

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.448/2013

Jodhpur this the 9th day of April, 2014

Reserved on 25.03.2014

CORAM :

Hon'ble Ms. Meenakshi Hooja, Member (A)

Heera Ram Choudhary S/o Shri Deepa Ram Choudhary, by caste Choudhary-Jat, aged about 49 years, R/o Baitu Panji, Tehsil Baitu, District Barmer.

.....Applicant

(Through Adv. Mr. Sunil Joshi)

Versus

1. Union of India through the Secretary, Earth Science Ministry, Government of India, New Delhi.
2. India Meteorological Department, Regional Meteorological Center, Lodhi Road, New Delhi, through its Dy. Director (D.D.G.M.).
3. India Meteorological Department, Regional Meteorological Center, Lodhi Road, New Delhi, through its Administrative Officer (Admn).
4. India Meteorological Department, PBO Barmer, through its Officer-in-Charge.

.....Respondents

(Through Adv. Smt. K. Parveen)

ORDER

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 07/08.08.2013 issued by respondent No.3 whereby the respondent No.2 ordered to transfer the applicant from PBO Barmer to AET Banswara.

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2. The brief facts of the case as averred by the applicant are that the applicant is serving under the respondent department since 23 years at Barmer as Scientist Assistant in PBO Barmer with utmost satisfaction of the respondent department and was served 2252 days extra time except to duty time due to shortage of staff member, but till today he has not received any service arrears thereof for extra days and it has been further averred that there is no inquiry or departmental proceedings pending against the applicant till today. The respondents have issued the order dated 07/08.08.2013 (Annexure-A/1) transferring the applicant from PBO Barmer to AET Banswara without any administrative reasons as a non-speaking order while not considering the case of the applicant for transferring him to Jodhpur. It has been further averred in the OA that the respondent department ordered the applicant vide order dated 26.03.2013 to go on tour on the post of AET Banswara with an intention to not to give the benefit of compensatory off whereupon the applicant submitted a representation for cancellation of the order dated 26.06.2013. Thereafter the competent authority has given the assurance to the applicant vide communication dated 02.07.2013 that after completion of tour as per order dated 26.06.2013 his case will be considered for transfer at Jodhpur. By another office order dated 05.07.2013, the respondent department has fixed the tour programme of one month while ordering the applicant to go on tour but the applicant was not relieved for going on tour. It has been averred that the respondent department have not taken any steps for relieving the applicant for going on tour at AET Banswara, till lapse of a



period of more than one and half months and on demand of service arrear of compensatory off by the applicant, the respondent department vide communication/office order dated 08.08.2013 (Annexure-A/6) relieved the applicant from the present place of posting in compliance of the order dated 07/08.08.2013 (Annexure-A/1). After issuing the order at Annexure-A/6 i.e. relieving order, the applicant submitted another representation on 10.08.2013 (Annexure-A/7) for considering his case and further submitted a reminder on 12.09.2013 (Annexure-A/8) for cancellation of order of transfer but the respondent department did not give any response.

3. It has been further averred in the OA that the respondent department relieved the applicant from the present place of posting vide order dated 08.08.2013 (Annexure-A/6) in compliance of the order dated 07/08.08.2013 (Annexure-A/1) just after a day, in order to not to make the payment of extra time service whereas the department did not relieve him for going on tour programme, and therefore the transfer order have been issued with a malafide intention with a view not to make the payment of compensatory off. Thereafter, the applicant submitted an application dated 13.09.2013 for issuing the service arrears for about 10 years, but the respondent department has not yet taken any steps for releasing the service arrears. It has been further averred that after issuing the orders at Annexure-A/1 & A/6, transfer and relieving orders, the applicant submitted various representations to consider his case for transfer to Jodhpur, where various posts are lying vacant and also in view of similarly situated persons having been transferred to their own place of



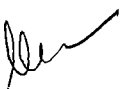
choice, but the respondent department have acted in a high handed manner and without any regard to rule of law and therefore, the transfer order and relieving order dated 07/08.08.2013 (Annexure-A/1) and 08.08.2013 (Annexure-A/6) are illegal, unjust, discriminatory, arbitrary and the interference of the Tribunal is warranted in the present case, and hence the applicant has prayed for the following reliefs:-

"In view of the facts and grounds as mentioned above, the applicant the applicant prays that the order dated 07/08.08.2013 & 08.08.2013, Annexure-A/1 & A/6 issued by the respondent department may kindly be ordered to be quashed and set aside. Further the respondent department may kindly be ordered to be consider the transfer application of the applicant within specific time and further any other appropriate order, which deems just and proper in favour of the applicant may kindly be passed."

