

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 1.10.2014

OA No. 291/00360/2014 with
MA No.291/00360/2014

Mr. P.N.Jatti, Counsel for the Applicant.

Mr. Mukesh Agarwal, Counsel for Respondents.

Heard the learned counsel for the parties.

Order Reserved.

Anil Kumar

(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

8/X/2014
Order
Pronounced
today in
the open court
by the aforesaid
Bench.

8/X/14.
C.O.

OA No. 291/00360/2014
with
 MA No. 291/00360/2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
 JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00360/2014

With

Misc. Application No. 291/00360/2014

ORDER RESERVED ON 01.10.2014

DATE OF ORDER : 8.10.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

K.M. Sharma son of Shri Narsi Lal Sharma, aged about 51 years, resident of 48-A, Raghunath Vihar, Panchyawala, Sirsi Road, Jaipur. Presently working as Assistant Superintendent (Head Quarter) O/o S.S.R.M., Jaipur Dn., Jaipur.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajathan Circle, Jaipur.
3. Senior Superintendent Railway Mail Service, Bariya House, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed the present OA being aggrieved by his transfer order dated 29.05.2014 (Annexure A/1) vide which he has been transferred from the post of ASR (HQ) 'JP' Division, Jaipur to ASP Bayana.

2. Heard the learned counsel for the parties and perused the documents on record and the case law referred to by the learned counsel for the applicant.

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3. The learned counsel for the applicant argued that the applicant is working on his present post with effect from 20.06.2011. The tenure period for this post is four years but the respondents have transferred him before the completion of his tenure period.

4. The learned counsel for the applicant also submitted that the applicant is under treatment of the specialist of the Neurology, Department of SMS Hospital, Jaipur. That the son of the applicant is studying at Jaipur. That according to the transfer policy of the respondent's department, the transfer should generally be made in April each year so that the education of the school going children is not disturbed whereas the applicant has been transferred on 29.05.2014 that is during the mid academic session. In support of his arguments, the learned counsel for the applicant referred to a judgment of the Hon'ble Supreme Court in the case of **Director of School Education, Madras & Others vs. O. Karuppa Thevan & Another**, 1994 (28) ATC 99 in which the Hon'ble Supreme Court has held that in the absence of urgency, the transfer of the employee during the mid academic term should not be effected.

5. The learned counsel for the applicant further argued that Bayana is a small city and there are no medical facilities for the ailment from which the applicant is suffering. There is no facility of Specialist of Neurology at Bayana. The applicant is

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required medical assistance all the times, therefore, it can be risky to leave Jaipur and stay at Bayana. Therefore, he prayed that the applicant's transfer order dated 29.05.2014 be quashed and set aside.

6. On the other hand, the learned counsel for the respondents argued that the applicant is working in Jaipur City itself for 17 years since his joining in Jaipur Circle in whole of his 21 years of service career. That the applicant is working in Jaipur City itself continuously for last 11 years that is since 01.05.2003. As per rules, the station tenure is four years and that may be extended upto six years. The transfer of the applicant is in public interest and also as per the relevant rules and guidelines in this regard.

7. With regard to the submission made by the learned counsel for the applicant that the applicant has been transferred in the mid academic session, the learned counsel for the respondents submitted that order of the transfer has been issued in the month of May because Parliament elections were ordered in the month of April to May, 2014. He further pointed out that as per the transfer policy dated 31.01.2014 (Annexure R/1), transfer orders could be issued upto 31st May of the year. Therefore, also the transfer of the applicant is as per the policy.

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8. With regard to the averments of the learned counsel for the applicant that he is taking treatment of Neurology, the learned counsel for the respondents submitted that the applicant had never produced medical sickness certificate during the past one year. However, since Bayana is not far away from Jaipur, therefore, he may continue to consult his specialist doctor as & when need be periodically. He further argued that even if the son of the applicant has taken admission in Jaipur but this cannot be a ground to retain the applicant at Jaipur. The transfer is an incidence of service. The public interest is more important than personal interest. The transfer is implicit essential condition of service.

9. The learned counsel for the respondents further submitted that the applicant had filed a representation to the Chief Post Master General, which has been duly considered. The Chief Post Master General after examining & considering all the points raised by the applicant in his representation has rejected it vide letter dated 11.07.2014 (Annexure R/4). Therefore, the present OA has not merit and it should be dismissed with costs.

10. From the pleadings & arguments of the learned counsel for the parties, it is not disputed that the applicant has been in Jaipur for 17 years out of 21 years of his service and that he has been working at Jaipur for the last 11 years since 01.05.2003. The applicant submitted his representation to the

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Chief Post Master General, Rajasthan Circle, Jaipur against his transfer. His representation has been duly considered by the Chief Post Master General, Rajasthan Circle, Jaipur and vide order dated 11.07.2014 (AnnexureR/4), the representation of the applicant has been rejected. I have carefully perused the order passed by the Chief Post Master General and I find that it is a very detailed & speaking order.

