

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR**

**Original Application No. 461/2007
& Misc. Application no. 50/2008**

4th April 2008.

Hon'ble Mr. N.D. Raghavan, Vice Chairman.

Prithviraj Rawat , S/o late Shri Vijay Singh Rawat, aged about 45 years, R/o Geethanjali, Teja Chowk, Makhopura, Ajmer (Raj.) presently working as Head Clerk in Establishment Section of DRM, office Ajmer (Rajasthan).

: Applicant.

Rep. by Mr. Sunil Samadaria: Counsel for the applicant.

VERSUS

1. Union of India through the General Manager, North West Railway, Opposite Ganpati Nagar, Jaipur (Rajasthan)
2. General Manager, North West Railway, Opposite Ganpati Nagar, Jaipur (Rajasthan)
3. Divisional Railway Manager, DRM Office, (Estt.) Ajmer. (Rajasthan)
4. Ram Singh Meena, Head Clerk, Settlement Section DRM Office Ajmer (Rajasthan)

: Respondents

Rep. by Mr. V.S. Gurjar : Counsel for respondent Nos. 1 & 2

Mr. Anupam Agarwal : Counsel for respondent No. 3

Mr. Nand Kishore : Counsel for respondent No. 4

ORDER

Per Mr. N.D. Raghavan, Vice Chairman

This O.A is directed against the order dated 19.12.2007, (Annex.A/1) whereby the representation made by the applicant, pursuant to the order of this Tribunal dated 28.09.2007 passed in O.A. No. 330/2007, has been rejected. Such rejection order is impugned by the applicant herein as cryptic, unreasoned and



non-speaking order passed by respondent No. 2 in utter transgression of the above order of this Tribunal. This O.A is further directed against the order dated 07.06.2007 (Annex.A/2) whereby the applicant was transferred from Ajmer to Zonal Training Centre, Udaipur, with an ulterior motive to accommodate Respondent No. 4. It is prayed by the applicant that for various reasons assigned in his O.A, the aforesaid orders impugned herein be quashed and set aside, thus restoring status quo ante, and also for interim relief prayed, in view of the applicant having a prima facie case, the balance of convenience being in his favour and irreparable injury would be caused to him if the interim relief as prayed is not granted i.e. staying the operation of the impugned orders aforesaid.

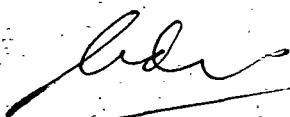
2. On 02.01.2008, the Tribunal in its order has observed that in view of the facts and circumstances of this case, the manner in which the General Manager has passed the order and the department has behaved with the applicant, this is a fit case which requires consideration and expeditious disposal. Accordingly, the respondents were directed to file reply at the earliest, besides permitting the respondents to reconsider the case of the applicant to accommodate him at his original place of posting on the post of Head Clerk. Besides, it made it clear that the pendency of the O.A would not come in the way of the applicant and that joining of the applicant pursuant to Annex. A/1 would not have any effect on the pendency of this O.A.



3. A perusal of the record reveals that pleadings have been completed and on going through the contents of the O.A and the order sheet endorsements, I deem it fit and proper to admit this O.A and proceed to hear the parties for adjudicating the issue in question.

4. The brief facts of the case are these: By order dated 07.06.2007, the applicant, who is presently working as Head Clerk in DRM's Office, Ajmer, was transferred to Zonal Training Centre, Udaipur, as Head Clerk which is questioned by him. His submissions are as below: In order to accommodate R.4 at Ajmer, the applicant had been transferred though there were already excess Head Clerks working in Ajmer Division. Hence, there was no necessity to post R.4 at Ajmer on his promotion. He challenged it before this Tribunal by filing O.A. No. 213/2007. By order dated 22.06.2007, the operation of the said transfer order was stayed. Further, when the O.A was pending, one Shri Pradeep Ramchandani, Head Clerk, died in harness and therefore the said O.A was disposed of on 02.08.2007, directing the applicant to make representation to the respondents and the respondents were directed not to disturb the applicant till the disposal of his representation.

