

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application 237/2012

Date of Order: 28.05.2012

CORAM:

HON'BLE Mr. B.K. Sinha, ADMINISTRATIVE MEMBER

S.S. Choudhary S/o Shri Manphool Singh, aged about 45 years, R/o Quarter No.II/14, Special Bureau Complex, Subhash Nagar, Pal Road, Jodhpur, Presently working on the post of Sr.Field Assistant (GD) in the office of respondent No.2.

...Applicant

Mr. S.K.Malik, Counsel for Applicant.

Versus

1. Union of India through the Secretary, Cabinet Secretariat, Room No.7, Bikaner House (Annexe) Sahajahan Road, New Delhi.
2. The Additional Commissioner, Special Bureau, Government of India, Subhash Nagar, Pal Road, Jodhpur.

...Respondents.

ORDER

Heard the learned advocate appearing on behalf of the applicant. The applicant is a Senior Field Assistant (GD) in the office of the Additional Commissioner, Special Bureau, Government of India, Subhash Nagar. The case of the applicant is that he has undergone frequent transfers; he was initially appointed as Field Assistant on 20.03.1991 and transferred to Anupgarh on 01.01.1993, to Sriganaganagar on 16.09.1995, to Chohatan (Barmer) on 01.06.2001, to Jaisalmer on 01.09.2004 and to Jodhpur on 16.06.2005. He has been transferred out vide the order dated 12.03.2012 to Special Bureau, Barmer with directive to take over charge immediately. The

applicant submits that he is suffering with slip disc and has to remain at Jodhpur, where specialized treatment is available. He has further submitted that there are persons who have continued here for a period longer than him but have not been taken up for transfer, while under the Transfer Policy they should have been transferred out first. The applicant had submitted a Memo against his transfer dated 13.03.2012 and a representation dated 04.04.2012 supported by certificates by the treating physician/government doctors. It has been rejected vide the Memo dated 19.03.2012. The applicant pleads that no public interest is going to be served by his transfer and seeks quashing of the impugned order [A-1].

2. The legal position in this is clear that transfer is a necessary incident of service best done by the Department; the Courts/Tribunals are precluded from interfering with the same, unless malafides were to be established or there is violation of some statutes or rules of natural justice. In this regard the Hon'ble Supreme Court in **Shilpi Bose vs. State of Bihar**, 1991 Supp.(2) SCC 659, has held:

"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."

3. The applicant has raised the ground of discrimination on account of not following the principles of 'last come first to go' in the

sense that persons staying for longer periods have been allowed to continue. The applicant has also raised the issue of arbitrariness and violation of Articles 14 & 16 of the Constitution of India. However, this Tribunal would not like to enter into these issues right now, as the Hon'ble Supreme Court has rightly held the Department is the best judge of who is to work where and the scope for intervention is limited indeed. Administratively also, the Courts/Tribunals have been advised by the Hon'ble Apex Court to avoid interfering with the process of transfer. However, considering the fact that the applicant does appear to suffer with slip disc from the documents adduced there is a humanitarian aspect that gets involved. It is true that the Courts/Tribunals are to be guided by the incidence of infringement or maintenances of legal rights yet all rules and directives have been promulgated keeping the individual hardships and compulsions in mind. Hence, rather going into the question of law, I would like to direct that the applicant approaches the competent authority with his representation within a week. The competent authority will consider with due sympathy and pass a speaking order on the same. Till the disposal of the representation the applicant shall continue at his present place of posting.

4. With above directions, the OA is disposed of.


[B.K.Sinha]
Administrative Member

Caribbean
~~Island~~
29/05/12
(K.S. Calvey)
SW