

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 347/2005.

Jaipur, this the 2nd day of February, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhatt, Administrative Member.

Mumtaz Ahmed Khan
S/o Shri Noor Mohd. Khan,
Aged about 57 and ½ years,
R/o Plot NO.11, Hasanpura-C,
Jaipur (Raj.)

... Applicant.

By Advocate : Mr. P. V. Calla.

Vs.

1. Union of India
Through Secretary to the Government,
Ministry of Information and Broadcasting,
New Delhi.
2. Prasar Bharti (Broad Casting corporation of India),
Director General, All India Radio,
Aakashwani Bhawan,
Parliament Street,
New Delhi.
3. The Deputy Director General
(Western Region-I)
Broad Casting Corporation of India,
All India Radio,
Mumbai-20.
4. The Station Director,
All India Radio,
Jaipur.

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The applicant has filed this OA against the order
dated 21.07.2005 (Annexure A/1) by which he was

transferred from Jaipur to Jhalawad. The transfer order was sought to be challenged on the ground that the said order is in violation of transfer policy Annexure A/5 where the tenure of 4 years has been fixed whereas the applicant has joined at Jaipur only on 18.02.2002, that too on his own request and for personal reasons as members of his family including the applicant were seriously ill. It was further pleaded that though the persons who have a short tenure at Jaipur have been retained whereas the applicant has been transferred in an illegal manner and also that the impugned transfer order will seriously affect the study of his children's who are studying at jaipur. It is on these basis, the applicant has filed this OA before this Tribunal.

2. When the matter was taken up for admission on 29.07.2005, this Tribunal granted ex-parte stay considering the submission made by the applicant and also that the applicant seems to have come to Jaipur only before three years back, Annexure A/1, so far as it relates to the transfer of the applicant, was stayed. The stay so granted is still continuing.

3. Notice of this application was given to the respondents who have filed reply thereby opposing the claim of the applicant. It has been stated that the transfer of the applicant was made as per administrative exigency and in the matter of transfer the Hon'ble

Tribunal had limited scope of interference. It is further submitted that the applicant has approached before the Hon'ble Tribunal without availing legal remedy provided to him under the Act.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. Along with the rejoinder, the applicant pleaded certain new facts. It has been stated that the applicant was advised to undergo for Angiography on 8.12.2005. The applicant has undergone Angiography and to this effect report of Sawai Mansingh Hospital and Bangur Medical Research Centre, Jaipur, has been placed on record as Annexure A/7. The applicant has further stated that after examination of the report of Angiography a Medical Board was constituted and the applicant was advised to undergo for Bye-pass Surgery. As per the advise of the Medical Board, the applicant was admitted to Escorts Heart Institute & Research Centre, New Delhi on 20.12.2005. On 20.12.2005 a major surgery was done by the Escorts Hospital and after surgery he was discharged from Delhi on 28.12.2005. It is further stated that the applicant was advised to contact for removal of stitches on 6.01.2006 and he was further advised to take full rest for a period of three months and again contact for check up on 6.4.2006. The applicant has also placed on record the copy of the certificate issued on 5.1.2006 (Annexure A/6) to support his aforesaid contentions.

5. We have heard the Learned Counsel for the parties and gone through the material placed on record.

6. Before we proceed further in the matter, it will be useful to notice decisions of the Apex court in transfer matters. The Apex Court has repeatedly held that the Court should not interfere with the transfer order which are made in public interest and for administrative reason unless the transfer is made in violation of any mandatory or statutory rules or on the ground of malafide. The Govt. servant holding a transferable post has no vested right to remain at one place or other, he is liable to be transferred from one place to other. Transfer order issued by the competent authority do not violate any of his legal right. Even if a transfer order is passed in violation of executive instructions or orders, the Court ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. The Apex court has further held that the Court and Tribunal cannot go into the question whether the transfer is in the public service or public interest would be served or not and also that the Court and Tribunal shall not interfere in the transfer matter as a matter of right as though they were appellate authority substituting its own decision for that of the employer because the order passed in the interest of administrative exigencies of service concerned. This is

what the Apex court had held in the case of Shilpi Bose vs. State of Bihar, AIR 1991 SC 532, Union of India vs. S. L. Abbas, AIR 1993 SC 2444, State of UP and ors. vs. gobardhan Lal, (2004) 11 SCC 402, State of UP vs. Siya Ram, (2004) 7 SCC 405 and in other cases. Further the Apex Court in the case of Rajinder Roy vs. Union of India, AIR 1993 SC 1236 has held that it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee but on that score the order of transfer is not liable to be struck down. Unless such order is passed malafide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is normal consequence and personal difficulties are the matter of consideration for the department, the SC has further held as under :-

".... The appellant has not made any representation about the personal hardship to the department. As such there was no occasion for the department to consider such representation. It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of the impugned order. It is reasonable expected that if such representation is made, the same should be considered by the department as expeditiously as practicable."