5. In pursuance of this, the applicant submitted a representation on 13.08.2007. An order dated 08.09.2007 was



issued rejecting the applicant's representation. In the order dated 13.08.2007, it was stated that some complaints were pending against the applicant. However, the rejection is made without referring to any of the complaints by the DRM (E), Ajmer. The applicant again approached this Tribunal challenging the order dated 08.09.2007 by filing O.A. No. 330/2007. An interim order was issued on 14.09.2007, staying the operation of the impugned order. The said O.A was finally disposed of on 28.09.2007 and the operative portion of the order reads as under:

"13. Without expressing any view on the merit of the case, the fact that the representation of the applicant was considered by authority which admittedly subordinate to the authority who has passed original order of transfer and thus cannot be said to be a fair consideration of representation as observed above and also the fact that this Tribunal in the earlier OA has specifically directed the respondents to consider the case of the applicant against the vacancy caused due to death of shri Pradeep Ramchandani, Head Clerk,. We are of the view that ends of justice will be met if the matter is remitted back to the General Manager, North West Railway, Jaipur to reconsider the representation of the applicant afresh after giving due consideration to the contentions to be raised by the applicant in his fresh representation, if the same is filed within ten days from today. In that eventuality, the General Manager, North West Railway, Jaipur (Respondent No. 1) will decide the same by passing a reasoned and speaking order. Till such time, the representation of the applicant is not decided, the applicant shall be allowed to work in Settlement Section, DRM Office, Ajmer. However, order dated 8.09.2007 (Annex. A/2) whereby the earlier representation was rejected, shall stand quashed and set aside.

14. With these observations, the O.A is disposed of with no order as to costs.

6. Thereafter, the applicant submitted a detailed representation to the General Manager, North Western Railway, Jaipur on 05.10.2007. The General Manager, by an order dated 19.12.2007, rejected the representation of the applicant in a cryptic manner, without touching the version of the applicant



about the death of Shri Pradeep Ramchandani, besides stating that the applicant has mis-represented before the Tribunal and at the same time finding fault with the Divisional Personnel of the respondents themselves stating that they failed to highlight the true picture before the Hon'ble CAT, apart from mentioning therein that the applicant's presence in Ajmer would hamper proper inquiry in the cases pending against him and the details of the cases would become known to the applicant in due course of time.

7. The learned counsel for the applicant submitted as below: The transfer order suffers from malice in law and such an order has been passed only to accommodate respondent No. 4 (Annex. A/3). Page 26 of the paper book, which showing the number of posts sanctioned in the grade of Head Clerk and the number of persons actually in strength, page 31 which is the order of this Tribunal dated 02.08.2007 passed in O.A. No. 213/2007 particularly at paragraphs 3 to 5 thereof, page 43 which is the order dated 08.09.2007 of the DRM (E) passed over the representation dated 13.08.2007 of the applicant which was the subject matter of O.A. No. 330/2007, pages 48 to 57 Annex. A/12-order dated 28.09.2007 passed by this Tribunal in O.A. No 330/2007 particularly at paras 5 to 13, pages 144 and 149 which are Annex. A/16 and A/17 respectively memorandum of charges dated 06.08.2007, Annex. A/11- interim order passed by this Tribunal on 14.09.2007, may all be carefully perused. Indeed, it



is a clear cut vendetta against the applicant and therefore Annex. A/1 and Annex. A/2 are not valid in the eye of law. Hence, they are liable to be quashed and set aside. The respondents have not denied the averment made by the applicant that there were persons who were staying longer than the applicant and who have also never gone out of Ajmer from their respective places of posting, thus remaining un-disturbed. In support thereof reliance is placed on the decisions following:

- (a) **Jagat Prakash Yadav vs. State of Rajasthan** [R.L.R. 1990(1) 171];
- (b) **S.Rama Gangi Reddy vs. Govt. of A.P. and others;** [1992 LAB I.C.1113];
- (c) **G. Babu vs. C.E (PS & GL) and others** [1989 LABIC 2264];

8. On the other hand, learned counsel for the respondents 1 & 2 submitted as below: The respondents' counsel has referred to Annex. A/3, contending that the contentions of the applicant's counsel is not sustainable in law. The additional reply filed may be seen. Seniority has no relevance in the matter of transfer. If transfer has to be made as per seniority, then the present O.A is not maintainable. Annex. A/8- order of this Tribunal dated 02.08.2007 passed in O.A. No. 213/2007, and Annex. A/10 – page 43 of the O.A, which is the order dated 08.09.2007 passed by the DRM (E) Ajmer, over the representation of the applicant dated 13.08.2007, may be seen.



The applicant is attributing malice against the DRM and GM without impleading them by name as party respondents. It is, therefore, not sustainable in law. In an administrative order, assignment of detailed reason is not necessary like a judicial order. The administrative authorities are not experts like judges to write administrative orders as judicial orders. The Tribunal should not and cannot interfere ordinarily in transfer matters as an appellate authority under Art. 227 of the Constitution of India. Charge sheets dated 06.08.2007 in Annex. A-16 and Annex. A-17 at pages 144 and 149 respectively, may be seen. Even though the applicant was relieved on 19.12.2007, he has not yet joined the new place of posting, in spite of the fact that the relieving order was served on him on 20.12.2007 itself. Though his non-joining is on medical grounds, action could be taken against the applicant and therefore, if at all malice could be attributed, it could only be against the applicant and not against the respondents. Transfer orders can be questioned only if it violates any of the provisions of the concerned Act or Rule or the incompetency of the authority passing the transfer order but not otherwise. There is nothing on record to establish any malafide against the respondents. Reliance is placed on the decisions following:

(a) State of UP vs. Gobardhan Lal [(2004) 11 SCC 402 at 407.

(b) UOI and ors vs. S.L. Abbas [(JT) 1993 (3) SCC 678



- (c) **National Hydro Electric Power Corporation Ltd. Vs. Shri Bhaqwan** [(2001) 8 SCC 574 at 578]
- (d) **Prabir Banerjee vs. UOI and ors.** [(2007) 8 SCC 793]
- (e) **Mohd Masood Ahmad vs. State of UP and others** [(2007) 8 SCC 150 - particularly para 5 to 8].

Based on the ratio decidendi in the aforesaid cases the Hon'ble Supreme Court has laid down the propositions particularly that unless the transfer order is vitiated or passed in violation of any statutory rule or provisions it cannot be interfered with by the Court/Tribunal. As propounded by the case law, no government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place. That apart and further more, this is the third round of litigation by the applicant on the same issue. The applicant has not joined the new place of posting because of the stay granted in his favour by this Bench of the Tribunal. Thus looking at the case from any angle, the applicant has no merit in his favour and hence the O.A deserves to be dismissed.

9. Learned counsel for respondent No. 3 in his turn submitted that he is adopting the same arguments as advanced by the learned counsel for respondent Nos. 1 & 2.

10. Learned counsel for respondent No. 4 submitted as below:
Page 31 and 32 of the O.A, which is the order dated 02.08.2007,



passed in O.A. No. 213/2007-particularly paras 3 to 5 of the order and also to pages 40 and 41 of the O.A may be seen. Persons at Sl. No. 17, 40 & 41 (4th respondent herein) are only ST candidates and thus there is no excess of ST candidates. Page 166 of the O.A (Annex R.4/1) in this regard may also be seen, besides page 168 (Annex. R.4/2). Reliance is placed on the decisions following:

- (a) **Suresh Chandra Dixit and others vs. General Manager ITI Ltd Naini, Allahabad and ors.** [2007 (4) SCT 107]
- (b) **B.S. Vadera and ors vs. Union of India others** [1969 Lab IC 100]
- (c) **Prabir Banerjee vs. UOI and ors.** [2007 (4) SCT 564]
- (d) **Mohd Masood Ahmad vs. State of UP and ors.** [2007 (4) SCT 397].

In effect, according to the ratio decidendi of the aforesaid cases, even if a transfer order is issued to accommodate another public servant, it cannot and should not be interfered, merely because the transfer orders were passed on the request of the concerned employees. No public servant has any vested right to remain posted at a particular place through out his service career. Further, Court/Tribunal should not interfere with the orders of transfer as it has no such jurisdiction unless it is passed in violation of any instruction or statutory rule. While transfer is an incidence of service under the Central Service Rules, one has no cause to complain in respect of the transfer order by which he was transferred from one place to another when such order has



been passed by the competent authority under the powers vested in him. Further, transfers are made in administrative exigencies or in public interest or for smooth functioning of the system and do not warrant any interference under Art. 226 and 227 of the Constitution of India. Transfer is an exigency of service and is an administrative decision and interference by the Courts with transfer orders should only be in very rare cases unless the Court finds either the order is mala fide or that the service rules prohibit such transfer or that the authorities who issued the orders were not competent to pass the orders. Hence it is prayed that this O.A should be dismissed.

