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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR****ORIGINAL APPLICATION No. 156/2009**Date of Order: 27-4-2010**CORAM:****HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER****HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Smt. Neena Tak w/o Shri R.S. Tak, aged 54 years, r/o Abhaygarh Scheme, Central School No.1, Opposite Air Force, Jodhpur.

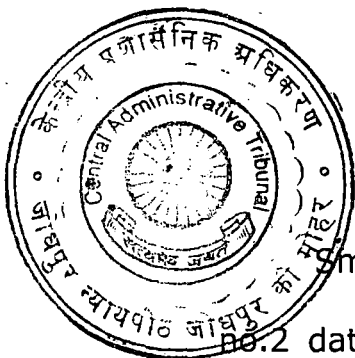
Official Address: as a Zoology Assistant, Desert Regional Centre, Zoological Survey of India, Jhalamand, Pali Road, Jodhpur.

....Applicant

Mr. R.S. Saluja, Counsel for applicant.**VERSUS**

1. The Union of India through the Secretary, Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
2. The Director, Zoological Survey of India, M-Block, New Alipore, Kolkatta-700 053.
3. The Officer Incharge, Desert Regional Centre, Zoological Survey of India, Jhalamand, Pali Road, Jodhpur.
4. Smt. Padma Bohra, the Officer Incharge, Desert Regional Centre, Zoological Survey of India, Jhalamand, Pali Road, Jodhpur.

....Respondents.

Mr. M.Godara, proxy counsel for**Mr. Vinit Mathur**, counsel for respondents.**ORDER****(Per Mr. V.K. Kapoor, Administrative Member)**

Smt. Neena Tak has filed this OA against the order of respondent No.2 dated 10.7.2009 by which while promoting the applicant to the post of Assistant Zoologist, she was transferred from Jodhpur to Kolkatta. The applicant has sought the reliefs that are as follows:-

"(i) That the Annex:A/1 dated 10.7.2009, so far as it transfers the applicant fro Jodhpur to Kolkatta, while promoting her to the post of Assistant Zoologist, may kindly be quashed and set aside.

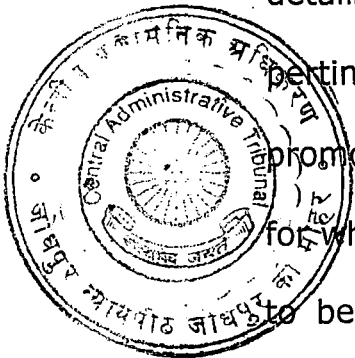
(ii) That consequent to aforesaid, the respondents may kindly be directed to continue applicant at Jodhpur.

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

(iv) Original Application filed by the applicant may kindly be allowed with costs."

2. The factual matrix of the case is that the applicant was appointed as Zoological Assistant in the respdt depts, Jodhpur on 26.11.1977; she was promoted on the post of Senior Zoological Assistant in 2001. Later, vide office order no.184/2009 dt 10 July, 2009, she was promoted as Assistant Zoologist (gazetted Gr.-B post) and posted at HQ Zoological Survey of India, Kolkatta (Ann.A-1). It is averred by the applicant that the sanctioned strength of Asstt. Zoologist is 03, out of which 02 posts are vacant at Jodhpur (Ann.A-2). Most of the staff/officers promoted were posted at Jodhpur itself, the glaring examples are those of Dr. N.S. Rathore, Dr. Q.H. Baquri, Dr. Sanjeev Kumar, Dr. Padma Bohra (respdt 4) and Dr. R.C. Sharma etc.; all of these officers were promoted and posted at Jodhpur at senior positions. The point in dispute behind these facts, is said to be the submission of medical bills to the tune of Rs.9682/-; only an amount of Rs.2827/- was not reimbursed, remaining amount was reimbursed (Ann.A-3). There was a pinching letter by respondent 4 addressed to the applicant (Ann.A-4), applicant submitted details as per Ann.A-4 & Ann. A-5. The case of respondent 4 is pertinently clear, she was posted at Jodhpur in 1978, earned all the promotions here till to date. There is not such administrative exigency for which applicant is to be posted at Kolkatta. The respondent 4 is said to be instrumental to get the applicant transferred to Kolkatta from Jodhpur. The applicant has prayed to quash the order dated 10.07.2009 and allow her to continue at Jodhpur itself.

