

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00089/2014

Jodhpur, this the 26th day of March, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

I.A. Mughal S/o Shri Nabi Bux, aged about 58 years, R/o 22, Income Tax Colony, Imartia Bera, Paotha C Road, Jodhpur, Rajasthan.

Presently working as Forest Conservator, M & I, Jodhpur, Rajasthan

.....Applicant

By Advocate: Mr Ankur Mathur.

Versus

1. The Union of India, through Secretary Ministry of Environment & Forest, CGO Complex, New Delhi.
2. Secretary, Department of Personnel, Government of Rajasthan, Jaipur, Rajasthan.
3. Additional Chief Secretary & Principle Secretary, Forest, Jaipur.
4. Joint Secretary, Department of Personnel, Government of Rajasthan, Jaipur, Rajasthan.

.....Respondents

By Advocate : Respondent No. 1 through Adv. Ms K. Parveen.
Respondent No. 2 to 4 through Adv. Mr Kamal Dave

ORDER (Oral)

Per Mr Justice K.C. Joshi

The present OA has been filed by the applicant Shri I.A. Mughal challenging his transfer order Annex. A/4 dated 03.03.2014.

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2. The brief facts of the case as averred by the applicant are that the applicant was initially appointed as Assistant Conservator of Forest in Rajasthan Forest Services in the year 1981 and promoted to the post of Dy. Conservator of Forest in the year 1999. Subsequently, the applicant was inducted and appointed in Indian Forest Services on merit basis and promoted to the post of Conservator of Forest in the year 2011 posted at Jodhpur. The applicant resides with his wife and children at the place of posting i.e. Jodhpur and his children are also pursuing their academics here. Son of the applicant is studying in 1st year of his Engineering Course and his daughter is in the final year of B.Com. course in Jodhpur. It has been averred in the OA that the applicant's age is more than 58 years meaning that there only about 1 ½ years left for his retirement and relevant documents for retirement benefits are going through their final stages of settlement. The respondents vide Annex. A/4 dated 03.03.2014 issued a list whereby the applicant has been ordered to be transferred from Jodhpur to Bikaner. Aggrieved by the said order, the applicant filed the present OA seeking following relief (s) :

- (i) That record of the case may kindly be called for,
- (ii) That by an order or direction, the Transfer Order dated 03.03.2014 (Annex. A/4) may kindly be quashed and set aside qua the applicant.
- (iii) That the respondents may kindly be directed not to relieve applicant from the present place of posting.
- (iv) That exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (v) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The original application may kindly be allowed with costs and

all circumstantial benefits may be granted in favour of the applicant.

- (vi) Costs of this application be ordered to be awarded in favour of the applicant.

3. Counsel for the applicant has also filed an additional affidavit on behalf of the applicant in support of his OA. By way of additional affidavit the applicant has averred that he is also suffering from the major heart ailment and has undergone severe medical treatment for the same and crucial surgery of replacing artificial heart stent has been undertaken at All India Institute of Medical Sciences (AIIMS), New Delhi. In support of his averment, the applicant has annexed Annex. A/5 to A/7.

4. In this case vide order dated 13.03.2014, the applicant was directed to submit a representation before the competent authority as an interim measure and the respondent-department was directed to decide the same keeping in view all the facts averred in the OA. After that on 21.03.2014, the matter regarding grant of interim relief was considered and it was observed by this Tribunal that the Tribunal is not inclined to stay the transfer order qua the applicant as an interim relief and the respondent-department was directed to decide the representation of the applicant. As per the oral submissions of counsel for the applicant, the applicant had submitted his representation before the competent authority.

5. Today counsel for the respondent No. 2 to 4 submits that he could not file the reply as he wants to incorporate the facts regarding the decision of the competent authority, in the reply but he is ready to argue the matter without filing any reply on behalf of the respondent No. 2 to 4.

6. Heard both the parties. Counsel for the applicant contended that he has challenged the transfer order Annex. A/4 on three grounds viz. the applicant is going to retire on 30.11.2015, the applicant is heart patient from the year 2005, has undergone heart surgery requires special care and diet and his children are studying at Jodhpur. Counsel for the applicant contended that the respondent-department while deciding the representation of the applicant did not consider the matter in proper perspective in the light of averments made in the OA and further averred that the applicant requires critical care and he is not in a position to shift his family from Jodhpur to Bikaner, therefore, in these circumstances the respondent-department ought to have considered his representation sympathetically and order Annex. A/4 must be stayed or modified by the respondent-department. But vide letter dated 25.03.2014 his representation has been dismissed. He further contended that the respondent-department should have considered the representation of the applicant objectively, therefore, he prayed that in view of the submission and averment made by the applicant in his OA, the order Annex. A/4 qua applicant may be quashed. Counsel for the applicant relied upon the judgment of Hon'ble Rajasthan High Court

passed in Dr (Smt) Pushpa Mehta vs Rajasthan Civil Services Appellate Tribunal & Ors reported in 2000 (2) WLC page 725. In this case Hon'ble Rajasthan High Court held that in case of Govt. employee who is due for retirement very shortly, he should not normally be transferred from his place of posting.

7. Per contra, counsel for the respondents No. 2 to 4 contended that in view of the judgments of Hon'ble Supreme Court passed in Shilpi Bose (Mrs) & Ors vs State of Bihar & Ors reported in 1991 Supp (2) SCC 659, State of U.P. & Ors vs Gobardhan Lal T D.B. Singh vs D.K. Shukla & Ors reported in (2004) 11 SCC 402, the Courts or Tribunals should not ordinarily interfere with transfers unless there is established element of malice or the order has been issued by the incompetent authority. He further contended that the applicant remained posted at Jodhpur from 2007 and has been transferred to Bikaner which is very near to Jodhpur and also the post of Conservatory of Forests (M&E), Bikaner is lying vacant since January, 2013. He further contended that after his continuous stay at Jodhpur which is home district of the applicant, the applicant has been transferred in public interest with minimum inconvenience caused to the applicant.

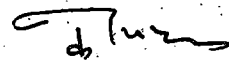
8. We have considered the rival contentions of both the parties alongwith other documents filed by the applicant. As per the documents submitted by the applicant, it is admitted position that the applicant had undergone heart surgery in AIIMS, New Delhi in the year 2005 and thereafter he is continuously availing the medical

facilities for his ailment but in view of the judgment of the Hon'ble Apex Court cited by the counsel for the respondents No. 2 to 4, we are not inclined to interfere with the transfer order Annex. A/4. In the judgment of Hon'ble High Court, cited by the counsel for the applicant, it has been held that ordinarily persons should not be transferred when they are at the verge of retirement but looking to the entire facts and circumstances in this particular case and also keeping in view documents submitted by the applicant for treatment of his ailment, no case is made out to interfere transfer order Annex. A/4.

9. Accordingly, OA is dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

SS/

For. K. Braneen
✓ 28/13

Reviewed copy

(4/11/2013
(Applicant J. A. Mughal))

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For
KAMAR AASE
4/11/14