11. With regard to the illness of the applicant, the Chief Post Master General in his order has stated that photocopy of prescription attached with the representation goes to show that the applicant had not consulted the specialist neurologist since April, 2013. However, he may continue to consult the Doctor as & when needed periodically from his new place of posting. Further the son of the applicant has already crossed the age of 18 years and is capable to manage his academic affairs on his own. Therefore, the son is studying at Jaipur cannot be the ground to retain the representationist at Jaipur. Even if he was transferred before the start of the academic year, none of the children of the representationist were likely to be admitted in school/college in Bayana.

12. The Chief Post Master General has further stated that the representationist is likely to be promoted to Group 'B' Officer's cadre where the experience of Postal Operations is equally needed to hold the post of Divisional Head at later stage. His postal exposure is only for one year as ASP Jaipur, hence it is

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necessary that he gets the feel of postal side also for his career development. Jaipur city is a popular station for posting and everybody wants to work in Jaipur. There are hardly any takers for the posting outside Jaipur. Maintenance of the postal service in areas outside Jaipur is more important than the personal convenience of the officials. Since the applicant has already worked continuously for 11 years at Jaipur, therefore, his posting to Bayana seems to be the right choice.

After considering all these facts, the Chief Post Master General rejected the representation of the applicant.

13. On the basis of the above discussion, I find that there is no merit in the present OA. The applicant has been at Jaipur for 17 years out of 21 years of service and also has been at Jaipur since 01.05.2003. It has been stated by the learned counsel for the respondents that the transfer policy dated 31.01.2014 (Annexure R/1) itself provides for transfer upto 31.05.2014. The applicant was transferred on 29.05.2014. Therefore, in my opinion, there is no violation of the transfer policy. The Chief Post Master General has stated that the applicant has last consulted his Neurology Specialist in April, 2013 and he can consult the same Specialist as & when required even from Bayana. I am in agreement with the opinion of the Chief Post Master General. The Chief Post Master General has also stated that even if the applicant would have been transferred in the month of April, his son could not have been admitted in Bayana as he had such an education that he

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would have been admitted in Jaipur only. Even otherwise, the son of the applicant is studying in 12th Class, therefore, in all probability; the applicant would not have shifted him from Jaipur to Bayana even if he was transferred in the month of April, 2014. The transfer order was issued on 29.05.2014 and it cannot be said that it is mid academic session transfer.

14. With regard to the submission of the learned counsel for the applicant that he has been transferred before the completion of four years tenure, the respondents have stated that the applicant has been at Jaipur continuously for more than 11 years. Hence, I am of the opinion that the contention of the learned counsel for the applicant that the applicant has been transferred without completing his tenure of four years has no force. The applicant has been at Jaipur for 17 years out of 21 years of his service and for the last 11 years continuously since 01.05.2003. Therefore, I do not find any illegality/infirmity in the transfer order of the applicant dated 29.05.2014 (Annexure A/1).

15. I have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Director of School Education, Madras & Others vs. O. Karuppa Thevan & Another** (supra) in which the Hon'ble Supreme Court has held that in the absence of urgency, mid academic transfers should not be given effect to till the end of academic session. However, under the facts & circumstances of present case, the ratio

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decided by the Hon'ble Supreme Court is not applicable. As per Para 4.3 of the transfer policy of the Department dated 31.01.2014 (Annexure R/1), transfer can be effected upto 31st May of that year. Therefore, it cannot be said that transfer of the applicant was effected during the mid academic session.

16. The Hon'ble Supreme Court in the case of **State of U.P. and Ors. vs. Gobardhan Lal** - 2004 (3) SLJ 244 - in para nos. 6 & 7 of its judgment has held that -

"6. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

"7. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the

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niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

17. The ratio decided by the Hon'ble Supreme Court in the case of **State of U.P. and Ors. vs. Gobardhan Lal** (supra) is squarely applicable under the facts and circumstances of the present O.A. In the present OA, the applicant has not leveled malafide or bias against respondents. The transfer has been issued by the competent authority and it is not in violation of any statutory provision, Act or Rule. Therefore, there is no justifiable ground to interfere with the transfer order.

18. Consequently the OA being bereft of merit is dismissed with no order as to costs. Accordingly, the interim order dated 18.06.2014 is vacated forthwith.

19. In view of the order passed in the OA, the Misc. Application, filed on behalf of the respondents praying for vacation of the interim order dated 18.06.2014, is allowed.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul