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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.136/2010

Date of decision: 06.05.2011

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Jetharam Bhati S/o Shri Motiram Bhati, aged 56 years, R/o Plot No.48, Gaj Singh Colony, Banar Road, Jodhpur. Post Supervisor B/S, Garison Engineer, (Army) Central, Jodhpur.

: Applicant.

For Applicant: Dr. Sachin Achariya, Advocate.

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Southern Command, Pune Headquarter.
3. Chief Engineer, Bhopal Zone, Sultania Infantry Lines, Bhopal MES.
4. Commander Works Engineer, Army, Jodhpur MES.
5. Garrison Engineer (Army) Central Jodhpur MES.

: Respondents.

For Respondents : Mr. Kuldeep Mathur, Advocate.

ORDER (ORAL)

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

Heard both the parties on the point of admission.

2. Applicant Jetharam Bhati, who is presently posted as Supervisor B/S II at Garrison Engineer (Army), Central, Jodhpur, has preferred this O.A. against the order dated 22.04.2010 and 28.04.2010 Annexure-A/1 and Annexure-A/2 respectively whereby he has been transferred from Jodhpur to AGE B/R, Mount Abu and thereafter movement order was issued accordingly.

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3. The main grievance of the applicant is that the applicant is holding the post of Supervisor B/S under the Civilian Subordinate Category and the place at which he is proposed to be transferred i.e. Mount Abu has no such post under the said category and so the order of transfer of the applicant (Annexure-A/3) is illegal and the same deserves to be quashed. It has further been contended that there is only one post of Supervisor B/S category at Mount Abu, as per the Subordinate Re-revised Estt. Sanction for year 2008-2009 and Estt. Sanction for year 2009-2010: CWE (Army Jodhpur Area), Annexure-A/10, and the same is meant only for Military Subordinate Category. Therefore, the posting/transfer order of the applicant is prima facie illegal. It has also been contended that the order of the transfer is affected by malafide and so the same should be quashed.

4. On filing of the O.A, notices were issued to the respondents and in response to the notices the respondents appeared before this Tribunal through lawyer and filed reply to the O.A. As per the reply of the respondents, their contention is that the Jodhpur Complex was holding two surplus Supervisor B/S and keeping in view of the three choice given by the applicant for his choice posting, the applicant was transferred to Mount Abu. It has further been contended that there is no hard and fast rule that any civilian employee cannot be transferred to military establishment. It is further contended that as per the decision of the Hon'ble Apex Court in the case of **Shilpi Bose (Mrs.) vs. State of Bihar & Ors**, 1991 Supp.(2) SCC 659 the Tribunal should not interfere in the

order of transfers, which might have been done for administration exigencies and does not suffer with malafide.

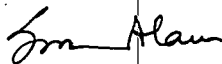
5. Both the lawyers appearing for the parties submitted that this O.A. can be disposed of at the admission stage itself. Shri Sachin Achariya, the learned advocate appearing for the applicant submitted that the applicant is a civilian employee and as per the statutory provision a civilian employee cannot be transferred to military establishment. However, the learned advocate failed to produce any such rule or guideline before this Court. It appears from the record that the respondents' lawyer vide order dated 11.02.2011 was asked to produce the document to show that at Mount Abu, there is post of Supervisor B/S-I and B/S-II vacant against the civilian post but the learned advocate failed to produce the same. However, it appears that the applicant has produce Annexure-A/10 showing that no post of Supervisor (Civilian) B/S-I and B/S-II is vacant at Mount Abu.

6. In view of conflicting stand of both the parties on the point whether an employee holding civilian post can be transferred to military post and in view of the failure of both the parties to produce any rule in this regard, it has become necessary to issue direction to the respondents to reconsider the request of the applicant for cancellation of his transfer from Jodhpur to Mount Abu if there is no provision under the rule to transfer any employee holding civilian post to a military post.

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7. Under the circumstances mentioned above, this O.A. is being disposed of at the admission stage itself with direction to the applicant to file a fresh representation before the competent authority to reconsider his request for cancellation of his transfer order. The applicant is directed to file fresh representation within a period of 15 days from this order and if such representation is filed the respondents shall dispose of the same within a period of one month by passing a reasoned order mentioning rules/guidelines under which the applicant can be transferred from civilian post to military post. It is further observed that till passing of the final order by the respondents, the applicant shall not be disturbed from his present place of posting.

8. With the above observations and directions, the O.A. stands disposed of at the admission stage. No order as to costs.



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