

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 23-03-04.

1. Original Application No.413/2003.

Kishan Lal son of Late Shri Amar Chand Aged about 44 years, resident of 12/113, Kavari Path, Mansarovar, Jaipur. Presently working as Staff Car Driver, Office of Regional Office-cum-Superintending Engineer (Mechanical Regional Office) Ministry of Road Transport and Highways, DCM, Ajmer Road, Jaipur 302019.

... Applicant.

v e r s u s

1. Union of India, through its Secretary to the Govt. of India, Ministry of Road Transport and Highways, Sansad Marg, Transport Bhawan, New Delhi.
2. Regional Office-cum-Superintending Engineer (Mechanical), Regional Office, Ministry of Road Transport and Highways, DCM, Ajmer Road, Jaipur 302019.
3. Regional Office-cum-Superintending Engineer (civil), Regional Office, Ministry of Road Transport and Highways, DCM, Ajmer Road, Jaipur 302019.

... Respondents.

2. Contempt Petition No.59/2003 in CA No.413/2003.

Kishan Lal, Son of Late Shri Amar Chand, aged about 44 years, resident of 12/113, Kavari Path, Mansarovar, Jaipur. Presently working as Staff Car Driver, Office of Regional Officer-cum-Superintending Engineer (Mechanical Regional Office) Ministry of Road Transport and Highways, DCM, Ajmer Road, Jaipur 302019.

... Petitioner.

v e r s u s

1. Shri Sunil Kumar Verma, Superintending Engineer, (Mechanical) Regional Office, Ministry of Road Transport & Highways, DCM, Ajmer Road, Jaipur 302019.

... Respondent.

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Mr. C. B. Sharma counsel for the applicant in OA as well as in CP.

Mr. Sanjay Fareek counsel for the respondents in OA as well as in CP.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.

Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :

(per Hon'ble Mr. M. L. Chauhan)

By this order we propose to dispose of this OA No.413/2003 as well as CP No.59/2003 arising out of the order dated 03.09.2003 passed in this OA.

2. The facts of the case are that the applicant who is working as Driver with the respondents has earlier filed OA against the impugned order of transfer dated 03.07.2003 vide which he was transferred from Jaipur Regional Office to Bangalore Regional Office with immediate effect. The said OA was registered as OA No.357/2003 and this Tribunal disposed of the same vide order dated 31.07.2003. At this stage it would be relevant to reproduce Para 2.3 and 3 of the order which will have bearing in this case and thus reads as under :-

"2.3 In the instant case, the appropriate authority has temporarily stayed the transfer of the applicant from Regional Office, Jaipur to Regional Office, Bangalore vide order dated 4th July, 2003 (Ann.A6) till further orders. From the material placed on record, it is also evident that the applicant has made representation against the transfer on 27.6.03 as the Car on which he was deployed as Driver was declared condemned and he has requested that he may be adjusted against the post, which will be falling vacant on account of retirement of Shri Ganga Ram on superannuation. The respondents have not passed any order on his

representation.

3. Keeping in view the aforesaid circumstances, it is directed that the applicant shall make a detailed fresh representation to respondent No.1, with a copy to respondent No.2 for information, within 10 days from today alongwith copy of this order and by Speed Post to avoid delay. In that eventuality, the respondent No.1 is directed to consider the case of the applicant in view of the fact that the applicant is low paid employee and as per policy of the Government, Group 'C' and 'D' employees has to be adjusted in their home district as far as possible whereas in the instant case the applicant has been transferred out of the State i.e. Regional Office, Jaipur to Regional Office, Bangalore and especially when a post is falling vacant. In case such representation is made within 10 days, in that event, the respondent No.1 shall decide the said representation within 4 weeks from the date of receipt of the representation keeping in view the aforesaid facts. Till the representation of the applicant is not decided by respondent No.1, status-quo as of today, shall be maintained, qua the applicant."

3. Thereafter the applicant made a detailed representation to the authorities and the respondents vide the impugned order dated 27.08.2003 (Annexure A-1) rejected the representation of the applicant. It is against this order, now the applicant has filed this OA thereby praying for the following reliefs :-

"(i) That the entire record from the respondents may kindly be called for and after perusing the same order dated 27.08.2003 (Annexure A/1) with the order dated 3/7/2003 (Annexure A/3) transferring the applicant from Jaipur to Bangalore may kindly be quashed and set aside with all consequential benefits.

(ii) That the respondents may be further directed to allow the applicant to work at Jaipur against vacant posts of Staff Drivers lying with them.

(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 costs of this applicant may be awarded."

