

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00578/2014

With

MISC. APPLICATION NO. 291/00444/2014

ORDER RESERVED ON 26.11.2014

DATE OF ORDER : 4,12.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

K.L. Meena son of Shri Dhanna Lal Meena, aged about 50 years, resident of House No. 133, Indra Colony, Malpura, District Tonk and presently working as Technical Officer (T-5), Indian Grassland and Fodder Research Institute, Western Regional Research Station, Avika Nagar, Malpura, Tonk (Rajasthan).

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Director, Indian Grassland and Fodder Research Institute, Jhansi (U.P.)
4. Principal Scientist & OIC, Indian Grassland and Fodder Research Institute, Western Regional Research Station, Avika Nagar, Malpura, Tonk (Rajasthan).

... Respondents

(By Advocate: Mr. S.S. Hassan)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

- "(i) That respondents be directed to allow the applicant to work at Avika Nagar under respondent No. 4 on the post of Technical Officer (T-5) by quashing order dated 15.10.2014 (Annexure A/1) with the relieving order dated 16.10.2014 (Annexure A/2) with all consequential benefits.

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- (ii) That the respondents be further directed not to harass the applicant in transfer and applicant only be assigned duties of electrical field.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

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

3. The brief facts, as stated by the learned counsel for the applicant, are that respondent no. 3 vide order dated 15.10.2014 (Annexure A/1) transferred the applicant from Sub Center Avika Nagar to Sub Center Srinagar. That the applicant is a man of electrical field whereas there is no work of electrical field at Sub Center Srinagar. One Shri Gopal Lal Meena, Technical Assistant, transferred from Sub Center Srinagar to Sub Center Dharwad belongs to agriculture field. The respondents always followed the practice to transfer the employees of agriculture field. The respondent no. 4 relieved the applicant against procedure on 16.10.2014 FN (Annexure A/2).

4. The learned counsel for the applicant argued that the transfer of the applicant is neither in the interest of service nor in any administrative exigency. That the applicant has been transferred without any base in the garb of redistribution of work without disclosing redistribution and nobody has been posted vice the applicant at Avika Nagar.

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5. The learned counsel for the applicant argued that the applicant has been transferred in mid academic session. His son is studying in 12th Class at Malpura. The learned counsel for the applicant in support of his arguments referred to the judgment of the Hon'ble Supreme Court in the case of **Director of School Education, Madras & Others vs. O. Karuppa Thevan & Another**, 1994 SCC (L&S) 1180, wherein the Hon'ble Supreme Court has held that although there is no such rule but in absence of urgency, employee should not be transferred during mid academic term especially when employee's children are studying in school. That he has also to manage the marriage of his daughter in the month of January, 2015. That the applicant has to look after his old mother and father. The applicant is not in a position to shift his family from Avikanagar. That the wife of the applicant has been facing illness since last six months and has been recently operated upon.

6. The learned counsel for the applicant argued that there are many electrical equipments at Avikanagar Sub Center whereas no work of electrical field is available in other sub centers. Therefore, the applicant's transfer to Srinagar cannot be said in the interest of service or in public interest. Hence, he prayed that transfer order of the applicant dated 15.10.2014 (Annexure A/1) and his relieving order dated 16.10.2014 (Annexure A/2) be quashed and set aside. He may be allowed to stay at Avikanagar Sub Center.

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7. On the other hand, the learned counsel for the respondents argued that in the applicant's offer of appointment letter, it is clearly mentioned under Condition No. 4 that his/her headquarters will be at Jhansi for the present but he/she will be liable to serve in any Institute and/ or office of the Indian Council of Agricultural Research located anywhere in India. Thus the services of the applicant are transferrable.

8. The learned counsel for the respondents further submitted that as per the record, the youngest son of the applicant, Pankaj, is about 23 years of age and according to the learned counsel for the applicant, he is studying in Class 12th and that the applicant has been transferred in mid academic session whereas the applicant has claimed Tution Fee of his son for Class 12th on 29.04.2010. Thus his son was studying in Class 12th in the year 2010 and not in the year 2014. Therefore, the applicant has made a false averment regarding education of his son. Therefore, the OA deserves to be dismissed on the ground of concealment of facts alone.

9. The learned counsel for the respondents further submitted that with regard to the submissions made by the learned counsel for the applicant that he is in the process of arranging marriage of his daughter in the month of January, 2015, the daughter of the applicant is already married and that the applicant had claimed GPF loan for his daughter's marriage in the year 2010. Therefore, even this statement of the applicant is

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not correct that he has to arrange marriage of his daughter in January, 2015.

10. Moreover, the applicant has applied TTA and TTA has been sanctioned but the applicant has not mentioned this fact in the OA.

