

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

OA No.290/00316/2014

Reserved on 10.3.2015

Jodhpur, this the 26th day of March, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Hari Singh Charan s/o Shri Panne Dan, age 54 years, resident of Village Naananyai, Tehsil Pokran, District Jaisalmer at present working on the post of Accounts Clerk-cum-Typist at Nehru Yuva Kendra, Jodhpur

.....Applicant

By Advocate: Mr. Vinay Jain

Versus

1. Nehru Yuva Kendra Sangathan through Director General, Core-IV, 2nd Floor, Scope Minar, Twin Tower Complex, Laxmi Nagar, District Centre, Delhi-110 092.
2. The Zonal Director, Nehru Yuva Kendra Sangathan, Kendriya Sadan Parisar, Block-A, Room 204-205, Sector 10, Vidhyadhar Nagar, Jaipur
3. The District Youth Coordinator, Nehru Yuva Kendra, Sangathan, 114, Shakti Nagar, 5th Road, Paota-C road, Jodhpur
4. Shri Mahendra Singh Sindhal s/o Shri Bhopal Singh Sindhal, resident of 114, Shakti Nagar, 5th Road, Paota-C Road, Jodhpur

.....Respondents

By Advocate : Mr. Nitin Trivedi for resp. No. 1 to 3 and Mr. Harish Purohit for resp. No.4

ORDER


By filing this OA u/s 19 of the Administrative Tribunals Act,

1985, the applicant has challenged the order dated 12.9.2014


(Ann.A/1) by which he has been transferred from Jodhpur to Nagaur and accordingly, he has prayed that the order dated 12.9.2014 may be quashed and set aside and the applicant be allowed to work at Nehru Yuva Kendra, Jodhpur.

2. Brief facts of the case, as averred by the applicant, are that the applicant is working on the post of Accounts Clerk-cum-Typist in respondent department. While working at Nehru Yuva Kendra (NYK), Nagaur he was transferred to Baran vide order dated 4.5.2010 (Ann.A/2) against which the applicant filed OA before this Tribunal, but the same was dismissed by this Tribunal. Against dismissal of the OA, the applicant approached the Hon'ble High Court by filing D.B. Civil Writ Petition No.10682/2010, which was also dismissed; however, liberty was granted to the applicant to submit representation before the competent authority. The applicant filed representation submitting that he may be posted at Jodhpur, Jaisalmer Pali or Nagaur and accordingly, vide order dated 25.7.2013 (Ann.A/3), he was transferred from Baran to Nagaur. After joining at Nagaur, the order of transfer was cancelled vide order dated 13.8.2013 (Ann.A/4), which was alleged to have been passed with mala-fide intention and, therefore, the applicant again challenged the same by filing OA No.337/2013 before this Tribunal. This Tribunal vide order dated 17.10.2013 (Ann.A/5) allowed the OA and quashed the order dated 13.8.2013 with

representation before the authority. The applicant filed detailed representation dated 28.10.2013 (Ann.A/6) and the respondents called the applicant and other employees. A compromise was arrived that the applicant will remain at Baran till April, 2014 and order to this effect was passed on 29.10.2013. As per the compromise and the order dated 29.10.2013, the applicant was expecting from the department for posting at Jodhpur after April, 2014, but no order was passed, therefore, the applicant again filed representation dated 17.6.2014 and 27.6.2014 (Ann.A/9) and after a long wait, order dated 30.7.2014 (Ann.A/10) was passed by which the applicant was transferred from Baran to Jodhpur and he joined at Jodhpur on 4.8.2013. The applicant submitted that as per policy, after his joining at Jodhpur, the respondent No.4 should be automatically deemed to be relieved but the respondents did not relieve him and only on 1.9.2014 respondent No.4 was relieved from Jodhpur and he joined at Nagaur. Thereafter respondent No.4 managed his transfer from Nagaur to Jodhpur and an order was passed on 12.9.2014 (Ann.A/1) by which the applicant has been transferred from Jodhpur to Nagaur within a short span of 40 days, which is arbitrary and without any administrative exigency just to accommodate respondent No. 4. Therefore, aggrieved of the action of the respondents, the applicant has filed the present OA with documents Ann.A/1 to A/10 praying that the order dated 12.9.2013 be quashed and set-aside.