4. The respondents in their reply have denied the claims of the applicant and submitted that the applicant is working as Scientific Assistant (erstwhile Senior Observer) at Pilot Balloon Observatory, Barmer, since his appointment on 09.08.1990. The averment made by the applicant that he has worked to the utmost satisfaction with the respondent department has been denied by saying that vide letter dated 20.06.2013 (Annexure-R/1), the Director In-charge, Meteorological Centre, Jaipur had not found the work of the applicant satisfactory and even earlier also the M.C. Jaipur had pointed out the poor working of the Station vide letter dated 27.08.2012. It has been further submitted that the transfer of the applicant from PBO Barmer to AET Banswara was made in public interest. The application for his transfer was considered by the competent authority and he was also assured by the department first to proceed on tour for one month to AET Banswara, thereafter his request for transfer to Jodhpur would be considered. However, he never




proceeded on tour to Banswara and remained on leave on one pretext or another just to avoid the order of the Department to make a tour of one month to AET Banswara. Therefore, this was nothing but the non-compliance of the orders of the Department. It has been further averred that the recruitment and retirement is an inevitable process of a Government department, and when the department recruited new Scientific Assistants, required number of officials (Scientific Assistants) were posted at PBO Barmer, till then the work of the station was being managed with the existing staff, and as and when needed, by deputing the staffs on tour from the other stations. This practice is being followed not only for PBO Barmer, but also for the other stations as and when needed. Therefore, the applicant was also deputed to AET Banswara for one month to manage the office work, as the person who was posted there was transferred to PBO Dabok (Udaipur) on promotion. Thus, the averments made by the applicant, that he was deputed on tour with the intention not to extend any benefit to him, are not correct and are baseless. It has been further averred that the submission of the applicant that he was not relieved from PBO Barmer is a lame excuse and in fact the applicant himself was the incharge of the Station and it was his duty to hand over the charge to the next junior person before proceeding on tour, which reveals that he was never having any intention to go on to tour to AET Banswara and if he had any ambiguity regarding the order issued by the department then he might have sought clarification immediately and would have proceeded on tour. Further in pursuance to the Fax Message dated 25.06.2013 from R.M.C. New Delhi to M.C. Jaipur, the M.C. Jaipur



got noted down the order to PBO Barmer vide Log Note No.14 dated 26.06.2013 and then on 01.07.2013 the applicant handed over the charge to Shri Dhruv Jain, SA and was relieved. It has been further averred in the reply that on 02.07.2013 (Annexure-R/3), the applicant submitted an application for granting of medical leave for 7 days, which reflects malafide intention of the applicant not to proceed on tour to AET Banswara.

5. The ratio decided by Hon'ble Apex Court in some cases in this regard has been averred in the reply itself and decisions in the case of *UOI v. S.L.Abbas*, reported in (1993) 2 SLR 585, *Mrs. Shilpi Bose & Ors. vs. State of Bihar & Ors.*, reported in 1992 SCC (L&S) 127, *M.V. Thimmai & Ors, v. Union Public Service Commission*, decided on 13.12.2007 (CA No.5883-91 of 2007 & Ors.), *N.K. Singh v. UOI & Ors*, reported in AIR 1995 SCC 423 and the *Gujarat Electricity Board and Anr. vs. Atmaram Sungomal Poshani*, reported in 1989 (2) SCC 602 have been referred to.


6. In sum, it has been averred by the respondent department that the applicant was first deputed for one month tour to AET Banswara to relieve the official posted there, as he was transferred to PBO Dabok on promotion, however, the applicant did not comply with the office order and the competent authority after thorough deliberations and keeping in view all the facts and circumstances, transferred him to AET Banswara in public interest and there is no bias or malafide intention of the respondent department and further the applicant has not produced any evidence in



support of this allegation. The respondents have therefore prayed for the dismissal of the OA.

