

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 378/2013

Jodhpur, this the 19th day of March, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)

Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Dr. (Smt.) A.K. Joshi w/o Dr. K.C. Joshi, aged about 52 years, presently working as Chief Medical Officer, P&T Dispensary, Jodhpur r/o Veer Mohalla, Jodhpur.

.....Applicant

By Advocate: Mr Mukesh Rajpurohit

Versus

1. Union of India through Secretary, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director (Staff), Ministry of Communication and Information Technology, Department of Posts (Personnel Division), New Delhi.
3. The Principal Chief Post Master General, Rajasthan Circle, Jodhpur.
4. Assistant Director Postal Services, Rajasthan Western Region, Department of Posts, Jodhpur

.....Respondents

By Advocate : Ms. K. Parveen

ORDER (Oral)

The present application has been filed against the transfer order dated 7.6.2013 (Ann.A/1) and relieving order dated 2.9.2013 (Ann.A/2) praying for the following reliefs:-

"It is most respectfully prayed that (submitted that) this Original Application may be allowed, impugned order dated 7.6.2013 (Annexure A-1) qua the applicant and order dated 2.9.2013 (Annexure A-2) may be quashed and set aside with all consequences and the respondents may be restrained from giving effect to this order

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qua applicant and they may be further restrained from relieving the applicant from present posting in pursuance to the impugned order.”

2. Short facts, as averred by the applicant, are that the applicant was initially engaged as Medical Officer on contract basis in the year 1986 and thereafter in the year 1988 she was appointed on regular basis w.e.f. September, 1986. The applicant is presently working as Chief Medical Officer Incharge in the P&T Dispensary, Jodhpur. The applicant has averred that husband of the applicant after suffering from damage of both kidneys had undergone Kidney Transplant Operation at Bombay and since then he has been under constant follow up treatment. As the Kidney Transplant Operation has been followed by after effects, therefore, husband of the applicant has to be under continuous treatment of Dr. Ashok Kirpalani. It has been stated that daughter of the applicant is also prosecuting studies at Jodhpur and required to be looked after by the applicant. Further, applicant's mother-in-law is 93 years old and is suffering from old-age ailments. The aforesaid peculiar domestic reasons are in the knowledge of the respondents, that is why, she was allowed to work at Jodhpur, but all of sudden impugned order dated 7.6.2013 has been passed transferring the applicant from Jodhpur to Kota. It has been alleged by the applicant that perusal of impugned order reveals that there is no administrative exigency/and or reason to transfer the applicant from Jodhpur to Kota as the order is silent of any administrative exigency and thereafter out of mala-fide and arbitrary exercise of powers qua the applicant the respondents issued order 2.9.2013 relieving the applicant. Therefore, aggrieved with the transfer order dated 7.6.2013 and relieving order dated 2.9.2013, the applicant has filed this OA praying for the reliefs as extracted in para-1 above.

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3. By filing reply to the OA, the respondents have denied the right of the applicant and submitted that in terms of Rotational Transfer Policy Guidelines dated 2.4.2012, all Medical Officers who had completed their station tenure were transferred vide order dated 7.6.2013. Moreover, she was posted at Jodhpur for the last 25 years since 1988. The applicant is not the only Medical Officer, but as many as 8 other Medical Officers excluding the applicant have been transferred. The respondents have further submitted that Rotational Transfer Policy Guidelines dated 2.4.2012 rests on the principles of tenure, performance, service history and records and suitability of officers for a post, sensitive and non-sensitive postings, interest of service /administrative interest, request and interest of officer etc. While ordering transfers, administrative and functional needs for a particular post are kept in view. Since the applicant had completed her station tenure, therefore, she was due for transfer under the said policy and the administration is not required to specify the reasons for such transfers and posting. So far as permission to work at Jodhpur for some time is concerned, it is submitted by the respondents that the representation of the applicant was forwarded to the Directorate for considering her request for cancellation of transfer and decision of the Directorate on her request was awaited, therefore, she continued to work at Jodhpur. The respondents have further submitted that the department has followed the transfer policy guidelines in letter and spirit and it is incorrect on the part of the applicant to say that her transfer has been done in mala fide and callous manner; the applicant being a Group-A officer has All India liability for transfer, but has been considered for transfer from Jodhpur to Kota, which is also within the Rajasthan Circle, therefore, the respondents prayed that the applicant is not entitled to any relief.

4. Heard counsel for both the parties. Counsel for the applicant contended that after filing of this OA some other Doctor has been posted at Kota in place of the applicant, and even at Jodhpur one Doctor has sought voluntary retirement and another Doctor Dr. Suman Jalva is on maternity leave. In these circumstances, she is the only Doctor for looking after the P&T Dispensary at Jodhpur and in view of this fact, no administrative exigency can be said to have existed presently and, therefore, the impugned order Ann.A/1 transferring the applicant from Jodhpur to Kota may be set-aside. Counsel for the applicant further contended that the applicant's case may now be considered in the light of the changed circumstances and further the Department be directed not to transfer the applicant from Jodhpur to any other place in view of genuine reasons.


5. Per contra, counsel for the respondents contended that although the other Doctor may have been posted at Kota, but the transfer order can be interfered with by the Tribunal only in case of malice and incompetency of the transferring authority or on some other substantial grounds. The applicant has challenged legality of the order on the ground that her husband has undergone kidney transplantation, her mother-in-law is suffering from old age ailments and her daughter is studying in higher classes. Counsel for the respondents contended on these grounds, administrative order of transfer from Jodhpur to Kota may not be interfered because this transfer has been made in public interest and according to the Rotational Transfer Policy Guidelines.

6. We have considered rival contentions of both the counsels. It is settled proposition of law that unless and until some malice or other substantial ground is proved by the applicant, the transfer order should not

be interfered by this Tribunal. The grounds averred in the application are not so substantial on the basis of which the impugned order Ann.A/1 qua the applicant can be quashed. Therefore, we are not inclined to quash the order Ann.A/1 in the light of the discussions made hereinabove.

7. However, looking to the entire facts and circumstances of the case, the respondent department is expected to see whether the circumstances referred by the applicant in her OA, if existing, can be considered in applicant's favour. Therefore, if the applicant files further representation before the respondent-department within a week from the date of receipt of this order, the department may consider it sympathetically so as to give any relief on humanitarian considerations. Till then the IR issued earlier shall remain operative. In case no representation is submitted by the applicant within the aforesaid stipulated time, the orders at Ann.A/1 and A/2 will automatically become operative qua the applicant.

8. With these observations, the OA stands disposed of with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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