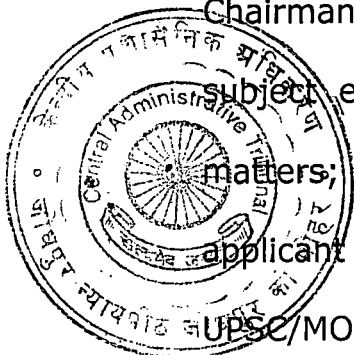


3(a). The respondents in reply have stated that applicant is transferred on promotion; she wants to join on the promotion post. It is well within

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the domain of employer to transfer an employee to any place for better and effective utilization of his/her services. This is within the discretion of employee as to where the post of Asstt. Zoologist at Jodhpur is to be filled or kept vacant. The contention of applicant is not sustainable in the eye of law that some employees/officers are posted/adjusted at Jodhpur, this would depend on the requirement and administrative exigency at that relevant time. The post on which the applicant is holding is having liability of transfer throughout India. Jodhpur is one of the regional centres of ZSI; there are 02 posts of Asstt Zoologists vacant at DRS, ZSI, Jodhpur instead of 03 posts. Some officers were promoted to next higher post there Flexible Complementary Scheme (FCS) on the basis of work assessment; under FCS, the officers promoted are not required to be transferred to any other place, according to norms laid down by the Ministry of Environment and Forests. The officers named above, Dr. Sanjeev Kumar, Dr. R.C. Sharma etc. earned promotions through FCS. The candidates promoted through DPC can be transferred as per deptt need. The applicant has used objectionable language against respondent 4 on many occasions.

Applicant's transfer seems to be effected by the discretionary power of Chairman of DPC as her services were required at ZSI Kolkatta as a subject expert. The medical reimbursement & transfer are separate matters; thus can't be clubbed together. The allegations made by the applicant are false and fabricated. The respondent 4 is selected through UPSC/MOEF on the post of scientist-C; earned promotion under FCS in which transfer of officer is not needed. Applicant is in habit of writing letters/complaints to senior officers and tampering with the official documents. The respondents have requested to dismiss the present OA.



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3(b). The applicant in rejoinder has stated that transfer is made on account of malafide attitude, mainly at the behest of respdt 4. The respdts are not clearly able to point out the main ground of applicant's transfer from Jodhpur to Kolkatta despite 02 posts of Asstt. Zoologists being available at Jodhpur itself. The promotion is effected by flexible complimentary scheme/departmental promotion committee; promotion is ultimately confirmed by MOEF. Dr. Sanjeev Kumar though selected them UPSC, is retained throughout his career at Jodhpur. The DPC has discretionary powers, but discretion cannot be used in a discriminatory manner. The letters written by respdt 4 to applicant & clearance her of medical bills are indicative of annoyance of respdt 4 towards applicant that led DPC to depart from normal practice of posting.

4(a). Learned counsel for applicant in arguments has stated that the applicant was posted at Jodhpur since inception of her service; she was promoted on 10.7.2009 (Ann.A-1) & posted at HQ ZSI Kolkatta. There are 02 posts of Asstt. Zoologists lying vacant at DRC, Jodhpur; transfer is made with malafide intent & reflective of discrimination. Other officers, besides respdt 4 were promoted and retained at Jodhpur itself. The dispute arose because of medical reimbursement; the respondents were said to be annoyed with her due to these reasons. The respdt 4 was instrumental in getting the applicant transferred to a far off area for no fault of her. Some officers were retained at Jodhpur itself under FCS. She gave various representations to reconsider her case, but in vain, but used no objectionable language for respdts. The applicant & respdt 4 were working at Jodhpur since 1977 onwards; other such promoted officers were allowed to work at Jodhpur with all exceptions.



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4(b). Learned counsel for respondents in arguments has stated that there were 05 posts of Asstt. Zoologist, all posts were at Kolkatta. Applicant was promoted and transferred to Kolkatta. Some of the officers in similar case faced the acid test, got promoted & posted at Jodhpur or like places. Some posts of Asstt. Zoologists were abolished; on 16.9.2009; there is no such post lying vacant at present. Applicant is posted at HQ ZSI Kolkatta, he can't be allowed to choose her own place of posting as narrated in (2008) 9 SCC 345, Govt of A.P. vs. G. Venketratnam. There is no malafide or arbitrary action in applicant's transfer from Jodhpur to Kolkatta, she is willing to accept promotion and wants to be at Jodhpur. The right of transfer vests with Director, ZSI, Kolkatta. As regards her medical claims, she was given in writing to collect the amount. As there was vacancy at HQ, ZSI, Kolkatta, she was posted there after promotion. The applicant can't choose a place of posting; respdt 4 is not responsible for the abolition of posts.

5. The applicant was appointed as Zoological Assistant in the respondent department on 26.11.1977 and posted at Desert Regional Centre, Zoological Survey of India, Jhalamand, Pali Road, Jodhpur. Later, she was promoted to the post of Senior Zoological Assistant in the year 2001; on 10 July, 2009 she was transferred from Jodhpur to Kolkatta as Assistant Zoologist (gazetted Gr.B post) at HQ, Zoological Survey of India, Kolkatta (Ann.A-1). The applicant is willing to join on promotion post but she wants her posting at Jodhpur itself like other fellow officers. The sanctioned strength of Assistant Zoologist is three and as per record one post is abolished & one post is said to be vacant on 30.6.2009. In the present case, after promotion she stands transferred to HQ, Zoological Survey of India, Kolkatta, transfer is made

