

76

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 204/2013

Jodhpur this the 30th day of May, 2013.

CORAM

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

Subhash Srivastava S/o Shri B.B.L. Shrivastava aged about 53 years, R/o near Ramdev Tent House, Rani Bazar, Bikaner, Rajasthan. Presently working on the post of T-3 in the office of Central Sheep & Wool Research Institute, Bikaner, Rajasthan

.....Applicant

(Through Advocate Mr. S.K. Malik)

Versus

1. The Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi
2. The Director, Central Sheep & Wool Research Institute, Avika Nagar, District Tonk, Rajasthan.
3. The Chief Administrative Officer, Central Sheep & Wool Research Institute, Avika Nagar, District Tonk, Rajasthan.
4. The Head, Central Sheep & Wool Research Institute, Arid Region Campus Bikaner, Rajasthan.
5. Dr. R.K. Sawal, Principal Scientist, Central Sheep and Wool Research Institute, Arid Region Campus, Bikaner, Rajasthan.

(Through Advocate Mr Ashok Chhangani)

..... Respondents

ORDER (Oral)

The applicant, Subhash Srivastava by way of this application has challenged the legality of the transfer order Annex. A/1 and Annex. A/2 by which he was relieved from the office of the Central

7/4

Sheep & Wool Research Institute, Arid Region Campus, Bikaner, Rajasthan to join at his new place of posting.

2. The short facts of the case are that the applicant was appointed on the post of Lab. Tech. on 25.03.1988 in pay scale of Rs 975-1540/- . On 07.05.2010, the applicant filed a complaint against his superior officer Dr R.K. Sawal. The applicant's promotion was withheld for some reasons. The applicant filed detailed representation for his promotion vide Annex. A/5. The applicant was transferred to N.T.R.S., Garsa (Kullu) HP and he filed a representation for cancellation of his transfer order. The competent authority passed the order to relieve him for N.T.R.S., Garsa (Kullu) HP, his new place of posting. Being aggrieved by this, the applicant has filed this OA for the following relief (s) :

“(i) By an appropriate writ order or direction impugned order dated 16.04.2013 at Annex A/1, and impugned order dated 30.04.2013 at Annex A/2 be declared illegal and be quashed and set aside with all consequential benefits.

“(ii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.”

2. The applicant has challenged the order of the transfer on the ground that applicant's wife is also an employee under the State Government and she is a diabetic patient. Further, he challenged the order of his transfer on the ground that he had made a complaint Annex. A/4 against Dr. R.K. Sawal, Principle Scientist, therefore, higher authorities transferred him at such a remote place from Bikaner and he further contended that transfer has been made in

79

violation of the policies of the department framed from time to time.

3. The respondent-department filed the detailed reply today and denied all the allegations averred in the OA. It has been averred in the reply that he is serving at Bikaner since 25 years and the transfer order Annex. A/1 and relieving order A/2 cannot be said to be punitive, stigmatic or passed with malice or demotion of any kind as he is not directed to work under any person junior to him.

Therefore, the order passed by the competent authority Annex. A/1 and A/2 cannot be reviewed judicially while considering the judicial aspect of the transfer. The transfer order was passed in public interest and the work of the department at N.T.R.S., Garsa (Kullu) HP is suffering badly and on the ground of some illness of wife or himself, the order of transfer passed by the competent authority cannot be judicially reviewed or quashed because competent authority can exercise its powers in public interest to transfer any employee. Counsel for the respondents contended that transfer policies are having only persuasive value and these policies cannot have binding force of law. Therefore, transfer order passed by the respondent-department does not suffer from any illegality or infirmity. It has also been averred that it is not the case of the applicant that transfer order has been passed by any incompetent authority.

4. Heard both the parties. Counsel for the applicant contended that on account of Annex. A/4 (Complaint against Dr R.K. Sawal), the applicant has been transferred to N.T.R.S., Garsa (Kullu) HP from Bikaner and the fact that his wife is a State Government employee and there are certain guidelines with respect to the transfer of low paid employees. Counsel for the applicant drew my attention to the guidelines for posting of husband and wife at the same station and also towards Annex. A/7 by which it has been instructed to all the competent authorities not to transfer any low paid employee on the ground of complaints unless and until due permission is sought from the competent authority. He further drew my attention to the proceedings of 29th Annual Meeting of Central Joint Staff Council of ICAR held on 27.02.2012 through Video Conference in which it has been considered that in case of lower staff, their hardship would be taken into consideration while transferring them from one place to another and as far as possible low level employees should not be transferred from their place of posting.

5. While reiterating the contentions raised in the reply, counsel for the respondents vehemently defended the order Annex. A/1 & A/2 and contended that it is a settled principle of law that judicial review of such transfer order is not permissible unless and until an element of malice is there or order appears to be illegal or suffers from infirmity or on the ground of incompetence of the authority passing the order or order being punitive or stigmatic in nature or

amounts to any demotion. Counsel for the respondents contended that no such grounds have been averred in the OA and he has been transferred solely on the basis of administrative exigencies and as the work at N.T.R.S., Garsa (Kullu) HP is being adversely affected therefore, the applicant has been transferred in public interest. Counsel for the respondent further contended that cases of longest stay vis a vis other staff cannot be a ground to judicial review of transfer order because in case of one transfer all such staff staying at that station requires to be transferred and this practice is not possible on administrative side.

6. I have considered the rival contentions of both the parties and also perused the relevant record. So far as the prior permission of competent authority for transfer of the applicant is concerned, the respondents in support of their reply annexed R/3, document showing prior permission from the higher authority for the transfer of the applicant but it is not clear from the record that while seeking permission of transfer of the applicant presented the fact before the authority that the applicant's wife is serving in the State Government as teacher. Although, policies framed by the Government or instrumentalities of the Government are having persuasive value but at the same time considering that the applicant is a low paid employee and his wife is serving in State Government as teacher and this fact has not been denied in the reply also, the representation Annex. A/6 which was submitted by the applicant has been recommended positively by his immediate officer which

has yet not been responded to the applicant and is still pending before the competent authority and these facts cannot be ignored while deciding the OA of the applicant.

7. Looking into the entire facts and circumstances of the case, especially that the applicant is a low paid employee and his wife is serving in State Government as teacher at Bikaner, Annex. A/1 and A/2 are quashed and the respondents are directed to consider the Annex. A/6 and forward the same to the competent authority. The present OA shall also be forwarded as an additional representation to decide it within 3 months from the date of receipt of this order. Further, after considering entire facts averred in the application as well as Annex. A/6, competent authority shall pass a reasoned and speaking order. In the meantime, applicant will not be disturbed from his present place of posting.

8. After completion of this exercise, if applicant has any grievance, he may file fresh OA if desires. There shall be no order as to costs.


(Justice K.C. Joshi)
Judicial Member