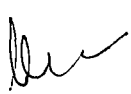
7. In the rejoinder, the applicant while reiterating the averments made in the OA, averred that the impugned transfer order has been passed as a punishment and not with regard to any administrative exigency or in public interest and further the department has not replied anything regarding the extra time duty performed by the employee and it is the Department's intentions to pressurize the applicant to give a written statement that the extra time duties were done voluntarily and no claim would be made for this.

8. In the additional affidavit, the respondent department while reiterating the averments made in the reply, averred that the order of transfer passed by the competent authority was not a punitive action but was in a larger public interest only. It has been further submitted that the averments made by the applicant that not a word is written regarding the benefit of 2252 compensatory off in the reply submitted by the respondents and that this is the main dispute between the applicant and the respondent department, appears to be an after thought, and to make 'not to give the benefit in lieu of compensatory off' as main issue is not tenable in the eyes of law. Further, it has been averred that as far as compensatory off is concerned, there are certain Rules and Regulations in this regard. It has been reiterated that it cannot be said that the applicant worked to the utmost satisfaction of the Department as there have been adverse observation regarding the applicant prior to his transfer as at R/1 and R/2



and even a notice dated 15.04.2000 (Annexure-R/3) was also served upon the applicant much earlier, and even after his transfer there have been complaints dated 22.10.2013, 23.10.2013 and 25.10.2013 against the applicant. A notice dated 21.02.2014 Annexure-R/9 (4) has been appended with the counter-affidavit regarding grant of commuted leave for one month w.e.f. 26.11.2013 of the applicant and wherein he has been asked to join office immediately along with proper medical/ fitness certificates in support of his illness w.e.f. 24.08.2013 to till date otherwise action as deemed fit as per rules will be initiated against him. It has been reiterated that the transfer order has been made in public interest, and any malafide intention on the part of respondents has been denied categorically.

9. Heard both the parties. Counsel for the applicant contended that it is a settled law that an employee in the Government can be transferred only in case of administrative exigency or in public interest, but in the present case the transfer order dated 07/08 August, 2013 (Annexure-A/1) purported to be in the interest of public service is actually without any public interest and based on, and actuated by other factors including malice, malafide and hostile discrimination. Referring to Annexure-A/6, office order dated 08.08.2013, he contended that it is a fact on official record that the applicant has 2252 days of compensatory off to his credit and there is pressure on him by the respondents to waive off this claim of so many days compensatory off, which he has duly earned by performing extra duties. The Department has not taken any steps to release his arrears.



and has infact transferred him with malafide intentions. He further contended that there was no administrative exigency for his transfer as there were five sanctioned posts of Scientific Assistant in Barmer and apart from the applicant who is the senior most only two other persons are posted there and two posts are lying vacant, therefore, there was no administrative exigency for transferring the applicant. Counsel for the applicant also contended that though the order for his deputation on tour to AET Banswara was issued, but he was not relieved for the same and therefore he was not able to proceed on tour. Counsel for the applicant further referred to Annexure-A/4, dated 02.07.2013, which is a Fax Message from Administrative Officer (Admn.) for DDGH, to RMC, New Delhi and PBO Barmer in which it has been stated that Shri H.R. Choudhary, S.A. (applicant) may be intimated that after completion his tour to AET Banswara his transfer case will be considered. This shows that the department was seized of his request of transfer but still on 07/08.08.2013 (Annexure-A/1) the applicant was transferred. Counsel for the applicant vehemently contended that the order of transfer from PBO Barmer to AET Banswara also based on discrimination because as per Annexure-A/2, the applicant himself in his application addressed to DDGM, Regional Meteorological Center, New Delhi had mentioned that while he has given his request on 25.06.2010 for transfer to Jodhpur but his case has not been considered but other persons viz. Atul Kumar, Vishnu Kumar, Ashok Meena, Sanjay Batra and Shri S.K. Singh have been transferred to the places of their choice within a period of six months to one and a half years of their stay, though he has been working in



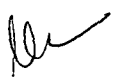
Barmer for the last 23 years. Counsel for the applicant contended that the applicant has been deliberately transferred to a far off place to Banswara on extraneous grounds which cannot be said to be based on public interest or administrative exigency and hence the transfer order of the applicant at Annexure-A/1, dated 07/08.08.2013 may be set aside being malafide, discriminatory, not in public interest or administrative exigency and thereby violative of the constitutional provisions.