3. By way of filing reply to the OA along with Ann.R/1 to R/3, the official respondents have submitted that the applicant has not come with clean hands before this Tribunal and has concealed glaring fact from the Hon'ble Tribunal on account of which the interim order was passed by the Hon'ble Tribunal and if the crucial fact had been brought to the knowledge of this Hon'ble Tribunal then the order, 15.09.2014 would not have been passed. The applicant made a wrong statement during the course of arguments and concealed the material fact that his successor had already joined at Jodhpur on 12.09.2014. The respondents have further submitted that the service record of the applicant is not good and time and again warnings have been issued to him by the respondent-department with regard to his unauthorized willful absence from the duties and not only this but while his earlier posting at Jodhpur he has also misbehaved with the superior staff and on account of that the warnings were also issued and he was ordered to be transferred from Jodhpur at relevant point of time and copies of such orders have been annexed at Ann.R/1. The respondents have further submitted that the applicant in his representation/application dated 05.06.2013 (Ann.R/2) gave 4 options of places to be transferred i.e. Jodhpur, Jaisalmer, Nagaur and Pali and requested the respondent-department to transfer at any place. Accordingly, the respondent-department passed an order dated 25.07.2013 whereby the applicant was transferred from Baran to Nagaur and the order dated 25.07.2013



13.08.2013 (Annex. A/4) and it is denied that aforesaid order dated 13.08.2013 was passed with mala-fide intention or to accommodate any blue eyed person. According to the respondent, no compromise was arrived at between the applicant and the respondent-department, as has been stated by the applicant. The respondent-department had never been party to any such compromise and the applicant has also not filed any such document on record. Regarding order dated 30.7.2014 by which the applicant was transferred from Baran to Jodhpur on his own request, the respondents have stated that since the only post of Accounts Clerk being available at Jodhpur, Shri Mahendra Singh Sindhal i.e. respondent No. 4 was transferred to Nagaur on the administrative exigencies, but private respondent No. 4 submitted an application dated 07.09.2014 to the respondent-department stating therein his personal problems with regard to his two daughters studying in school at Jodhpur and requested to provide the posting place at Jodhpur. Therefore, looking to the entire circumstances and comparative hardship between the applicant and private respondent No. 4, the respondent-department came to the conclusion that since the transfer order dated 30.07.2014 has been issued after starting of the academic session, therefore, it would not be possible for the private respondent No. 4 to cope up with the family requirements as he has two younger daughters at primary and middle level and besides that the applicant had already given 4 options seeking his transfer from

thought proper to transfer the applicant at Nagaur which was one of his own choice station and transferred the private respondent No. 4 at Jodhpur looking to his hardship. With regard to the averment that as per transfer policy if an incoming person joined at transferred place then outgoing employee is automatically deemed to be relieved, it is submitted that private respondent No. 4 could not be relieved due to some administrative exigencies as NYS Volunteers' Training was continuing at Jodhpur and so also on account of the fact that respondent No. 4 represented himself before the respondent-department and requested to reconsider his case looking to his hardship, therefore, the respondent-department was under process to reconsider his case and did not relieve him. So it is wrong to submit that any undue favour was granted to respondent No.4 and no illegality has been committed by the respondent-department while passing the order impugned dated 12.09.2014 (Annex. A/1). Since the order impugned was perfectly legal, valid and in absence of any material on record it is not open for the applicant to level the allegations of favoritism against the respondent-department. Hence, no legal and valid grounds exist in favour of the applicant and OA is liable to be dismissed.



4. The applicant has filed rejoinder to the reply of the official respondents and while reiterating the averments made in the OA also

thought proper to transfer the applicant at Nagaur which was one of his own choice station and transferred the private respondent No. 4 at Jodhpur looking to his hardship. With regard to the averment that as per transfer policy if an incoming person joined at transferred place then outgoing employee is automatically deemed to be relieved, it is submitted that private respondent No. 4 could not be relieved due to some administrative exigencies as NYS Volunteers' Training was continuing at Jodhpur and so also on account of the fact that respondent No. 4 represented himself before the respondent-department and requested to reconsider his case looking to his hardship, therefore, the respondent-department was under process to reconsider his case and did not relieve him. So it is wrong to submit that any undue favour was granted to respondent No.4 and no illegality has been committed by the respondent-department while passing the order impugned dated 12.09.2014 (Annex. A/1). Since the order impugned was perfectly legal, valid and in absence of any material on record it is not open for the applicant to level the allegations of favoritism against the respondent-department. Hence, no legal and valid grounds exist in favour of the applicant and OA is liable to be dismissed.

