

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 04.12.2014

OA No. 291/00365/2014

Mr. Amit Mathur, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

9/12/14.
order pronounced
today in
the open
court by
the Bench.
9/12/14.
c-o.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00365/2014

ORDER RESERVED ON 04.12.2014

DATE OF ORDER : 9.12.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Kiran Jyot Singh son of Shri Prem Jeet Singh, aged around 31 years, presently working as ECRC, Jhalawar, resident of Hotel Kiran, Bhawani Mandi Road, Jhalrapatan, District Jhalawar (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Sr. Divisional Personnel Officer, West Central Railway Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed the present OA being aggrieved by his transfer order dated 17.06.2014 (Annexure A/1) vide which he has been transferred from Jhalawar to Sawaimadhopur.

2. The learned counsel for the applicant argued that a memorandum has been served upon the applicant under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968. The applicant was transferred from Kota Division to Bhopal Division

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vide order dated 13.01.2012 (Annexure A/2). Normally the transfer cannot be made outside division as the seniority, avenues, promotion and further the appointment of an employee are made for the division. The applicant being aggrieved by his transfer order filed an OA. During the pendency of OA, the order of transfer was modified. Vide order dated 15.05.2012 (Annexure A/3), he was transferred to PRS Jhalawar within the Kota division. The applicant, therefore, withdrew the petition.

3. The learned counsel for the applicant submitted that immediately after withdrawal of the application, respondents again gave effect to the earlier order of transfer to Bhopal Division (Annexure A/4).

4. The applicant again challenged the action of the respondents. The learned Tribunal set aside the order of transfer. Despite the order passed by the Tribunal, the respondents insisted for joining at the same place, order for which has been set aside by the learned Tribunal.

5. The respondents challenged the order passed by the learned Tribunal before the Hon'ble High Court unsuccessfully. After the Hon'ble High Court's order, they allowed joining but within two months have again transferred the applicant vide order dated 17.06.2014 to Sawaimadhopur on non cash dealing post (Annexure A/1).

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6. The learned counsel for the applicant argued that the transfer order dated 17.06.2014 has been passed for the applicant and no other person has been transferred. It is a case of institutional bias. During the period when the order of the Tribunal was in force, they posted two persons in place of posting of the applicant. The respondents never accommodated the applicant in spite of the orders of the Tribunal. Therefore, the order dated 17.06.2014 (Annexure A/1) is per se illegal and the same has been issued with mala fide intent. This order has been issued only with a purpose to harass the applicant. This order has been issued within a period of two and a half months of the joining of the applicant on his earlier posting. He joined his present place of posting at Jhalawar on 04.04.2014.

7. The learned counsel for the applicant argued that the applicant is having a family consisting of parents, wife and minor children. The respondents have not paid a single penny from September, 2012 to 04.04.2014, therefore, the financial condition of the applicant is such that he cannot afford to maintain the family at different place. Therefore, the learned counsel for the applicant prayed that the transfer order dated 17.06.2014 (Annexure A/1) be quashed and set aside.

8. On the other hand, the learned counsel for the respondents submitted that transfer is an incidence of service. Any transfer order can be challenged only on the basis of mala fide or violation of any statutory rules. The applicant has failed to demonstrate any such illegality. The Vigilance Department

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had recommended that the applicant be posted to a post which does not involve dealing with cash for a period of two years (Annexure A/8). Therefore, the applicant has been posted to Sawaimadhopur on a non cash dealing post.

9. The learned counsel for the respondents submitted that the applicant was transferred to PRS Jhalawar in compliance of order of the Tribunal passed in OA No. 245/2012. Feeling satisfied with the modified order, the applicant withdrew the OA. Since the applicant withdrew the OA, therefore, the earlier transfer order to Bhopal was restored vide order dated 26.07.2012 (Annexure A/4).

10. The learned counsel for the respondents submitted that during the pendency of the Writ Petition before the Hon'ble High Court of Rajasthan, that post occupied by the applicant was filled up due to administrative exigency vide order dated 08.10.2013 (Annexure A/9). Therefore, it cannot be said that these orders were issued with mala fide intent. The learned counsel for the respondents further submitted that there was no post of ECRC Grade Pay of Rs.2800/- available at Jhalawar, therefore, the applicant had to be transferred to Sawaimadhopur.

