

(15)

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

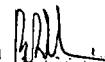
11 October, 2009

OA. 08/2009 with
MA.283/2009

Present: Shri Virendera Lodha, counsel for applicant
Shri Sanjay Pareek, counsel for respondents

At the request of the parties, let the case be listed for
hearing on 8.10.2009.

Interim order to continue till the next date of hearing.


(B.L. Chauhan)
Member (Administrative)

Mk

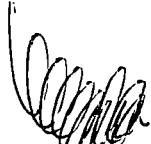
OA 8/2009 with MA 283/09

08-10-2009

Mr. Virendera Lodha, Counsel for applicant
Mr. Sanjay Pareek, Counsel for respondents

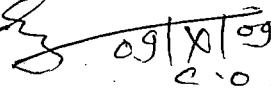
Heard Learned Counsel for the parties.

Judgment Reserved.


(M.L. Chauhan)
M(I)

09/10/09,

order pronounced today
in the open court by the
afore said Bench.


09/10/09
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 9th day of October, 2009

ORIGINAL APPLICATION No.8/2009

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Narendra Singh Jhajharia
s/o Shri Bhana Ram,
R/o A-41, Kriti Nagar,
Tonk Road, Jaipur,
at present posted as
Divisional Accounts Officer, Gr.I,
in the office of Executive Engineer,
PWD City Dn.I, Jaipur (Raj.)

.. Applicant

(By Advocate: Mr. Virendra Lodha)

Versus

1. Union of India,
through Accountant General (A&E),
Rajasthan, Jaipur.
2. Dy. Accountant General (Accounts),
Bhagwandas Road,
Statue Circle,
Jaipur

.. Respondent

(By Advocate: Mr. Sanjay Pareek)

ORDER

The applicant has filed this OA against the Office Order No. 477 dated 23.12.2008 whereby the applicant was transferred from the office of Executive Engineer, PWD City Division-I, Jaipur to the

office of Executive Engineer, Water Resources Division, Tonk with immediate effect. Aggrieved by the said order, the applicant has prayed for quashing this order and declaring the same as null and void with further prayer that the respondents may be directed to continue the applicant on the post of Divisional Accounts Officer Gr.I at PWD, City Division, Jaipur.

2. When the matter was listed on 5.1.2009, this Tribunal granted ex-parte interim stay on the basis of the contentions raised by the applicant in the following terms:-

"As regards interim prayer, it was submitted on behalf of the applicant that from perusal of the aforesaid order it is clear that the applicant remained posted at Jaipur only for a period of less than five years and in this particular division for almost one year and two months, as such the impugned transfer order dated 23.12.2008 is in utter defiance of the circular/instructions/guidelines (Ann.A/2). Learned counsel for the applicant has relied particularly para (a), (d) & (f) of the circular Ann.A/2, which reads as under:

"(a) transfer and posting should normally be made only once in a year and annual transfers should be timed properly so that these may not disturb the academic session;

(d) option for posting in particular station (s) should be called for from the individuals and efforts should be made to accommodate the officers at the place of their choice, subject to availability of vacancy and on basis of seniority. The adverse comments given by the Inspecting Officers auditing the accounts of the Divisions, adverse remarks made by the Executive Engineers on the performance of the Divisional Accounts Officers/ Divisional Accounts which are finally substantiated and their performance in proper and timely submission of accounts may also be kept in view.

(f) tenure of posting should normally be three years in a particular Division and six years at a particular station.

It was further submitted that applicant's children are prosecuting study at Jaipur and he has been transferred in the mid academic session.

The interim stay as granted on 5.1.2009 has been continued

from time to time.



3. The respondents have filed reply. In the reply, the respondents have categorically stated that transfer of the applicant has been made because there were serious complaints regarding negligence to his duties, non-observance of the direction of superior officers, creating disturbance in the smooth functioning of Govt. work etc. received from the Executive Engineer and two Chief Engineers of PWD, Rajasthan, Jaipur. At this stage, it will be useful to quote para 11 of the reply, which is in the following terms:-

"11) That the contents of para No.4(8) are not admitted in the manner as stated. The transfer order dated 23.12.2008 has been made on the basis of complaints of serious nature regarding negligence to his duties, non-observance of the direction of superior officers, creating disturbance in the smooth functioning of Govt. work etc. received from the Executive Engineer and two Chief Engineers of PWD, Rajasthan Jaipur. He was warned not only by the Chief Engineers but also by DAG(A/cs) of the Office of the AG (A&E) Rajasthan, Jaipur. The charges in the complaints being serious in nature, some severe action would have been taken, but he was transferred in the administrative exigencies. The applicant has been transferred in the past from Chittorgarh to Jaipur at his own request by relaxing the criteria of posting of 3 years and as such this cannot be a sole ground of transfer of a person from one station to other station. The photocopies of some of the letters dated 14.8.07, 17.8.07, 24.8.07, 3.10.07, 24.10.07, 5.11.2007, 10.12.07, 28.5.08, 30.5.2008 and 28.11.2008 related to complaints of the applicants, are submitted herewith and marked as Annexure R-1 to R-11 respectively."