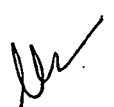
4. The applicant has filed rejoinder to the reply of the official respondents and while reiterating the averments made in the OA also

5. Heard counsels for the parties. Counsel for the applicant submitted that the applicant is Accounts Clerk in the Nehru Yuva Kendra and vide order dated 4.5.2010 (Ann.A/2) he was transferred from NYK, Nagaur to NYK, Baran on administrative grounds. He challenged the transfer before this Tribunal and also filed Writ Petition and both were dismissed and thereafter he joined at Baran. He then filed a representation (as he was given the liberty to file the same when the Hon'ble High Court dismissed his Writ Petition) including on medical grounds and on the basis of his representation, order dated 25.7.2013 (Ann.A/3) was passed by which he was transferred to Nagaur from Baran and in compliance thereof he joined at Nagaur on 29.7.2013. However, the said order was cancelled vide order dated 13.8.2013 (Ann.A/4) and he again remained posted at Baran, therefore, aggrieved of the cancellation of the order, he filed OA No.337/2013, which was decided vide order dated 17th October, 2013 in the following terms:-

"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 of 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

of representation. Till then, the status quo shall be maintained."

In pursuance to the above direction, the applicant submitted representation dated 28.10.2013 (Ann.A/6) and thereafter on the basis of settlement arrived at with the respondents and respondent No.4 Shri Chotu Ram in that OA, he submitted application dated 29.10.2013 stating he is agreeable to continue at Baran upto March, 2014 and after that requested for his transfer to Jodhpur, as may be seen from Ann.A/11 which is the official notesheet. Accordingly, order dated 29.10.2013 (Ann.A/8) was passed and the applicant was continued at Baran. However, when orders were not passed for his transfer to Jodhpur in April, 2014, he again submitted representation dated 17.6.2014 and second time on 27.6.2014 (Ann.A/9) and on the basis of the representation and application, order Ann.A/10 dated 30.07.2014 was issued and the applicant was transferred to Jodhpur. However, just within less than 45 days the order dated 12.9.2014 (Ann.A/1) was issued where he was transferred from Jodhpur to Nagaur on administrative grounds and respondent No.4 Shri Mahendra Singh Sindhal was transferred vice him to Jodhpur on the ground of his health and family reasons, though respondent no.4 had been at Jodhpur for the last 8 years. Counsel for the applicant contended that he has been frequently transferred and made a shuttle cock and without any reason and in an arbitrary manner his transfer to Jodhpur has been



12.9.2014. Counsel for the applicant also referred to Ann.A/12 (which is the reply of the same official respondent in OA no.337/2013) where, as per policy, 4 years term is a requirement but he has been arbitrarily transferred in just 40 days. He, thus, prayed that the OA be allowed and Ann.A/1 be set aside.

6. Per contra, counsel for the official respondents contended that transfer is an incidence of service and can be challenged only if it is without jurisdiction, mala-fide or there is violation of the statutory rules. In this case, neither conditions are there and he referred to application of the applicant (Ann.R/2) dated 5.6.2013 where the applicant himself has given his choice of posting at Jodhpur, Jaisalmer, Nagaur and Pali and he has been transferred to Nagaur which is one of the places of his choice. Counsel for the official respondents also denied that there was any settlement between the respondent department and submitted that respondents were never party to any such compromise or settlement. He further contended that once the applicant was posted to Jodhpur from Baran vide Ann.A/10 datd 30.07.2014, the respondent No.4 who was being displaced also made an application in view of his personal problems and respondents considered and accepted his case (just as earlier they had considered the request of the applicant) and passed order dated 12.09.2014 Ann.A/1 on his representation and request and since the applicant had already given

Jodhpur, therefore, there is no violation of any statutory rules or malafide and the OA deserves to be dismissed.

