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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application Nos.139/2010
and
Misc. Application Nos. 156/2010 and 157/2010**

Date of decision: 28-10-2010

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

Hon'ble Mr. Sudhir Kumar Administrative Member.

Hari Singh Charan, s/o Shri Panney Dan Charan, aged about 50years, by caste Charan, presently R/o Behind Nehru Yuva Kendra, Nagaur, presently posted as Accounts Clerk at Nehru Yuva Kendra, Nagaur (Raj.)

Applicant.

Rep. By Mr. Vinay Jain : Counsel for the applicant.

Versus



1. Nehru Yuva Kendra Sangathan through the Director General, Core-4 Second Floor, Scope Minar, Twin Tower Complex, Laxmi Nagar, District Centre, Delhi 110 092.
Deputy Director (Personnel), Nehru Yuva Kendra Sangathan, Core-4 Second Floor, Scope Minar, Twin Tower Complex, Laxmi Nagar, District Centre, Delhi 110 092.
3. The Zonal Director, Nehru Yuva Kendra Sangathan, Kendriya Sadan Parisar Block 'A' Room No. 205, Vidhyadhar Nagar, Sector 10, Jaipur 302023
4. Youth Coordinator, Nehru Yuva Kendra, Fort Road, Nagaur.
5. Shri Chhotu Ram Puniya S/o Shri Imreta Ram resident of Village Kasipura, The Jayal, Distt. Nagaur at present Nehru Yuva Kendra Nagaur.

: Respondents.

Rep. By Mr. S.K. Malik : Counsel for respondents 1 to 4.

ORDER

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

Applicant Hari Singh Charan, presently posted as Accounts Clerk Nehru Yuva Kendra Nagaur, Rajasthan has preferred this O.A for quashing and setting aside the orders dated 04.05.2010 (Annex. A/1) and 17.05.2010, (Annex. A/2),

whereby he has been transferred to Nehru Yuva Kendra Baran and the order of transfer of one Gyan Prakash Vyas, transferring him to Nagaur from Sirohi was cancelled.

2. The brief facts of the case are as follows:

The applicant is presently posted on the post of Accounts Clerk at Nehru Yuva Kendra Nagaur. By order dated 04.05.2010, (Annex. A/1) passed by the Zonal Director, Rajasthan Zone Nehru Yuva Kendra Sangathan, Jaipur (Respondent no. 3), the applicant was transferred to Nehru Yuva Kendra, Baran from Nagaur and one other person namely Gyan Prakash Vyas was transferred from Nehru Yuva Kendra, Sirohi to Nehru Yuva Kendra Nagaur. However, the said order was modified by another order dated 17.05.2010, (Annex. A/2) by which Shri Gyan Prakash Vyas's transfer was cancelled and till further order the applicant was asked to hold additional charge of Accounts Clerk of Nehru Yuva Kendra, Nagaur. It is stated that Nehru Yuva Kendra Sangathan, is an autonomous body under the Ministry of Youth Affairs & Sports, Government of India. Transfer of employees of Nehru Yuva Kendra is guided by the policy framed by the respondents department (Annex. A/3). On 26.02.2008, the respondents issued a circular (Annex. A/4), by which all the Deputy Directors, District Youth Coordinators, Accounts Clerk cum Typists and staff of Zonal offices, who had worked for four years and more at the present place of posting and also those who had not completed four years but were desirous of opting other places, were asked to exercise their option for transfer in the prescribed format. As the applicant was working at Nagaur since 1998, as such he exercised his option giving first preference to Jodhpur and second preference to Jaisalmer and the 3rd one to Pali. While exercising his option for Jodhpur, he took the ground that his mother (now dead) who was 85 years old at that time and was suffering from

Diabetes and Asthma and she was residing at Jodhpur. It is stated that the respondents ignored all the grounds taken in his options and issued the order dated 04.05.2010, whereby he has been transferred from Nagaur to Baran. The applicant alleges that his transfer is not in administrative exigencies as there is no vacancy for the post of Accounts Clerk at Baran since one person is already working as Accounts Clerk at Baran. It is also alleged that the impugned order of transfer is also against the policy framed by the respondents. During the pendency of this O.A the applicant filed two Misc. Applications bearing No. 156/2010 and 157/2010 for amending the O.A and another for impleading one Chhotu Ram Puniya who has been transferred to Nagaur from Dausa vide order dated 20.05.2010. On the grounds mentioned in the O.A as well as in the M.A. No. 156/2010, the applicant has prayed for quashing and setting aside of the impugned orders dated 04.05.2010 and 17.05.2010.