4. The applicant has filed rejoinder thereby stating that transfer has been made by way of punishment without holding enquiry on the basis of frivolous complaints and has also placed certain documents on record pursuant to the letters annexed with the reply.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. As can be seen from the facts as stated above, the challenge in this OA is regarding violation of guidelines issued by the respondents vide confidential letter dated 15.4.2000 (Ann.A/2) and also that the said transfer has been effected in the mid academic session. The applicant has not challenged the transfer order on account of mala-fide action on behalf of the authority who has issued such order. The learned counsel for the applicant further argued that the applicant could not have been transferred on the basis of the so called complaints Ann.R1 to R11 appended with the reply, without holding enquiry in view of the law laid down by the Hon'ble Apex Court in the case of Somesh Tiwari vs. Union of India and ors., (2009) 1 SCC (L&S) 411. On the contrary, the learned counsel for the respondents submits that there were serious complaints against the applicant regarding his work and conduct during the period when he was in the office of the Executive Engineer, PWD, City Division-I, Jaipur. Under such circumstances, it was not necessary to hold enquiry before transferring the applicant and it was permissible for the respondents to issue the impugned transfer order. The learned counsel for the respondents has further argued that in fact the transfer of the applicant is in conformity with the policy guidelines Ann.A/2 which stipulate that in exceptional circumstances, dispensation of the set norms could be made.

7. I have given due consideration to the submissions made by the learned counsel for the parties. Admittedly, in this case the impugned order of transfer was made on 23.12.2008. The academic session of the children of the applicant is over, as such, the ground of the applicant that transfer has been made in mid academic session does not survive now. As regards violation of Para a), d) and f) of the policy decision dated 15.4.2000 (Ann.A/2), it may be stated that these guidelines have been issued by the Comptroller and Auditor General of India to all Principal Accountants General and Accountants General dealing with the cadre of Divisional Accountants. These guidelines are confidential and thus are meant only for the purpose of the authorities as mentioned while making transfer. According to me, violation of such guidelines per-se does not confer any right on a Government servant. The Hon'ble Apex Court has held that a transfer order based on violation of administrative guidelines by itself is no ground to quash such order. At this stage, I wish to quote decision of the Apex Court in the case of B.Vardha Rao vs. State of Karnataka, AIR 1987 SC 287 whereby the Apex Court has held that norms enunciated by the Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfer in the exigencies of administration than vesting of any immunity from transfer in the Government servants. To the similar effect is the decision of the Apex Court in the case of Bank of India vs. Jagjit Singh Mehta, AIR 1992 SC 519 whereby the Apex Court has held that an order of transfer based on administrative guidelines

that a husband and wife should be posted at same place as far as feasible cannot be challenged on this ground.

8. That apart, in the instant case, the appropriate authority has kept in mind the guidelines issued vide Ann.A/2. As can be seen from these guidelines, while providing broad parameters for transfer and posting of the Divisional Accounts Officers in para 1 of the letter, relevant sub paragraphs of which have been notice in earlier part of this judgment, in para-2 it has been specifically provided that dispensation of the set norms could be made only in exceptional circumstances. No doubt the applicant has completed 5 years instead of 6 years of service at particular station i.e. Jaipur and one year and two months service instead of 3 years service in a particular division but perusal of clause (f) reveals that word 'normally' has been used while prescribing the aforesaid tenure of posting. It is not mandatory that the employee cannot be transferred in any circumstances before completion of aforesaid tenure. In the instant case, there are serious allegations leveled by the Executive Engineer about the work and conduct of the applicant including lack of punctuality in attending the office, absenting himself intentionally at the time of opening of tenders, committing offensive behavior with the Executive Engineer, lack of devotion to duty and acting negligently in not amending himself and non-cooperation with the Divisional Officer in the official work thereby hampering the official work etc. As can be seen from Ann.R1 and R2 dated 14.8.2007 and 17.8.2008, the applicant was advised to improve his work and conduct and also to remain