7. Counsel for private respondent No.4, adopted the reply filed by official respondents and submitted that respondent No.4 had already joined on 12th September, 2014 after issue of the order Ann.A/1 as he was at Jodhpur at that time and in fact the applicant misled the Tribunal when his case for interim relief was considered on 15.9.2014 stating that his successor i.e. respondent No.4 has not joined at the place of posting at Jodhpur. Counsel for respondent No.4 further submitted that the applicant has not proved any allegation regarding mala-fide intention or violation of any statutory rules and since the transfer is an incidence of service and just as the applicant had the right to make representation, so does respondent No.4 and when the applicant was posted to Jodhpur, respondent No.4 who was being displaced made a request to the authorities and they accepted the same on the ground of family problems and education of the daughters which is fully justified and thus there was no case for setting aside Ann.A/1 and prayed for dismissal of OA.

8. Counsel for the applicant in this context contended that representation/ application referred to by the counsel for the official respondent regarding option for Jodhpur, Jaisalmer, Nagore and Pali is dated 5.6.2013 (Ann.R/2) and on the said basis he was posted to

was cancelled vide order dated 13.8.2013 (Ann.A/4) against which the applicant filed OA. No.337/2013, so the plea of the counsel for the respondents that he has himself given choice for Nagaur, therefore, he was posted to Nagaur vide order dated 12.9.2014 (Ann.A/1), is not tenable. He further referred to note sheet dated 29.10.2013 (Ann.A/11) filed with the rejoinder in which it is clear that after passing of the order in OA No.337/2013 in which the present applicant was also applicant and respondent No.4 was Shri Chotu Ram Punia, a meeting was held in the office of respondents and mutual understanding and consent was arrived at in which he gave his choice for Jodhpur and it is wrong on the part of the respondents to say (as mentioned in internal Page 5 and 6 of the reply) that they were not party to this agreement and on the basis of this understanding, order dated 30.7.2014 (Ann.A/10) was issued transferring the applicant from Baran to Jodhpur pursuant to which he joined Jodhpur on 4th August, 2014. Regarding the query about policy of the NYK counsel for applicant submitted that in Ann.A/12 appended with his rejoinder, which was the reply of respondents in his earlier OA No.337/2013, it has been mentioned "that now before completion of his tenure he has been transferred to Baran contrary to the transfer policy even the applicant has not completed 4 years' tenure at Baran"; this automatically implies that there is policy of completing 4 years tenure which was held against him in OA No.337/2013 but now he has been transferred from

football and shuttle cock. He further contended that in the rejoinder at para-3, he has referred to the transfer policy which says that one should not remain at a place for more than 4 years but the respondent No.4 has been kept at Jodhpur for more than 8 years and there is favoritism for respondent No.4 and only to accommodate respondent No.4, he has been transferred from Jodhpur to Nagaur in an arbitrary way and prayed for allowing the OA.

9. Considered the rival contentions and perused the record. The main contention of the applicant is that the transfer order dated 12.9.2014 (Ann.A/1) transferring him from Jodhpur to Nagaur has been issued just in about 40 days after he was transferred to Jodhpur vide order dated 30.7.2014 (Ann.A/10) {which was in pursuance of settlement arrived at as per Ann.A/11 dated 29.03.2013 and his further application dated 17.06.2014 and 27.06.2014 (Ann.A/9)} and this is arbitrary and violative of the guidelines and has been done just to accommodate respondent No.4 who is blue eyed person of the department. The official respondents have controverted this contention by saying that Ann.A/1 has been issued on the basis of representation received from respondent No.4 regarding his problem of education of his girls and also considering that the applicant had given option for Jodhpur as well as for Nagaur. In this context, it is seen that the applicant had earlier filed OA registered as OA no. 337/2013 in

this Tribunal which was decided on 17.10.2013 in which the following direction were given:-

"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 representation 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."

