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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application. No. 400/2012

Date of decision: 28th September, 2012.

CORAM:

HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER

R.L. Gajja S/o Late Shri Shiv Prasad Gajja, aged 49 years, r/o 160, 1st 'C' Road, Sardarpura, Jodhpur, Raj. Office Address : Dy. C.M.E., NWR, Jodhpur.

Applicant

[Applicant present in person]

Versus

1. Union of India through the General Manager, North Western Railway, Jawahar Circle, Headquarters Office, Jaipur.
2. The Secretary (E), Railway Board, New Delhi.
3. The Chief Mechanical Engineer, North Western Railway, Jawahar Circle, Headquarters Office, Jaipur.
4. The Chief Workshop Manager, Railway Workshop, Near Raiway Station, Jodhpur.

Respondents

O R D E R (Oral)

This is the second round of litigation. Earlier, OA No. 369 of 2012 was disposed of with a direction to the applicant to move a representation to the authorities concerned in respect of transfer order dated 29th August, 2012. The applicant has preferred a representation and has highlighted the following:-

(a)That the applicant has been subjected to transfer within a short span to a number of places.

(b)In the present place of posting he has put in less than 3 years

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and still he has been transferred, whereas persons with more four, or five or six or even 14 years of station seniority have been retained in the same station.

(c) The children of the applicant are studying respectively in 7th, 12th standard and the eldest is studying Engineering at Jodhpur and as such, shifting in the middle of the academic session would adversely affect the education of children.

2. The above representation date 10th September, 2012 had been considered by the General Manager (P) who has rejected the case of the applicant stating inter alia as under:-

"Normally officers are kept at one location for about three years on a post and extendable on consideration of various aspects regarding suitability of the officers for different jobs, their past experience indicating abilities/aptitude for different tasks and requirements of the administration. Therefore, in all cases, parity of tenure cannot be ensured."

Your request that your family is settled in Jodhpur and your children are in mid academic session so you should not be shifted from Jodhpur is not agreed to as Jodhpur and Bikaner are in the same State so shifting your children from Jodhpur to Bikaner should not cause any problem. It must also be realized that transfer/posting is an administrative requirement and made in the exigency of services, therefore, personal/family demand has to be subservient to the administrative interests."

3. Speaking order dated 26th September, 2012 at page 15 of the OA refers. Immediately, vide order dated 27-09-2012, the transfer order dated 29-08-2012 was sought to be implemented and by another order dated the same date, i.e. 27-09-2012, the applicant has been relieved. It is against the transfer order dated 29-08-2012 and the speaking order as well as the relieving order that the applicant has filed this OA.

4. Heard the applicant in person. The applicant submitted that the children education is crucial especially with reference to the second child who is studying in the 12th Standard. Again, he has referred to

hostile discrimination meted to him in that while others have been permitted to remain in the same station much beyond the normal tenure period (in one case even upto 14 years), in the case of the applicant within a period of two and a half years, the authorities have transferred the applicant.

5. The applicant further submitted that within a period of nine years, he has been shifted as many as nine times, out of which five are inter-station transfers.

6. The applicant has, therefore, prayed for the interim relief, i.e. the effect and operation of the impugned orders dated 26-09-2012, received under letter dated 27-09-2012, order dated 29-08-2012 and relieving order dated 27-09-2012 may be stayed and the respondents be directed to allow the applicant to continue at his present place of posting.

7. Heard the applicant. Issue notice to the respondents who may file reply within three weeks.

8. As regards interim relief, the three grounds – children education, hostile discrimination shown to the applicant and frequent transfers of the applicant (five in nine years) do reflect that the transfer order at this juncture does not appear to be appropriate. The justification given in rejecting the representation of the applicant does not reflect what exactly the pressing exigency to shift the applicant. There appears undue haste shown in that the applicant stands relieved forthwith.

9. In the case of ***B. Varadha Rao vs State of Karnataka***



(1986) 4 SCC 131, the Apex Court has held as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally."

10. In the case of **Director of School Education vs O. Karuppa Thevan** (1994) Supp (2) SCC 666, the Apex court has held as under:-

"Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

11. The above two judgments of the Apex Court would go to show that children education has to be kept in mind while effecting transfer. There does not appear to be any compelling reason to shift the applicant at this juncture, when he has not even completed full tenure at Jodhpur and during the middle of the academic session. Thus, a *prima facie* case has been made out by the applicant.

12. The applicant has now been relieved. The relieving order has been issued on the very same day when the decision of the General Manager has been communicated. The question is whether such a

relieving order would pre-empt the applicant from seeking an interim order for stay of operation of the transfer and relieving order. To a pointed question whether any individual has taken charge of the post of the applicant at Jodhpur, the applicant submitted that of the chain transfer involving four vide order dated 29-08-2012, the applicant was first to be relieved. Thus, none else has been shifted much less joined the post vacated by the applicant at Jodhpur.

13. The Apex Court has in the case of ***Dorab Cawasji Warden vs Coomi Sarob Warden (1990) 2 SCC 117***, held as under:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.***
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.***
- (3) The balance of convenience is in favour of the one seeking such relief.***

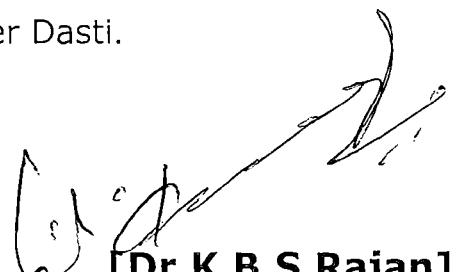
17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

14. Keeping in view the law laid down by the Apex court in the above decision, if the case is considered, the applicant does deserve the interim relief as the reasons for rejection of the representation of the applicant do not appear to be strong. The observation that the children of the applicant could be shifted to Bikaner being within the same State does not appeal to logic. Again, there has been no proper justification in shifting the applicant alone even before the expiry of his normal tenure of three years, which could be extended to four years, while the examples cited by the applicant reveal that persons are not shifter even after four years. Thus, this is a fit case wherein the mandatory injunction shall be granted. Balance of convenience and interest of justice are in favour of the applicant being granted the interim relief prayed for.

15. As such, the respondents are directed not to give effect to the transfer order of the applicant nor to the relieving order and **Respondent No. 2 and 3** are directed to entertain the applicant and permit him to perform the duties hitherto carried out at Jodhpur for a period of 14 days from today.

16. List the case for further consideration with regard to continuance of interim relief. Respondents may file a short reply in this regard before the next date of hearing.

17. List on 12th October, 2012. Order Dasti.



[Dr.K.B.S.Rajan]
Judicial Member