10. Per contra, counsel for the respondents vehemently denied the contentions of the counsel for the applicant and contended that the applicant has been continuously at one place i.e. Barmer from 09th August, 1990 from the time of his first appointment and keeping in view the vacancy occurring in Banswara on account of promotion of the incumbent there, the applicant was deputed to proceed on tour to AET Banswara for one month and he was also assured by the Department that after completion of his tour to AET Banswara his request for transfer (to Jodhpur) will be considered. However, the applicant never proceeded on tour to AET Banswara and remained on leave on one pretext and other just to avoid the order of the Department for going on tour to AET Banswara. Counsel for the respondents denied the contention of the counsel for the applicant that the applicant did not proceed on tour because he was never relieved and contended that the applicant was himself incharge of the station and on 01.07.2013 itself, he had handed over the charge to Shri Dhruv Jain as is clear from certificate of transfer of charge which has been attached with Annexure-R/3. She further



contended that his application for leave was submitted after 02.07.2013 with the intention not to proceed on tour to AET Banswara. It was emphasized that after 02.07.2013, the applicant has not joined his duties, though he has been present in Court proceedings and is even present today also. Counsel for the respondents further denied that the applicant is being pressurized to waive his claim of 2252 days of compensatory off and contended that the applicant has shown no record or document in this regard and has failed to establish any evidence of malafide intention. Counsel for the respondents also denied the claims of the applicant that he has been serving with the respondent department with utmost satisfaction and contended that there were several communications and observations regarding the poor working of the incumbent as well as the Station under his charge as referred in para No.3 of the reply and Annexure-R/1 & R/2, and later also as brought out in a report at Annexure-R/4 and that even after his transfer orders were issued, some complaints were filed as at Annexure-R/9. It was further contended that the applicant has not joined his duties till date and even an OM dated 21.02.2014 has been issued to him (Annexure-R/9 (4)) asking him to join office immediately along with proper medical/ fitness certificate in support of his illness w.e.f. 24.08.2013 to till date otherwise action as deemed fit as per rules will be initiated against him.

11. Summing up, counsel for the respondents contended that there has been no discrimination because in the applicant's case also as per Annexure-R/4, communication dated 02.07.2013, his transfer was to be



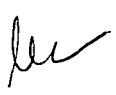
considered after completion of his tour to AET Banswara but the applicant did not proceed on tour on one pretext and other and did not comply with the Government orders. Further, though he stood relieved for AET Banswara vide order dated 08.08.2013 (Annexure-A/6) in pursuance to the office order dated 07/08.08.2013 (Annexure-A/1), he has not joined there and not reported for on duty till today. As upheld by the Hon'ble Apex Court in a catena of judgments that the transfer of an official is an incident of service and in this case the transfer has been made in the interest of public service against a vacant post, therefore, there has been no discrimination, malice, malafide or arbitrariness in the order and the applicant is not entitled to any relief and transfer order dated 07/08.08.2013 requires no interference and accordingly the OA may be dismissed.

12. Considered the rival contentions of counsels for both the parties and also perused the record. It was the contention of the counsel for the applicant that the transfer order dated 07/08.08.2013 (Annexure-A/1) was discriminatory because he was not given the transfer to his place of choice i.e. Jodhpur, while several others were given their transfer to the place of their choice. In this regard, admittedly, the applicant has remained posted in Barmer for the last 23 years continuously from the time of his appointment in August, 1990. He had also made a request for transfer to Jodhpur in June, 2010. He was asked to proceed on tour to AET Banswara vide communication dated 26.03.2013 and as brought out in the reply deputing the staff on tour to other stations is a practice being followed in



the Department not only for PBO Barmer but also for other stations as and when needed to manage the office work. The applicant was asked to go on tour as the person who was posted there was transferred to PBO Dabok on promotion. The applicant handed over the charge on 01.07.2013 and vide message dated 02.07.2013, it was also communicated that after completion of his tour to AET Banswara his transfer case will be considered. Thus, the Department had even in writing committed that they will consider his case of transfer after completion of tour; however, the applicant did not proceed on tour even after issue of another order dated 05.07.2013 (Annexure-A/5). The contention of the counsel for the applicant that there has been discrimination against him, as four or five other officials had been transferred from Barmer and given posting of their choice but he was denied the same, does not carry much force because in this case, the Department itself had committed in writing that they will consider his case after completion of tour to AET Banswara, but the applicant did not go on tour.