10. It has been brought out by the applicant in this OA and rejoinder that the respondents have considered the matter and after the meeting held in the office of respondents and the discussions, a mutual consent was arrived at and it was agreed that the applicant (who was also the applicant in the earlier OA) will continue at Baran upto March, 2014 and he will be considered for transfer after April, 2014 and he referred to Ann.A/11 dated 29.10.2013 in this regard. In this context, it is seen that the applicant had also filed application on 28.10.2013 (Annex. A/6) in which he had requested for being transferred to Nagaur or Jodhpur, Pali and Jaisalmer and another application dated 29.10.2013 (Annex A/7) in which he requested for transfer to Jodhpur after March, 2014. However, as the respondents did not issue any transfer order in April, 2014, the applicant represented on 14.6.2014 and 27.6.2014 (Ann.A/9) in which it is noted that he gave option for Jodhpur and Nagaur. Counsel for the applicant also alleged favoritism and malafide

malafide stands established because as per reply, and Annex. A/1 the respondent No.4 has been posted at Jodhpur on his request and this request was made with regard to education of his daughters. In this context, it is further noted that as per recording of decision at Ann.A/11, the respondents were expected to issue transfer order in April, 2014 itself but order Ann.A/10 was issued on 30.7.2014 which was in mid-session. Apparently, at the time of issuing Ann. A/10, no consideration appears to have been made by the official respondents regarding the possible hardships that the respondent No.4 who was being displaced may have to face specially in a mid-session transfer. Thereafter when the respondent No.4 raised his personal problems at being displaced and transferred from Jodhpur to Nagaur, Ann.A/1 was issued on 12.9.2014 by the official respondents, which was also in mid-session and just about 40 days after Annex. A/10 order was issued.

11. Coming to the point of interim relief, in the reply of the respondents, it has been mentioned that while praying for interim relief the applicant misled the Tribunal on 15.9.2014 that his successor has not joined at the transferred place, but actually respondent No.4, the successor had already joined at Jodhpur, as may be seen from Ann.R/3 i.e. joining report. In this context, it is noted that though Ann.R/3 is the application of respondent No.4 regarding his joining at Jodhpur but no formal order of the competent authority accepting the joining report and concurrently/simultaneously relieving the applicant

(prior to 15.09.2014) has been placed on record. Be that as it may, the applicant continued at Jodhpur in view of the interim relief, and further as seen from Ann.A/14 dated 22.10.2014, the respondents have issued an order assigning additional charge of Nagaur to respondent No.4 and he joined at his additional charge at Nagaur on 31.10.2014.

12. It is settled position that transfer is an incidence of service and no person can claim transfer/posting at a particular place or post and Courts and Tribunals should not ordinarily interfere in transfer matters unless there is an established malafide or gross violation of statutory rules or policy or the order has been passed by an authority not competent to do so. In view of the analysis made above, this does not appear to be so in the present case and as such, Ann.A/1 is not legally liable to be set-aside and is, therefore, not being set-aside.

However, considering the facts and circumstances of the case, specially that the applicant was transferred by order dated 12.9.2014 (Ann.A/1) in just about 40 days after joining at Jodhpur in pursuance to order dated 30.7.2014 (Ann.A/10) and that transfer orders, both Ann.A/10 and A/1 have been issued during mid session and further Ann.A/10 was issued as per the request of the applicant, apparently without at that time taking into account any possible difficulties of the person (i.e. respondent No. 4) being displaced and Ann.A/1 has been subsequently issued as per request of respondent No.4 resulting into

this piquant situation, therefore, it is proposed to dispose of this OA with certain directions.

13. Accordingly, applicant and respondent No.4 are directed to file fresh representations before the competent authority within two weeks from the date of receipt of a copy of this order and the respondents are directed to decide the same, within a month from receipt of the representations, taking into account their genuine problems and comparative hardship in accordance with the policy guidelines and administrative exigencies of the respondent-department. Till then status quo will be maintained.

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



(MEENAKSHI HOOJA)
Administrative Member



R/

ਅੰਤਿਮ ਪਾਠ-ਵੀ

ਦੁਆਰਾ (ਡਾਕੂਮੈਂਟੇਸ਼ਨ)

06/04/2015.

Copy Received

Nitin
7/4/15.

Copy fee. by

Wahid
27/4/15