4. Notice of this application was given to the respondents. The respondents have filed the reply, thereby opposing the prayer made by the applicant. At this stage it may also be relevant here to mention that the matter was listed for admission on 03.09.2003. This Tribunal stayed the transfer order and it was observed by the Bench that the contention raised by the applicant in his representation has not been considered/disposed of by the respondents. Since the applicant was not permitted to join duties pursuant to the aforesaid interim order he has filed the CP which was registered as CP No.59/2003. Notice on this CP was also issued to the respondents and the respondents have filed the reply.

5. We have heard the learned counsel for the parties and perused the material placed on record.

6. The main contention raised by the learned counsel for the applicant in this OA is that the impugned order dated 27.08.2003 (Annexure A-1), thereby rejecting the representation of the applicant has been passed in mechanical manner and the contention raised by the applicant in his representation as well as the observation made by this Tribunal in Para 3 of the earlier OA, relevant portion of which has been reproduced above, has not been kept in view. We have perused the impugned order and we agree with the submissions made by the learned counsel for the applicant. As can be seen from the impugned order dated

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27.08.2003, the applicant has raised six grounds in his representation which has been reproduced in Para 5 of the order whereas the finding has been given by the competent authority only on four points. At this stage it would be relevant to reproduce Para 5 onwards of the order which are in the following terms :-

"....AND WHEREAS the said Shri Kishan Lal, in his representation, has requested to allow him to continue at Jaipur by withdrawing transfer order dated 30.07.2003 on the following grounds:-

(i) Since his appointment in the year 1980, there has been complaint or adverse entries against him.

(ii) His transfer to Bangalore would affect him well his family conditions.

(iv) The transfer order is neither in public interest nor in administrative exigencies and has been done in mid academic session.

(iv) His father, 70 years old, is a chronic heart patient and he has to look after him.

(v) He is a low paid employee and cannot bear such transfer order as done far away about 3000 kms.

(vi) One post of Staff Car Driver is lying vacant at Jaipur due to the retirement of Shri Ganga Ram on 30.06.2003.

AND, THEREFORE, the Secretary in the Ministry of Road Transport & Highways, being the Respondent No.1, considered the representation of the said Shri Kishan Lal, sympathetically and has observed as follows :-

(i) Transfer is not a penalty. Therefore, the complaints/adverse entries are not relevant for making transfers.

(ii) The applicant has been transferred and purely on the grounds of exigencies of work.

(iii) When exigencies of work demand, then the Govt. employee has to adjust between his family circumstances and his official work.

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NOW, THEREFORE, the Secretary, Ministry of Road Transport & Highways, after considering the above aspects, comes to the conclusion that keeping in view the exigencies of work, the transfer of the said Kishan Lal from Regional Office, Jaipur to Regional Office, Bangalore is justified and his representation dated 07.08.2003 has no merit. The same is, therefore, rejected.

6. Thus, from the portion extracted above, it is evident that the contention raised by the applicant that he is a low paid employee and cannot bear such transfer order as done far away about 3000 kms. and also that one post of Staff Car Driver is lying vacant at Jaipur due to the retirement of one Shri Ganga Ram on 30.06.2003 has not been dealt with by the appropriate authority. Further the observation made by this Tribunal in Para 3 of the earlier OA, relevant portion of which has been reproduced above, whereby the respondent No.1 was directed to consider the case of the applicant in view of the fact that the applicant is low paid employee and as per policy of the Government, Group 'C' and 'D' employees has to be adjusted in their home district as far as possible whereas in the instant case the applicant has been transferred out of the State i.e. Regional Office, Jaipur to Regional Office, Bangalore and especially when a post is falling vacant, has not been kept in view despite the fact that this Tribunal has specifically observed that the facts stated above may be kept in view. To say least this is non compliance of the direction given by this Tribunal in OA No.357/2003. At this stage we do not want to take serious view of the matter. Suffice it to say that the appropriate authority has not considered the

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matter in right perspective and keeping in mind the relevant issue that as far as possible Group 'C' and 'D' employees has to be adjusted in their home district subject to the availability of the post. This aspect of the matter has not been considered at all while deciding the representation as can be seen from the portions reproduced above. Consequently, the impugned order dated 27.08.2003 (Annexure A-1) is hereby quashed and set aside. The respondents are directed not to give effect to the impugned transfer order dated 03.07.2003. It is however, made clear that it will be permissible for the appropriate authority to reconsider the request of the applicant in the light of his earlier representation dated 07.08.2003 and give finding on all the points raised by the applicant in his representation especially the ground 5 & 6 and to pass appropriate order. In that eventuality, order of transfer dated 03.07.2003 ^{is though non existence and has been quashed} will give way to the fresh ^{order} order to be passed. With these observations, the OA is disposed of.

7. Since the OA has been partly allowed and the impugned order has been set aside, we do not wish to proceed with the contempt petition. Accordingly the CP is dismissed. Notices issued to the respondents are hereby discharged.

(A. K. BHANDARI)
MEMBER (A)

(M. L. GUHAN)
MEMBER (J)

p.j.