

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00173/2014

Jodhpur, this the 18th day of November, 2014

CORAM

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

Dr. (Smt.) A.K. Joshi wife of Dr. K.C. Joshi aged about 53 years presently working as Chief Medical Officer, P&T Dispensary, Jodhpur resident of Veer Mohalla, Jodhpur

.....Applicant

By Advocate: Mr. Mukesh Rajpurohit

Versus

1. Union of India through Secretary, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Bhawan, New Delhi.
2. Director (Staff), Ministry of Communication and Information Technology, Department of Posts (Personnel Division), New Delhi.
3. The Principal Chief Post Master General, Rajasthan Circle, Jodhpur.
4. Assistant Director General (SGP), Ministry of Communication and Information Technology, Department of Posts (Personnel Division), Dak Bhawan, Sansad Marg, New Delhi 110 001.

.....Respondents

By Advocate : Ms. K. Parveen

ORDER (ORAL)

The applicant has filed this OA against the order dated 7.5.2014 by which representation of the applicant has been stated to be rejected without speaking order, therefore, she has prayed for the following reliefs:-

"It is most respectfully prayed that (submitted that) this Original Application may be allowed, impugned order dated 7.5.2014 (Annexure A-1) qua the applicant may be quashed and set aside with all consequences and the respondents may be restrained from giving

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effect to this order qua applicant and they may be further restrained from relieving the applicant from present posting in pursuance to the impugned order. The applicant may be allowed to work at Jodhpur as if the impugned order was never passed."

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially engaged as Medical Officer on contract basis in the year 1986 and thereafter in the year 1988 she was appointed on regular basis w.e.f. September, 1986. The applicant is presently working as Chief Medical Officer and is posted at P&T Dispensary, Jodhpur. Husband of the applicant Dr. K.C.Joshi after suffering from the damage of both kidneys had undergone kidney transplant operation at Bombay Hospital, Bombay and since then he has been under constant follow-up treatment. The kidney transplantation operation has been followed by after effect, therefore, husband of the applicant has to be under continuous treatment of Dr. Ashok Kripalani as well as super specialty Doctor at Jodhpur. The applicant has also stated that her daughter is prosecuting studies and her mother in law aged 93 years old is suffering from old age ailments. The aforesaid peculiar domestic reasons are in the knowledge of the respondents and that is why she was allowed to work at Jodhpur but vide order dated 7.6.2013 she was transferred from Jodhpur to Kota. This order was conspicuously silent of any administrative exigency. After passing order dated 7.6.2013, the applicant was allowed to work at Jodhpur but a relieving order dated 2.9.2013 was passed, therefore, the applicant has filed OA 378/2013 before this Tribunal. The said OA was disposed of vide order dated 19.3.2014 directing the applicant to file representation before the respondents and the department may consider it sympathetically so as to give any relief on humanitarian considerations. Accordingly, the applicant submitted a detailed representation ventilating her grievance, but vide order dated 7.5.2014 (Ann.A/1), representation of the applicant was rejected and she was directed to join at Postal Dispensary, Kota without any further delay. Therefore,

aggrieved of the action of the respondent department, the applicant has filed this OA praying for the reliefs as extracted above.

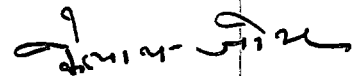
3. The respondents by way of reply to the OA has submitted that the applicant has been working at Jodhpur since 19.9.1998. In terms of Rotational Transfer Policy of the Department issued vide order dated 2.4.2012 also, such Medical Officers, who had completed their station tenure were transferred vide Directorate's order dated 7.6.2013. This order was issued in respect of 8 Medical Officers excluding the applicant. The respondents have further submitted that there are no provisions in the Rules or Rotational Transfer Policy Guidelines to extend opportunity of defence to the offer concerned before ordering his/her transfer. The applicant was already got full opportunity to putforth her defence in the matter twice, first in the shape of representation dated 13.6.2013 and secondly when fresh representation was submitted in compliance of the Tribunal's order dated 19.3.2014 and both these representations have been rejected by the competent authority after due consideration. According to the respondents, the applicant belongs to Central Health Service Group 'A' which has All India Service liability. The respondents have further submitted that personal problems of a Government servant cannot be allowed to interfere with the conditions of service to which he/she is subjected. The Rotational Transfer Policy guidelines issued by the Department prescribe a normal station tenure of 4 years extendable upto 6 years subject to certain conditions and therefore, there is no question of allowing the applicant to continue further at the same place of posting when she has been working here since last 25 years. Further, the impugned order passed by the respondents is a speaking order in all sense as all the grounds submitted by the applicant in her

representation have duly been considered and discussed in this order. Therefore, the respondents pray for dismissal of the OA.

4. Heard both the parties. Counsel for the applicant submitted that one Dr. Tiwari has been transferred to Kota at the place at which the applicant was transferred and now that post has been filled up by way of transfer and therefore, the applicant may be accommodated at Jodhpur in the light of the facts averred in the OA because the husband of the applicant had undergone Kidney transplantation and the applicant is regularly attending her husband and further her daughter is studying at Jodhpur and her mother-in-law who is quite old is residing with her. Counsel for the applicant contended that although in the earlier OA No.378/2013, the respondent department was directed to consider representation of the applicant which is to be filed within certain period from the date of decision of the OA, but the representation was not objectively considered by the respondent authorities. They merely assigned reason for rejecting that similar medical facilities are available at Kota and the applicant can transfer her mother-in-law as well as her daughter to Kota and in view of these facts her representation was dismissed and she was directed to join at Kota. The statement made by the counsel for the applicant that Dr. Tiwari has been transferred in place of the applicant has not been controverted by the counsel for the respondents but she argued that she has no updated knowledge about transfer of Dr. Tiwari. She further argued that the applicant is working since 22 years at Jodhpur and right to hold the post at any place is not a civil right and further the transfer order cannot be quashed unless and until it is passed by an incompetent authority or when there is established case of mala-fide proved by the applicant.

5. While considering the arguments of both the parties, in case Dr. Tiwari has been posted at Kota then it is directed that applicant may be posted as per the administrative exigency and convenience while keeping in view the convenience of the applicant also and the facts which have been averred by the applicant in her OA. Otherwise, it is settled law that transfer order cannot be interfered by the Tribunal or court unless and until it is passed by an incompetent authority and there is established proof of mala-fide. So far as consideration of representation of the applicant is concerned, it is admitted fact that the applicant is working since last 22 years at Jodhpur and she has been transferred to Kota which is having all the basic facilities equivalent to Jodhpur. Therefore, while not interfering with the order of transfer or the order of rejection of representation, I dismiss the OA but at the same time the respondents are expected that after joining by the applicant, the respondents shall consider the representation, if any, filed by the applicant regarding her inconvenience to be faced at Kota and the applicant shall have a fresh cause of action after joining at Kota.

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



(JUSTICE K.C.JOSHI)
Judicial Member

R/

Receive 2 copy
Taveen sharm
on behalf of
mykesh Raj Azhida
18/11/14

R/K
Ravinder Tak
18/11/14