11. The learned counsel for the respondents argued that the contention of the learned counsel for the applicant that recommendation of the Vigilance Department for posting of the applicant to a non cash handling post was for two years, which

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are over in 2013 cannot be accepted because the disciplinary proceedings against the applicant are still pending. Therefore, the applicant cannot be posted on cash dealing post. The applicant has been posted at Sawaimadhopur which also in Kota Division. Therefore, the transfer order of the applicant dated 17.06.2014 does not suffer from any illegality/infirmity. Thus the OA has no merit and it should be dismissed with costs.

12. Having heard the rival submissions of the parties and perusal of the documents on record, I am of the opinion that the applicant has not been able to make out any case for interference by this Tribunal. Earlier the applicant has filed an OA against his transfer from Kota Division to Bhopal Division on the ground that he should not be transferred from one division to another division and now admittedly the applicant has been transferred from Jhalawar to Sawaimadhopur. Both these stations are under Kota Division. It is also admitted that there is a disciplinary case pending against the applicant. The respondents have categorically stated that in view of the pendency of the disciplinary case, the applicant cannot be posted on a cash dealing post. They have also mentioned that no post of post of ECRC Grade Pay of Rs.2800/- was available at Jhalawar, therefore, the applicant has been transferred to Sawaimadhopur. The learned counsel for the applicant did not contest this position that there is no sanction post of post of ECRC Grade Pay of Rs.2800/- at Jhalawar. That the applicant was earlier posted to Jhalawar in the same grade pay by the

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respondents but if there is no post of post of ECRC Grade Pay of Rs.2800/- at Jhalawar, therefore, the applicant had to be transferred to a place where such post exists. Accordingly, the respondents have transferred the applicant to Sawaimadhopur, which is also under Kota Divison. No employee can claim a right to be posted to a particular post whether it is a cash dealing or non cash dealing post. It is for the employer to post an employee on any post so long as seniority and his pay is not adversely affected. It is not a case of the applicant in the present OA that by his transfer to Sawaimadhopur either his pay or his seniority would be adversely affected.

13. The learned counsel for the applicant laid much stress that transfer of the applicant suffers from institutional bias but looking to the facts & circumstances of the present case, the applicant has not been able to prove that his transfer from Jhalawar to Sawaimadhopur is based on mala fide or on institutional bias. Since there is no post of post of ECRC Grade Pay of Rs.2800/- at Jhalawar, therefore, the respondents had no choice but to transfer the applicant at another place where such post exists. Therefore, the applicant has been transferred from Jhalawar to Sawaimadhopur. In my opinion, this transfer cannot be said to be on account of institutional bias against the applicant.

14 The Hon'ble Supreme Court in Para 8 of the judgment in the case of **State of U.P. vs. Gobardhan Lal**, 2005 (L&S) 55, has held that *even allegations of mala fides when made must*

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be such as to inspire confidence in the Court or are based on concrete materials and ought not 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. In this particular case, the allegation of institutional bias against the respondents are not based on any concrete material and there are no strong convincing reason to believe that the transfer of the applicant from Jhalawar to Sawaimadhopur is on account of institutional bias. Therefore, even on the ground of institutional bias, the Tribunal cannot interfere with the transfer order of the applicant dated 17.06.2014 (Annexure A/1).

15. Moreover, the Hon'ble Supreme Court in Para No. 7 & 8 of its judgment in the case of **Union of India vs. S.L. Abbas**, 1993 (4) SCC 357, has held that-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it....."

"8.The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer....."

Thus the ratio laid down by the Hon'ble Supreme Court in the case of **State of U.P. vs. Gobardhan Lal** (supra) and **Union of India vs. S.L. Abbas** (supra) are squarely applicable under the facts & circumstances of the present OA.

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16. Thus on the basis of above discussion and in view of the ratio laid down by the Hon'ble Supreme Court in the above two judgments, referred to in Para 14 and Para 15 of this order, I do not find any infirmity/illegality in the transfer order dated 17.06.2014.

17. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul