant and as such the applicant was transferred from Banar. In support of his argument, he drew our attention to Annexure A/1 which is the transfer order dated 20.03.2009 and contended that the same would show as many as sixty persons were transferred to different places from different units; there is no mention in the order that the applicant was transferred on the basis of complaint made against him. He has further submitted that a general order of transfer is issued in the administrative exigencies, so the Tribunal has got no jurisdiction to interfere with such a transfer order. He also invited our attention to relief clause (ii) claimed as per applicant's submission that the relief itself will show that he has made a prayer for issuing an appropriate order to the respondents to continue him at Banar near Jodhpur or to post him at some nearby area from Jodhpur or defer the same upto January 2010. He further submitted that on the basis of above prayer made by the applicant that this O.A. has become infructuous since the period of retention sought for at Banar has already expired. He also submitted that the Apex Court in its catena of decisions has held that ordinarily Courts/Tribunal have no



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jurisdiction to interfere in the matter of transfer which is made in administrative exigencies by the concerned department. In support of his argument, learned counsel has placed reliance upon the decision of the Apex Court in the case of **Government of Andhra Pradesh vs. G. Venkata Ratnam** (2008) 9 SCC 345.


6. We have minutely heard the arguments of both sides and perused the contents of the application as well as reliefs claimed by the applicant. We are of the view that there is nothing on record to show that the applicant's transfer was made on the basis of complaint made by MES Builders Association of India (registered) Jodhpur Branch which was later on found false. We are also of the view that the transfer order at Annexure A/1 is a transfer order issued in respect of the applicant along with 59 persons and there is no mention in the order that the transfer order of the applicant was made on the basis of complaint lodged against him which establishes the fact that the transfer order was issued in the interest of administration keeping in view the administrative exigencies.

7. The law is very clear on the point that transfer of an employee is not a punishment and the authorities are within its jurisdiction to transfer an employee working in any institution to other place either in the interest of the institution or in a routine manner and the Hon'ble Apex Court in **State of UP and Others vs. Gobardhan Lal and D.B. Singh vs. D.K. Shukla and others** reported in 2004 (3) SLJ 244 (ii) **Shilpi Bose (Mrs) v. State of Bihar** reported in 1991 Supp (2) SCC 659; (iii) **Union of India vs. S.L. Abbas** [(1993) 4 SCC 357 at page 359 para -7, (iv) **National Hydroelectric Power**

Corporation Limited vs. Shri Bhagwan [2001 (8) SCC 574,];

(v) **State of M.P. and another vs. S.S. Kourav and others** [(1995) 3 SCC 270] has held that the Courts/Tribunals should not interfere with the transfer orders unless the same is vitiated either by mala fide or by extraneous considerations without any factual backgrounds.

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, the Hon'ble Apex Court 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.

In the case of **Shilpi Bose (Mrs) v. State of Bihar** reported in 1991 Supp (2) SCC 659, the Hon'ble Apex Court in the case of has 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.

In **Union of India vs. S.L. Abbas** [(1993) 4 SCC 357] the Supreme Court at para -7, has observed in the following manner :-

"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."

A similar view has been taken by the Supreme Court in

National Hydroelectric Power Corporation Limited vs. Shri

Bhagwan [2001 (8) SCC 574,] wherein at para 5 at page 577 it

was held that:

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to class or category of transferable post from one place to another is not only an incident but a condition of service, necessary too in public interest and efficiency in public administration" Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provision prohibiting any such transfer the courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

In **State of M.P. and another vs. S.S. Kourav and others** [

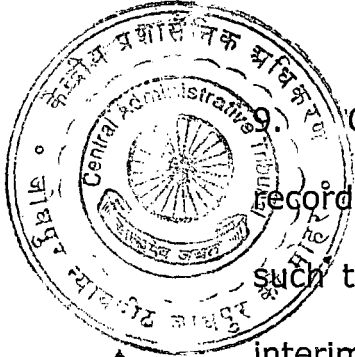
(1995) 3 SCC 270], the Supreme Court observed that :

" The Courts or tribunals are not the appellate forums to decide on transfers of officers on administrative grounds; the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places; it is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fide or by extraneous consideration without any factual back ground foundations."



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8. Moreover, a bare reading of relief clause (ii) itself shows that the period upto which the applicant wanted to defer the transfer order has already been expired and as such in view of relief claimed at clause (ii), the O.A. has become infructuous.



9. On the basis of above discussion and the materials available on record, we find and hold that there is no merit in this O.A. and as such the same is hereby dismissed with no order as to costs. The interim order granted by this Tribunal on 18.5.2009 stands vacated.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

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