3. On filing of the O.A notices were issued to the respondents and in response to the notices, the respondents appeared through lawyer and filed reply to the O.A. As per the reply, the case of the respondents in brief is that the post of Accounts Clerk is a transferable one and he can be transferred from one place to another on completion of four years period at a particular place as per the policy framed by the respondents department. It is stated in the reply that the applicant was working at Nagaur for the last about 12 years and therefore his transfer was effected in a routine manner and there is no malafide intention of the authorities in issuing the order of transfer. It is further stated that it is settled law that unless the transfer order is issued with malafide intention or against the statutory rules, no such order can be interfered with when the transfer order is passed by a competent authority. Further case of the respondents is that the applicant has not approached the Tribunal with clean hands and has deliberately concealed material fact that the applicant after his transfer was

ordered to be relieved and handover the charge in pursuance of transfer order dated 04.05.2010. But the applicant had deliberately avoided the receiving of his relieving order and therefore the said order was sent through registered post. It is contended that the applicant has suppressed this fact in the O.A in order to get interim relief. The respondents have further stated that there is only one post of Accounts Clerk at Nagaur and for that post one Chotu Ram Poonia has been transferred vide order dated 20.05.2010 (Annex. R/4) from Dausa to Nagaur. Though this O.A was filed on 20.05.2010, this fact has not been mentioned by the applicant in the O.A. On the above grounds the respondents have prayed to dismiss this O.A.



4. It is an admitted position that the post of the applicant is transferable and he can be transferred to other stations in the event of administrative exigencies after completion of four years at previous place of posting. It is an admitted fact that the applicant has been working at Nagaur for the last 12 years and therefore his transfer was due as per the policy of the respondents department. The applicant had taken a plea for exercising his option for Jodhpur on the ground that his old mother was residing at Jodhpur and she was suffering from Diabetes and Ashtma. However, this ground is not available to the applicant as much before filing of the O.A his mother expired in the month of September 2008

[Signature]

5. The next contention of the applicant was that no post of Accounts Clerk was lying vacant at Baran. Since one person working from before on that post and he was not transferred from the said station till the order of transfer of the applicant (Ann. A/1) was passed by the respondents. But the respondents in their reply at para 4.7 have stated that the post of Accounts Clerk at Baran has fallen vacant since one Mahesh Kumar Jamini, who was working on that post has been transferred from

Baran to Dausa. Since this fact has not been rebutted by the applicant by filing rejoinder and the same finds corroboration from Ann. R/4 of the reply as such we hold that this plea of the applicant that the post of Accounts clerk is not vacant at Baran is not available to the applicant.

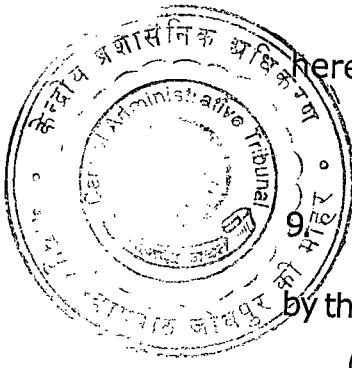
6. The next plea taken by the applicant is that till the date of filing of the O.A he has not been relieved. But this statement is totally false since by order dated 14.05.2010(Annex. R/2) he had already been relieved from Nagaur. But the applicant had avoided to acknowledge of the said order, hence the same was sent by registered post (Annex. R/3) on the address of the applicant. However, but the applicant managed to return the same. This goes to show that the applicant had deliberately avoided the service of the relieving order. In our view and in the eye of law that applicant will be deemed to be relieved from Nagaur since the date on which the competent authority passed the relieving order. Thus this plea of the applicant that till today he has not been relieved is also not acceptable.

7. It is settled principle that normally Tribunal should not interfere with the order of transfer when no malafide is established by the affected person. In support of the above view, we rely upon the decision of the Apex Court given in the case of **Shilpi Bose (Mrs.) and others vs. State of Bihar and others** [(1991) 17 ATC 935]. Para 4 of the said decision is relevant and the same is incorporated hereunder:

"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 malafide. A government servant holding a transferable post has not 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

violated 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 interfering with the transfer orders.

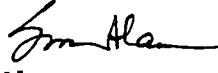
8. On the basis of the above discussion we hold that the transfer order is neither malafide nor made in violation of any mandatory Rule and so relying upon the decision of the Apex Court referred above, we hold that this O.A has got no merit and as such the same is hereby dismissed and the order of stay dated 21.05.2010 is hereby vacated. However, there will be no order as to costs.



In view of the above order, M.A. No. 156/2010 and M.A. No. 157/2010 filed by the applicant have become redundant hence both MAs stand disposed of.

[Sudhir Kumar]
Administrative Member.

jsv


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

17/12/11 ✓
11/12/16
जोधपुर न्यायपीठ, जोधपुर

उमा भास्कर शर्मा

केन्द्रीय उत्तरायणिक अधिकारण
जोधपुर न्यायपीठ, जोधपुर