11. With regard to illness of wife of the applicant, the respondents have submitted that illness of his wife is not of serious nature as per the documents submitted by the applicant. Moreover, the applicant has major children of about 27, 25 and 23 years of age and they can easily look after their mother. Therefore, the applicant cannot claim cancellation of his transfer order on the ground of illness of his wife. Old age of parents of the applicant is also not a ground to challenge the transfer order. The applicant is having major children who can look-after their grand parents also.

12. The learned counsel for the respondents also submitted that Jammu & Kashmir State is in the priority list of the Government of India for development. There are four posts of Technical Staff at Regional Research Station, Srinagar and the applicant being a technical staff has been transferred to Srinagar. Transfer of the applicant is an incidence of service and the same has been ordered as a part of administrative requirement and in the better interest of the Institute at Srinagar to use the skill, knowledge and experience of the applicant.

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13. The learned counsel for the applicant in response to submission made by the learned counsel for the respondents submitted that he has to perform the marriage of his son instead of his daughter on 09.02.2015. The ground of marriage of the daughter in the OA has been inadvertently mentioned instead of son. Similarly with regard to the education of his son, it was submitted that the applicant's son is studying in Class 12 and appearing in examination as private candidate because he failed in preceding years. Moreover, the applicant being a man from electrical field should not be transferred to Srinagar where there is no work for electrical side.

14. Having considered the rival submissions of the parties, perusal of the documents on record and the case law submitted by the learned counsel for the applicant, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal in the present OA. It is not disputed that the applicant has an All India transfer liability. It is for the employer to decide the place of posting of an employee. The learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in the case of **Director of School Education, Madras & Others vs. O. Karuppa Thevan & Another**, 1994 SCC (L&S) 1180 wherein the Hon'ble Supreme Court has held that in absence of urgency, employee should not be transferred during mid academic term especially when employee's children are studying in school but under the facts & circumstances of the present case, the ratio decided by the

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Hon'ble Supreme Court in this judgment is not applicable as the son of the applicant, admittedly was a student of class 12 in the year 2010 and after four year, he is still the student of class 12th. He is studying as a private student. Therefore, if the applicant is transferred during mid-academic session, studies of his son would not be disturbed.

15. The learned counsel for the applicant in the OA had mentioned that he has to arrange the marriage of his daughter in January, 2015 but subsequently he submitted that he has to arrange the marriage of his son in January, 2015. However, this cannot be a ground for cancellation for transfer of the applicant.

16. I agree with the averments of the learned counsel for the respondents that his wife and the old parents can be looked after by the children of the applicant who are already major. In any case, these are the normal problems that any employee faces when he/she is transferred from one place to another place. Therefore, on this ground also, the applicant is not entitled for any relief.

17. The learned counsel for the applicant laid emphasis on the ground that the applicant is from the electrical field whereas there is no work of the electrical field at Srinagar. However, it is for the employer to decide the place of posting of its employees. The applicant cannot choose his own place of posting. According to the learned counsel for the respondents, the applicant is a technical man and there are four posts of Technical staff at

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Regional Station, Srinagar and the applicant being a technical staff has been transferred to Srinagar. I do not find any illegality/infirmity in the transfer order issued by the respondents. I am inclined to agree with the arguments of the learned counsel for the respondents that Jammu & Kashmir state is in the priority list of the Government of India for development and, therefore, the respondents have taken a decision for strengthening the regional stations and in that process, the applicant has been transferred to Srinagar.

18. Hon'ble Supreme Court in Para No. 7 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....."

In Para No. 8 of the judgment, the Hon'ble Supreme Court has held that:-

"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....."

19. Hon'ble Supreme Court in Para Nos. 7 & 8 of its judgment in the case of **State of U.P. vs. Gobardhan Lal**, 2005 SCC (L&S) 55, has held that

"7. 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 terms of appointment but

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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."

"8. 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 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 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."

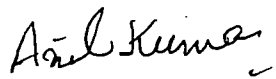
20. In the present OA, the applicant has not leveled malafide or bias against respondent no. 3 who is the competent authority to transfer the applicant. The transfer has been issued by the competent authority and it is not in violation of any statutory provision, Act or Rule. Therefore, there is no justifiable ground to interfere with the transfer order.

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21. It is well settled law that the transfer of an employee is an incidence of service. An employee can be transferred by the competent authority to any place in public interest and in exigency of service as long as the official status is not affected. It is for the competent authority to decide as to which employee is to be posted where. Therefore, I do not find any reason to interfere with the transfer order of the applicant dated 15.10.2014 (Annexure A/1) and his relieving order dated 16.10.2014 (Annexure A/2).

22. Consequently the OA being bereft of merit is dismissed with no order as to costs.

23. In view of the order passed in the OA, the interim stay granted to the applicant vide order dated 22.10.2014 is vacated. The Misc. Application No. 291/00444/2014 filed by the respondents for vacation of the interim stay stands disposed of accordingly.


(ANIL KUMAR)
MEMBER (A)

Abdul