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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.175/2013

Jodhpur, this the 18th day of October, 2013

CORAM

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

Chandra Shekhar Azad s/o Shri Ashok Kumar, aged about 39, r/o 3105, DS Railway Colony, Residency Road, Jodhpur, Rajasthan. The applicant is presently working in the office of SSE/P Way/USFD (Ultra Sonic Flow Detector), North-Western Railways, Jodhpur, Rajasthan.

.....Applicant

Mr. N.M.Mathur, proxy counsel for Mr. Kuldeep Mathur, counsel for applicant

Vs.

1. The Union of India through the General Manager, North-Western Railway, H.Q. at Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur.
3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur.

...Respondents

Mr. Vinay Jain, counsel for respondents

ORDER (ORAL)

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

The applicant, Chandra Sekhar Azad has filed this OA against the periodical transfer order dated 7.3.2013 with the following prayers:-

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- (i) That the impugned order dated 7.3.2013 (Annexure -01) may kindly be declared illegal and the same may be quashed.
- (ii) That the respondents may be directed not to relieve applicant from the present place of posting.
- (iii) That the cost of the application be quantified to the applicant from the respondents.

2. Brief facts, as stated by the applicant, are that the applicant is presently working on the post of Sr. Section Engineer, P-Way Ultra Sonic Flow Detector (USFD), North Western Railway, Jodhpur. It is stated that as far as the applicant is concerned, upto 22.9.2010, he was working on USFD Machine No.1. The said USFD Machine comes under the jurisdiction of Sr. Divisional Engineer (Central), NW Railway, Jodhpur. The Trains running between Jodhpur-Luni, Banar-Jodhpur and Rai Ka Bagh-Jaisalmer are looked after by this Machine. It is further stated that respondent No.2, as per their periodical transfer policy issued order dated 29.11.2012 of the employees working on one post/station for more than 04 years, and name of the applicant does not appear in the said order. The applicant is not working on one place from last 04 years and, therefore, his name was rightly not included in the order dated 1.12.2012 issued by the respondent no.2 in pursuance to the periodical transfer policy. Thereafter the official respondents vide order dated 7.3.2013 issued order transferring applicant from the present place of posting to Nokha as SSE, P-Way. It is averred that the applicant has been transferred from the present place of posting only with a view to adjust Shri Rakesh Kumar in Jodhpur though he has worked for more than 04 years at one

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station/place. The applicant aggrieved by the transfer order dated 7.3.2013 submitted representation but of no avail. Therefore, he has filed this OA praying for the reliefs as mentioned in Para-1 above.

3. The respondents by way filing reply denied the right of the applicant and submitted that that applicant has not completed 4 years on same post/station, therefore, his name was not included in the list of periodical transfer issued on 29.11.2012. As far as Shri Rakesh Kumar, SSE/P.W./JU is concerned, his name was in the list of periodical transfer from P.W./J.U. Shri Rakesh Kumar has submitted request for his transfer to USFD and accordingly same was considered and he was transferred to USFD on his own request. As far as order of applicant is concerned, the same was issued from USFD to NOKHA on administrative grounds. It is also submitted that although proposed list of the employee who are to be transferred on account of sensitive posts but that does not mean that department cannot transfer an employee on administrative ground. It is further stated that as per periodical transfer policy of railway, employees working against sensitive posts on same place/station for more than 4 years are generally transferred to other place/station. As far as applicant is concerned, he is working at Headquarter Jodhpur since January, 2000 which means he is working for more than 13 years, therefore, now on administrative account he has been transferred.

4. Heard both the parties and perused the relevant material available on record. Counsel for the applicant submitted that the

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applicant has been transferred to accommodate Shri Rakesh Kumar, SSE/PW/JU, who has been posted at the place of the applicant as SSE/PW/USFD on his request and this order has not been passed in pursuance to the periodical transfer policy. It is further contended that where a public servant is transferred to accommodate some other persons such transfer can be termed as malafide and further contended that it has not been passed under the transfer policy.

5. On the contrary, counsel for the respondents contended that the transfer order has been passed not to accommodate Shri Rakesh Kumar, but looking to the administrative exigency, this order has been passed.

6. We have considered the rival contention of both the parties and perused the order of transfer. In this case, Shri Rakesh Kumar has not been impleaded as party-respondent by the applicant and this specific objection has been averred in the reply by the respondents. Further, the Hon'ble Supreme Court in the case of State of U.P. vs. Gobardhan Lal, reported in (2004) 11 SCC 402 at page 407 held as under:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or condition of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of

grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigency of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provisions.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the court of tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned.....”

Similar view has been taken by the Hon'ble Apex Court in the case of Airports Authority of India vs. Rajeev Ratan Pandey, reported in (2009) 8 SCC 337 page 339 wherein the Hon'ble Court held as under:-

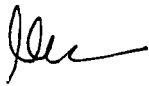
“10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not even find any contravention of transfer policy in transferring respondent 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage of final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.

11. In the present case, the High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant.”

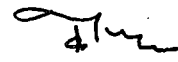
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7. In view of the pronouncements of the Hon'ble Apex Court (supra), it is settled principle of law that transfer is an incident of service and it cannot be termed as punishment and in the present case no mala fide or arbitrary exercise of power is made out. Accordingly, in the facts and circumstances of the present case, the OA lacks merit and the same is therefore, dismissed with no order as to costs.

The ~~IR~~ issued on 2.5.2013 stands vacated.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

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