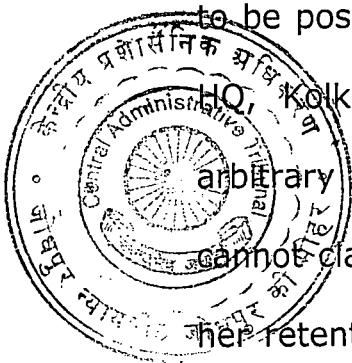


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on administrative exigency and confirmed by head office. Applicant has narrated some reasons for transfer mainly pertaining to submission of medical bills which were not cleared for quite some time. She has pointed her fingers towards respondent 4 who is instrumental in getting her out from Jodhpur to a distant place like Kolkatta. Her medical case was cleared by respondents though some dispute was definitely there. Clearly speaking medical reimbursement & applicant's transfer are two disjoint issues, the main reason for a transfer from Jodhpur to some other place is her over zealousness of writing letters/complaints to senior officer and tempering with official documents etc. It is alleged that she had a bad intention to disturb peaceful atmosphere prevailing in the office and to hamper the scientific work of respdnt 4. In fact, applicant can be posted anywhere in India, the rules are followed on administrative exigency and her technical capability to be retained at Kolkatta. It is for respondents to decide as to where the employee be posted so as to make best use of her capability and technical abilities.

6. In so far as applicant's case is concerned, she is transferred on administrative exigency and utilization of her technical ability/skill at HQ, i.e. Kolkatta calls for no interference. There is definitely one post of Asstt Zoologist lying vacant at Jodhpur but that gives no right to her to be posted her at a particular place. She is promoted and posted at HQ, Kolkatta on administrative exigency, there appears to be no arbitrary action or malafide intent on official respondents' part. She cannot claim her new posting as a matter of right when her claims for her retention at Jodhpur stand vindicated. The applicant is not alleged to chose her own place of posting as narrated in apex court's dictum Govt. of A.P. vs. G. Venketratnam (2008) 9 SCC 345.



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7 The applicant has quoted certain officials of department who were posted at Jodhpur earlier, went out on promotion, later brought back to Jodhpur itself. Some of the officers were retained at Jodhpur itself namely Dr. N.S. Rathore, Dr. Q.H. Baquri, Dr. Sanjeev Kumar, Dr. R.C.Sharma and lastly Dr. Padma Bohra (respdt 4). Some explanations are given by the respondents as regards these officials, who are mainly given relief on the point of flexible complimentary scheme. Some of these officers were selected through UPSC, promoted under flexible complimentary scheme and posted at Jodhpur again. The officers promoted and posted under FCS are not be posted anywhere else. It is worth mentioning that respondent 4 got the benefit of promotion and posting at Jodhpur under FCS. Practically most of officers transferred from Jodhpur are working here lately by courtesy FCS. Not much light is thrown on this flexible complimentary scheme during the course of arguments; respondent 4 and similarly situated officers took advantage of this scheme, posted back at Jodhpur. Applicant's case is treated differently; she was posted out of Jodhpur on administrative exigency. But while applicant is not given an advantage under FCS, no plausible explanation is tendered. Keeping in view applicant's nature of work, her technical capability and her long stay at Jodhpur, she was shifted to Kolkatta which is proper & justified in the present scenario. There is a clear discrimination in applicant's transfer matter because respdt 4 is given advantage under FCS and allowed to have continued stay/service at Jodhpur itself. This is apparently transparent that employees/officers under FCS are treated on different footing which is discriminatory at the first perception. This is equally applicable to some officers who under the garb of FCS are posted for quite a long time here or brought from outside to Jodhpur. This complimentary scheme is evolved so as to

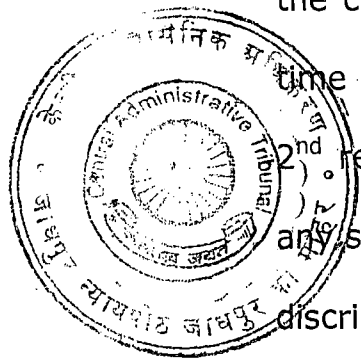


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shower mercy on some elite staff/officers. This flexible complimentary scheme needs to be minutely examined and action taken accordingly. The official respdts are directed to have fresh look on the merits & demerits of the flexible complimentary scheme and ensure that no injustice is made out to applicant and similarly situated persons in the guise of FCS. The officers including respdt 4 who have taken advantage under flexible complimentary scheme, are to be examined at utmost priority so that the discriminatory & dilatory tactics are not adopted to harass any employee/officer of concerned organization.

8. In the light of observations made above, no case is made out in applicant's favour. Thus, the present OA is hereby dismissed. But, in the circumstances stated above, we grant the applicant three months' time to be relieved and join at Calcutta. In the internum the 1st and 2nd respondents shall look into the Flexible Complimentary Scheme as any such scheme cannot have a personalized elasticity and be positively discriminatory within the same class within the next two months and pass consequential orders. OA is hereby dismissed without costs.




(V.K.Kapoor)
Administrative Member


(Dr. K.B.Suresh)
Judicial Member

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