

8

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 254/2013

Jodhpur this the 22nd day of July, 2013.

CORAM

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

Dr Bhagwan Das Songara S/o Shri N.R. Songara, aged about 58 years, presently working as Chief Medical Officer Incharge (CMO I/C) Postal Dispensary, Jodhpur, Rajasthan, R/o 9/334, Chopasani Housing Board, Jodhpur

.....Applicant

(Through Advocate Mr H.M. Saraswat)

Versus

1. Union of India, through Secretary, The Ministry of Communication & I.T., Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Director (Staff) Department of Posts, M/o Communication & IT Dak Bhawan, Sansad Marg, New Delhi 110001.
3. Chief Post Master General, Rajasthan Circle, Jaipur.
4. The Post Master General, Near UIT Circle, Jodhpur

(Through Advocate Ms K. Parveen)

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant by way of this application has challenged the legality of the transfer order Annex. A/1 issued by Government of India, Ministry of Communications & IT, Department of Posts (Personnel Division) by Director (Staff) on 27.05.2013 by which

5

the applicant Dr Bhagwan Das Songara has been transferred from Jodhpur, Rajasthan Circle to Ajmer, Rajasthan Circle against the vacant post.

2. The short facts of the case are that the applicant is a 58 years old Chief Medical Officer Incharge of Postal Dispensary at Jodhpur and he has been transferred from this post by the order dated 27.05.2013 (Annex. A/1). It has been averred in the application that the applicant joined at Post & Telegraph Dispensary, Jodhpur on 01.08.2009 and without completing even 4 years of service at his present place of posting , he has been transferred to Ajmer Division and that too in violation of the policy issued by the respondent-department vide letter dated 02/04/2012. As the applicant held the present post for less than 4 years and also his tenure at this station is less than 6 years, therefore, the transfer order issued by the respondent-department is in violation of the policy in vogue. It has been averred in the application that the applicant is going to retire within 2 years i.e. in the year 2015, therefore, the order Annex. A/1 requires to be quashed in view of Rotational Transfer Policy Guidelines as at Annex. A/3.

3. The respondent-department in their reply while denying the right of the applicant has averred that transfer of the applicant was done in public interest and he is going to complete his 4 years' tenure on 01.08.2013 but looking to the commencement of the

education session these doctors including the applicant have been transferred for some period in advance before completion of 4 years' tenure. Therefore, order Annex. A/1 cannot be said to be illegal or against the provisions of law. It has been averred in the reply that the applicant has served for 4 years as Chief Medical Officer at Jodhpur, therefore, he was transferred which is 2 days earlier to the completion of the 4 years tenure.

4. Heard both the parties. Counsel for the applicant contended that the applicant has been transferred in violation to the guidelines issued under the policy by the respondent-department and further averred that the applicant is going to retire in the year 2015, therefore, his transfer order should be quashed by this Tribunal while exercising the powers under Article 226 of the Constitution and it cannot be said to be in the public interest that even before completion of 4 years tenure, the applicant has been transferred to Ajmer.

5. Per contra counsel for the respondents contended that the policies issued by the Govt. of India for transfers are having persuasive value and they cannot be termed as the rules. Therefore, it cannot be said that the transfer order has been issued in violation to the rule but for better administration of work. Counsel for the respondents further averred that the applicant has been accommodated in the same circle which is the closest station

from Jodhpur inspite of the fact that fair number of vacancies were there in the Postal Dispensaries across the country. Moreover, he has transferred to a vacant post and at the transfer is clearly in public interest.

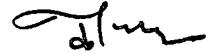
6. Considered the rival contentions advanced by both the parties and also perused the records. Counsel for the applicant cited the decision of the Hon'ble Rajasthan High Court passed in D.B.C.W.P. No. 1430/99, Dr (Smt) Pushpa Mehta vs Rajasthan Civil Services Appellate Tribunal and Ors reported in 2000(2) Western Law Cases (Raj) in which a transfer order issued in favour of a doctor who was to retire within 2 years from the date of transfer was quashed by the Tribunal and the same was affirmed by the Hon'ble Rajasthan High Court.

7. It is settled position of law that transfer matters depend on the fact of the cases and facts always differ from case to case. In the present case it cannot be said that order was passed malafidely and the Hon'ble Rajasthan High Court in above judgment considered the transfer order of the applicant to be malafide. So far as the applicant's case is concerned, he has been accommodated in the same circle at Ajmer, therefore, order Annex. A/1 cannot be said to be having any malafide and it cannot be said to be against the public interest because he was transferred against the vacant post at Ajmer.

8. Looking into the entire facts and circumstances of the case, no case is made out for quashing of transfer order. However, we also direct the applicant, if he so desires to submit a detailed representation to the respondent-department within two weeks from the date of joining his new place of posting, and competent authority shall consider the applicant's representation sympathetically in view of the fact that the applicant is going to retire within 2 years.

9. Accordingly, OA is dismissed with above order. There shall be no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

ss