13. Further, it has been the contention of the counsel for the applicant that the transfer was not made in public interest and there was no administrative exigency for the same. In this context, it is seen from the record that at the time of sending the applicant on tour, there was a vacant post at Banswara due to promotion of the incumbent, and further the applicant was also posted to AET Banswara against a vacant post, therefore, it cannot be said that there is no public interest involved in his transfer. Moreover, the applicant has not shown or referred to any policy



or guidelines of the Department which have been violated in this matter, especially when he was at Barmer for the last 23 years and was transferred against a vacant post at Banswara. It has also been contended by the counsel for the applicant that there was no administrative exigency for transfer of the applicant because there were vacant posts in Barmer itself and that the transfer was arbitrary. However, it is seen from record that the transfer to Banswara was made against a vacant post and undeniably, the Department has the right to transfer and post its officials keeping in view the requirements and smooth functioning of the Department and this view has been upheld in the various judgments of the Hon'ble Apex Court including the case of *UOI v. S.L. Abbas*, reported in (1993) 2 SLR 585, wherein it has been held inter alia that who should be transferred where is a matter for the appropriate authority to decide. Thus, it cannot be said that the transfer was not in public interest or that there was no administrative exigency for the same.

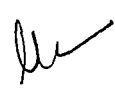
14. It was also contended by the counsel for the applicant that the transfer was made with malafide intention because the applicant was claiming his due compensatory off of 2252 days and the Department was not responding to his various representations and rather transferred him with malafide intentions vide order dated 07/08.08.2013, in this connection it is seen that the representations at A/7, A/8, A/9 are dated 10.08.2013, 12.09.2013, 13.09.2013, i.e. after the date of transfer and further the applicant has not placed any document or evidence on record to show that the transfer was done with a view to dissuade him to make

the claim for compensatory off and as such no case is made out for treating the transfer as having been made with malafide intentions.

15. The counsel for the applicant also contended that the transfer was made as a punishment, but from the record it is clear that the applicant was deputed on tour to AET Banswara because the vacancy had occurred there and was transferred vide Annexure-A/1 to fill up that vacant post. As the transfer has been made on administrative grounds and without attaching any stigma, it cannot be implied to mean a punishment and this view is supported by the decision of the Apex Court in the case of *Registrar General, High Court of Judicature of Madras v. R. Perachi & Ors.* reported in (2011) 2 SCC (L&S) 643.

16. It is also seen from the record that the applicant neither proceeded on tour to AET Banswara though he handed over charge on 01.07.2013 and nor on transfer after being relieved vide Annexure-A/6 dated 08.08.2013 and apparently has not joined his duties as on date, as emphasized by the counsel for the respondents, and in this regard with reference to his grant of leave on medical grounds and not joining his duties he was also issued a notice dated 21st February, 2014 as at Annexure-R/9 (4).

17. Thus, on the basis of the aforesaid discussions, the transfer order at Annexure-A/1 cannot be said to be not in public interest because the post of AET Banswara was vacant and as upheld by the Apex Court in its several judgments that it is the prerogative of the Government/Department



to transfer/post its officials to ensure the smooth functioning of the Department. Further in this case the applicant has not been able to establish any malafide intention of the respondents nor shown violation of any rules/guidelines regarding the transfer. It is a settled principle of law that the transfer is an incident of service and unless it is made on malafide ground or in contravention of any rules or guidelines in this regard, the Court or Tribunal should normally not interfere with the matter and as in the present case the applicant has failed to establish any malafide, discrimination or violations of rules and regulations therefore there appears to be no ground for any interference in the transfer order dated 07/08.08.2013 as at Annexure-A/1. Accordingly, the OA lacks merit and is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
MEMBER (A)

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for Sunil Joshi Adv.

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