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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.337/2013

Jodhpur, this the 17th day of October, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Hari Singh Charan s/o Shri Panne Dan Charan, age 53 years, resident of Village Naananyai, Tehsil Pokram, District Jaisalmer at present working on the post of Accounts Clerk-cum-Typist at Nehru Yuva Kendra, Nagaur.

.....Applicant
Mr. Vinay Jain, counsel for applicant

Vs.

1. Nehru Yuva Kendra Sangathan through Director General, Core-IV, 2nd Floor, Scope Minar, Twin Tower Complex, Laxmi Nagar, District Centre, Delhi.
2. The Deputy Director (Personnel), Nehru Yuva Kendra Sangathan, Core-IV, 2nd 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 204-205, Sector-10, Vidyadhar Nagar, Jaipur
4. Shri Chhotu Ram Puniya s/o Shri Imratiram Puniya, resident of 1/297, housing Board, Nagaur.

...Respondents

Ms. K Parveen for resp. No. 1 to 3 and Mr. S.K. Malik for resp. No.4

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present application has been filed by the applicant challenging the order dated 13.8.2013 by which transfer order dated

25.7.2013 of the applicant has been cancelled and therefore, he has prayed for the following reliefs:-

- (i) It is, therefore, prayed that by appropriate order or direction order dated 13.8.2013 passed by respondent department may kindly be quashed and set aside and applicant be allowed to work at Nehru Yuva Kendra, Nagaur.
- (ii) That, any other appropriate direction or order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be granted.
- (iii) Cost of this application may kindly be awarded."

2, The brief facts of the case, as stated by the applicant, are that the applicant is working on the post of Accounts Clerk-cum-Typist in respondent department. The post on which the applicant is working is a transferable post and as and when transfer order has been passed, he has obeyed the same. The applicant while working at Nehru Yuva Kendra, Nagaur was transferred to Bara vide order dated 4.5.2010 which was challenged by the applicant before this Tribunal and the Tribunal vide order dated 28.10.2010 decided the same. Against the order dated 28.10.2010, the applicant filed Writ Petition before the Hon'ble High Court in D.B. Civil Writ Petition No.10682/2010, which was disposed of by the Hon'ble High Court and it was made that the applicant can submit representation before the authority. Thereafter, vide order 25.7.2013, the applicant was transferred from Bara to Nagaur and he joined at Nagaur on 29.7.2013. The respondent No.4 was relieved vide order 31.7.2013 but subsequently vide order dated 13.8.2013, the said transfer order was cancelled. Therefore, aggrieved with cancellation of his transfer order, the applicant has filed this OA praying for the reliefs as mentioned at para-1 above.

3. The respondents by way of filing reply denied the right of the applicant. The official respondents by way of filing reply submitted that respondent No.4 was posted at Home District at Nagaur in peculiar circumstances and additional charge of the applicant was also entrusted to him being efficient worker. It is further submitted that the applicant has worked at Nehru Yuva Kendra, Nagaur from 1998 to October, 2010 i.e. almost for about 12 years and transfer from Nagaur to Baran was in public interest being exigency of service. Thereafter the competent authority passed order dated 20.5.2010 whereby respondent No.4 has been posted at Nagaur. It is further stated that after issuance of transfer order dated 25.7.2013, respondent No.4 moved an application on 29.7.2013 whereupon his transfer has been cancelled from Nagaur to Baran on the ground of family problem, children's education and his daughter is undergoing GNM training at Nagaur. Thereafter posting order dated 13.8.2013 was issued.

Respondents No.4 has also filed reply denying right of the applicant and has also denied the allegations made against him as baseless and incorrect. It is submitted that after the transfer of respondent No.4 from Nagaur to Baran, he moved representation dated 29.7.2013 highlighting his family problems and court cases. He also highlighted reasons of education of his children and clearly stating that he has not even completed four years tenure period as per transfer policy. Further, his daughter is undergoing GNM training at Nagaur and also deposited the requisite fees. Being girl, there is no one to lookafter her at Nagaur after his transfer to Baran and requested the official respondents to consider his request and cancel

the transfer order at least upto completion of his tenure at Nagaur. Looking to the representation of respondent No.4, his transfer order has been cancelled, which is perfectly legal and valid. Therefore, submitted that the present application deserved to be dismissed.

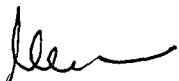
4. Heard both the parties and perused the relevant material available on record. The counsel for the applicant contended that the order Annexure A/1 dated 13.8.2013 has been passed after execution of the order at Ann.A/3 dated 25th July, 2013, therefore, once an order has been executed that cannot be cancelled. He relied upon the judgment of Hon'ble Rajasthan High Court reported in WLR 1994 Raj. 537- Ganga Ram Vs. State of Rajasthan and Others in which it has been held that once a transfer order has been executed it cannot be cancelled.

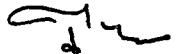
5. Per contra, counsel for the respondents contended that it is the prerogative of the respondents to transfer any officer or staff from one place to another and the Courts or the Tribunals should not interfere in view of the various pronouncements of the Hon'ble Supreme Court, because the transfer can be made on the basis of administrative exigencies and only in cases of malfideness or incompetency to pass any order, such orders could be interfered with by the Courts or the Tribunals.

6. We have considered the rival contention of both the parties and in view of the aforesaid judgment of Hon'ble Rajasthan High Court, the

order Ann.A/1 cancelling the order passed by the competent authority at Ann.A/3, is hereby quashed. The applicant and the private respondent No.4 may file their respective representations within a week from the date of receipt of a copy this order to the competent authority and the competent authority is directed to take appropriate decision in accordance with administrative exigencies and the relevant guidelines issued by the Department and after considering the representations of both the parties pass appropriate fresh order of transfer within two weeks from the date of receipt of representations. Till then, the status quo shall be maintained.

7. The OA stands disposed of accordingly with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

R/JRM