7. Learned Counsel for the applicant has sought the intervention of this Tribunal on the ground that the order of transfer has been made in violation of transfer policy inasmuch as he has not completed a tenure of 4 years and

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has also pleaded personal difficulties that by way of impugned transfer, studies of his children will be hampered and also that the applicant has less than 3 years of service for retirement and he wants to settle at Jaipur. As such, in view of Clause-xxi) of the Transfer Policy (Annexure A/5), Member of staff, who are within three years of reaching the age of superannuation, will, if posted at their home town, not be shifted therefrom, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or to near their home towns to the extent possible. Besides this, the applicant by way of rejoinder has placed additional facts regarding his health condition whereby he has been operated upon for heart surgery and he has been advised to take rest for three months.

8. We have given due consideration to the submission made by the Learned Counsel for the applicant. We are of the view that the applicant is not remediless. It was permissible for the applicant to make proper representation to the higher authorities bringing to their notice the extreme hardship which the applicant is facing. To that effect is also the law laid down by the Apex Court in the case of Rajendra Roy (supra) whereby the Apex Court has held that the appellant therein is free to make representation to the concerned department about the personal hardship and such representation, if made, shall be considered by the department as

expeditiously as practicable. At this stage, it will be useful to quote the decision of the Apex court in the case of Shanti Kumar vs. Regional Deputy Director, Health Services, AIR 1981 SC 1577. This was a case where nurse in the health Department was transferred from a place in her home district to another district. It was alleged that the said transfer order is in contravention of the State Government directions. Although the Supreme Court has declined to interfere with the impugned order, however in para 2 it was specifically observed...

"....Shri Grover learned counsel for the appellant, however, contends that the impugned order was in breach of the government instructions with regard to transfer in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant." (emphasis mine).

Further the Rajasthan High Court, Jodhpur, in D.B. Special Appeal No.1430 of 1999 decided on 16.12.1999, Dr. (Smt.) Pushpa Mehta vs. Rajasthan Civil Services Appellate Tribunal, in para 4 of the judgment has made the following observations :-

".... We are of the view that unless there are compelling reasons, ordinarily, an employee should not be disturbed from the place of his/her posting, when he/she is at the verge of retirement. An employee should be given sufficient time, which may be of two years or so to plan peacefully his/her post retirement life. This can be the legitimate expectation of an employee who has served the Department for major part of his/her life. In exceptional case, if the transfer in such case is felt necessary in the public interest, it must be kept in mind while giving the fresh posting that minimum inconvenience is caused to the concerned

employee. Any transfer contrary to aforesaid principle will lead to interference that the order is malafide. We find no good reason to interfere with the order of the learned single Judge."

9. Keeping in view the law laid down by the Supreme Court and also that the applicant has undergone By-pass Surgery in Escorts Heart Institute & Research Centre, New Delhi, on 22.12.2005 and he has been advised to take rest for three months, we are of the view that ends of justice will be met if a direction is given to the applicant to file representation before the appropriate authority who will decide the same sympathetically in the light of law as noticed above. Accordingly, the applicant will be at liberty to make representation to Respondent No.2 about his personal hardship, along with a copy of this order, within a period of two weeks from today. In case such representation is made within the aforesaid period, Respondent No.2 shall entertain the same and pass speaking and reasoned order, keeping in view the contention raised by the applicant and the observations made herein above. Till the representation of the applicant is not decided by the competent authority, the applicant shall be allowed to work at Jaipur.

10. With these observations, the OA is disposed of with no order as to costs.

A. K. Bhatt
(A. K. BHATT)
ADMINISTRATIVE MEMBER

P.C./

M. L. Chauhan
(M. L. CHAUHAN)
JUDICIAL MEMBER