present at the time of opening of tenders by the Executive Engineer. When the applicant did not improve his working a further letter was written by the Executive Engineer to the Chief Engineer on 24.8.2007 to take up the matter with the competent authority regarding his transfer as he was facing difficulty in execution of work. Copy of these letters has also been endorsed to the Accountant General. As can be seen from letter dated 5.11.2007 (Ann.R/6), when the work and conduct of the applicant was not up to the mark despite giving him warning/advice, the Chief Engineer vide this letter took up the matter with the Accountant General to provide another Divisional Accountant instead of the applicant. Not only this, after a lapse of 7 months, another DO letter was written by the Chief Engineer on 28.5.2008 (Ann.R/9) requesting the Accountant General to transfer the applicant followed by another DO letter dated 28.11.2008 (Ann.R/11). It is only thereafter that the applicant was transferred in public interest vide impugned order Ann.A/1. Thus, it cannot be said that the applicant was transferred on non-existent grounds. Sufficient opportunity was granted to the applicant to improve his work and conduct. It was only after a period of more than one year that the Accountant General has passed the transfer order when repeated requests were received from the Executive Engineer and the Chief Engineer, PWD, City Division, Jaipur for transfer of the applicant in public interest. Thus, it was permissible for the authority concerned to transfer the applicant in terms of the policy decision Ann.A/2 even if he has not completed his tenure as prescribed in clause-f) of the transfer policy.

Ann.A/2, in terms of para-2 of the said policy decision being a case of exceptional nature. Thus, I see no infirmity in the action of the respondents whereby the applicant has been transferred vide impugned order dated 23.12.2008 (Ann.A/1).

9. The contention as raised by the applicant that when there are complaints, the employee should not be transferred till enquiry is held, cannot be accepted and deserves out right rejection. The reliance placed by the learned counsel for the applicant on the judgment of the Apex Court in the case of Somesh Tirwari (supra), is wholly misconceived. That was a case where the order of transfer was based on the material which was non-existent. It was under these circumstances the Apex Court held that the order of transfer not only suffers from total non application of mind on the part of the authority, but also suffers from malice in law. That was a case where enquiry was initiated against the applicant in terms of the allegations contained in anonymous letter and allegations were found to be untrue. Despite this fact, the order of transfer was passed for a station which according to the department themselves was harsh. It was under these circumstances, the Apex Court held that the order of transfer has been passed in lieu of punishment and the same is liable to be set-aside being wholly illegal. At this stage, it will be useful to quote para 16 and 17 of the judgment, which thus reads:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia mala fide* on the part of the authority is proved. *Mala fide* is of two kinds- one

malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

17. An enquiry was initiated against the appellant in terms of the allegations contained in an anonymous letter. Having regard to the directives of the Central Vigilance Commission, no enquiry could have been initiated against him but it is beyond any doubt or dispute that in the said enquiry, the allegations were found to be untrue. Despite the same not only an order of transfer was passed but to a station, which according to the respondents themselves, was "harsh".

It was under these circumstances, the judgment was rendered by the Apex court. Thus, according to me, the learned counsel for the applicant cannot draw any assistance from this judgment which was rendered in different facts and circumstances.

Rather, the decision rendered by the Apex Court in the case of Union of India and Others vs. Janardhan Debanath and Another,

2004 SCC (L&S) 631 is fully applicable in the facts and circumstances of this case. That was a case where the respondents before the Apex Court misbehaved with the senior lady officer with a view to force her to withdraw the chargesheet against a particular employee. The Apex Court held that for the purpose of effecting transfer question of holding an enquiry to find out whether there was misbehaviour and conduct of unbecoming of an employee is unnecessary and what is needed is the *prima-facie* satisfaction of the authority concerned based on contemporary reports about occurrence of and if the requirement for holding

enquiry is insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated! At this stage, it will be useful to quote relevant portion of para-9 of the judgment which thus reads:-

".....No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise, or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in 'National Hydroelectric Power Corp. Ltd. vs. Shri Bhagwan' (2001) 8 SCC 574..."

Further, the Apex Court in Para 14 has given the following findings:-

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to

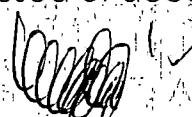
consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct on way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to Costs".

10. Further, the Apex Court has repeatedly held that transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be arbitrary or visited by mala-fide or infractions of any norms or principles governing the transfer as held in the case of Ambani Kanta Rai vs. State of Orissa, 1995 (Supp) 4 SCC 169.

Further, who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order is vitiated by mala-fide or is made in violation of operative guidelines or rules, the courts should not ordinarily interfere with it. As already stated above, it is not a case of such nature.

11. Accordingly, the OA is dismissed with no order as to costs. Interim stay granted on 5.1.2009 and continued from time to time shall stand vacated.

12. In view of the order passed in the OA, no order is required to be passed in MA No.283/09, which stands disposed of accordingly.


(M.L.CHAUHAN)

Judl. Member

R/