

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 176/2012

Jodhpur this the 03rd day of July, 2013.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Jagdish Chandra Joshi S/o Shri Shiv Dutt Joshi, aged about 47 years, resident of 69, Shivpuri, Mahamandir, Jodhpur at present employed on the post of UDC in the office of Central Ground Water Board, NWHR Jammu - 298299

.....Applicant

(Through Advocate Mr J.K. Mishra)

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Director (Admn), Central Ground Water Board, NH-IV, Bhujal Bhawan, Faridabad - 121001

(Through Advocate Ms K. Parveen)

3. Shri G L Meena, Executive Engineer, Central Ground Water Board, Division-11, C-8 Saraswatinagar, Pali Road, Jodhpur.

(Through Advocate Mr Vinay Jain)

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

By way of this application, the applicant has challenged the legality of the order Annex. A/1 by which he was transferred from CGWB, Div XI, Jodhpur to CGWB, NWHR, Jammu with immediate effect.

2. The short fact of the case are that the applicant was initially appointed to the post of Peon on 18.08.1986 in CGWB office at Jodhpur and in due course he earned his promotions and was lastly promoted to the post of UDC in April, 2011. The 3rd respondent developed some averseness and annoyance with the applicant and issued a warning letter to the applicant. A show cause notice was also issued to the applicant on 19.05.2011 and he immediately submitted his explanation on 06.06.2011. He inter alia submitted that he had been efficiently performing his duties. The applicant was issued another show cause notice on 12.07.2011 and the same was replied vide letter dated 15.07.2011. Some fabricated complaints were made in the name of the applicant to the higher authorities, regarding the news about the party in office which was published in newspaper and the applicant was asked to verify the same vide letter dated 19.07.2011 and he replied it vide letter dated 20.07.2011. The 3rd respondent did not find any ground for initiating disciplinary proceedings against the applicant and engineered some manipulation for deriving sadistic pleasure and got the applicant transferred from Jodhpur to Jammu vide letter dated 28.07.2011. The applicant was relieved in an unceremonial way vide order dated 29.07.2011. The applicant was transferred as a punishment for the alleged misbehaviour and misconduct and specific finding of guilt has not been recorded to this effect and no inquiry was conducted and he was not given any opportunity about finding of guilt against him. Therefore, he was transferred while

violating the valuable right of hearing. It has been averred in the OA that when a transfer of public servant is ordered for any misconduct or due to stigma, a specific opportunity of hearing must be given to the public servant otherwise it is violative of principle of natural justice and the applicant referred the judgment of Full Bench of the Tribunal in the case of Shri Kamlesh Trivedi Vs Indian Council of Agricultural Research & Another reported in ATR 1987 (2) C.A.T. 116=1989 (1) SLJ page 641 wherein this principle has been held by the Full Bench of the Tribunal.

3. The applicant by way of this application sought to declare the transfer order dated 28.07.2011 Annex. A/1 and relieving order Annex. A/2 dated 29.07.2011 as illegal, tainted by malice of 3rd respondent and further prayed to quash it and to pass any other just and proper order in favour of the applicant has been prayed.

4. By way of reply, the respondents No. 1 & 2 denied the facts averred in the application and it has been averred in the reply that the transfer of the applicant has not been ordered with any malice nor has it been manipulated by any person. But, the performance and behaviour of the applicant was not proper, therefore, he was transferred in public interest and it has been averred that no inquiry has been initiated against the applicant under the CCS (CCA) Rules, 1965, therefore, no question arises for issuing any memorandum. The fact of performing the duties by the applicant

efficiently has been denied and it has been brought out that on various occasions for negligence of his duties as well as his several misconducts like non performance, not being punctual in his duties, threatening/quarreling/manhandling with his colleagues and supervisors, creating hindrance in the Government work and indiscipline environment in the office, he has been transferred from present city to the Jammu. It is further averred that the applicant was involved habitually in indulging in unwarranted activities and he was negligent towards his duties and a non performer, therefore, the applicant has been transferred for administrative reasons. It has also been averred that the applicant has not availed alternative remedy by way of any representation to the competent authority so that his case may be considered on administrative side.

5. By way of rejoinder while reiterating the same facts, the applicant has averred that no punitive or stigmatic order can be passed against him without giving any opportunity of hearing.

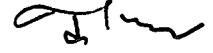
6. Heard all the parties. Counsel for the applicant contended that at page No. 21 of the OA, he has annexed a note-sheet of the office obtained under RTI Act in which it has been mentioned that the applicant was absent at 11:30 A.M. when he was called by EE, Div. XI, Jodhpur and when he inquired about it he had behaved in a very arrogant manner and therefore, keeping in view the repeated complaints in the past and his attitude towards work transfer of the

applicant was proposed in public interest and that was approved by the competent authority. The findings on this fact that the applicant behaved arrogantly and he was not found at 11:30 A.M in the office, it was argued that these are stigmatic in nature and thus the transfer order issued by the competent authority is punitive, being violative of principle of natural justice, and cannot be sustained in the eye of law. Counsel for the applicant relying on the judgment of Full Bench of the Tribunal in the case of Shri Kamlesh Trivedi Vs Indian Council of Agricultural Research & Another reported in ATR 1987 (2) C.A.T. 116=1989 (1) SLJ page 641 contended that where an inquiry has been initiated against any person then the transfer order issued without the conclusion of the inquiry is punitive and stigmatic in nature and even where during the course of the preliminary inquiry the statement of the witnesses have been recorded it amounts to punitive transfer or stigmatic in nature. In the present case there is no evidence on record that any inquiry has been initiated against the applicant or the statements of the witnesses have been recorded during the preliminary inquiry and without initiating the inquiry simple transfer order was issued. Therefore, the facts of the case cited by the counsel for the applicant are different from the present case.

Now, we come to the legality of the order Annex. A/1 in the light of the judgment cited by the counsel for the applicant and the general principles of transfer made by the public authorities in public interest. It is a settled position of law that for proper and

efficient functioning of any Government office, it is necessary that the executive authorities or the competent authorities must have the full discretion to transfer the employees as and when necessary to maintain discipline, proper working and cordial atmosphere in the office. Any interference in this regard is not warranted. Further, it is the settled position of law that any transfer made in the public interest cannot be said to be punitive or stigmatic unless and until a specific case is proved by the applicant to this effect. In the present case where no inquiry has been initiated against the applicant and no stigmatic action has been taken against the applicant, merely transferring on the ground of maintaining discipline and cordial atmosphere in the office, the order cannot be said to be punitive or stigmatic in nature or violative of principle of natural justice. Therefore, OA filed by the applicant lacks in merit and is accordingly dismissed with no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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