11. In reply, the learned counsel for the applicant referred to para 5 of the Tribunal's order dated 28.09.2007 passed in O.A. No. 330/2007. He emphasized that in spite of the Tribunal's specific order, the General Manager, North West Railway, has not passed any reasoned and speaking order besides the fact that there is nothing in the reply filed by the respondents in respect of the allegations against the applicant which are merely stated orally. Reliance is also placed on one of the Constitution Bench's decision rendered by the Apex Court in the case of S.N. Mukherjee vs. UOI and ors. [JT1990 (3) SC 630].

12. Rival submissions heard and relevant records read, besides the judgments cited by the parties, very carefully. The list of Head Clerks furnished by the applicant clearly indicates that the



applicant is neither seniormost nor juniormost and none of the seniors or none of the juniors was disturbed by transfer and that therefore the applicant has submitted that he has been harassed by transferring him to Udaipur from Ajmer. The dates of issuance of the charge sheets is apprehended by the applicant as malice on the part of the respondents against the applicant. The applicant has also stated that the respondents are harping only on the point that the applicant is staying in Ajmer for the last 22 years. However, his contention that there are other persons who are also staying in Ajmer longer than him, had not been refuted by the respondents. It also appears that both the representations of the applicant dated 13.08.2007 and 05.10.2007, seem to have been rejected stating that complaints were pending against the applicant and his continuance at Ajmer would hamper the investigation but without furnishing any detail thereof. In my considered opinion, these things have created in the mind of the applicant apprehension that there is malice on the part of the respondents against the applicant. Further, the impugned order dated 19.12.2007 states that the case has been misrepresented by the applicant before the Tribunal and at the same time finds fault with its own Divisional Personnel that there has been failure to highlight true picture before the CAT. The details of cases, which are apprehended to be hampered by the presence of the applicant, would become known to him in due course of time, according to the G.M., but no detail of the cases have been mentioned. These are the only reasons which have



been stated in the impugned order for not acceding to the prayer of the applicant to cancel the transfer order dated 07.06.2007. Further, the applicant's contention that in spite of the clear cut direction given by this Tribunal vide its order dated 28.09.2007, to dispose of the representation of the applicant by a reasoned and speaking order, the respondents, particularly the General Manager, had not implemented the said order in letter and spirit, seems to have substantial force and valid substance. That apart, the three charge memos have been issued to the applicant; i.e. the first two charge sheets are dated 06.08.2007 i.e. after the disposal of O.A. No. 213/2007 on 02.08.2007, and the third charge sheet seems to have been issued on 26.09.2007 after the applicant filed O.A. No. 330/2007 and obtained interim stay on 14.09.2007, staying the operation of the impugned transfer order dated 07.06.2007. Further, none of the charge sheet mentions about any financial irregularities committed by the applicant. Learned counsel for the official respondents are unable to support the impugned order dated 19.12.2007 that the same has been passed in consonance with the order passed by this Tribunal dated 28.09.2007 in O.A. No. 330/2007. Further, the Constitution Bench's decision in S.N. Mukherjee's (supra) case has held that administrative authority exercising quasi judicial functions must record reasons for its decisions except where the requirement has been dispensed with expressly or by necessary implications. This ratio decidendi has not been complied with in letter and spirit in spite of specific directions by



this Tribunal. Even assuming that the presence of the applicant in Ajmer would hamper the inquiry, he could very well be posted in an appropriate division in Ajmer itself where he could have no access to the evidences.

13. While adjudicating the issue involved in this case, the proposition laid down by the Apex Court in the matter of transfer and interference by the Courts or Tribunals, that transfer orders should not be interfered with unless the same is passed by an incompetent authority or the same is issued in violation of any statutory rules or the same is issued with malafide intentions is borne in mind. Even though it is stated that the instant transfer order is issued in administrative interest, no such administrative exigency has been brought to my notice except harping on the point that the applicant is staying in Ajmer for the last 22 years.

14. Under the aforesaid circumstances, considering the pros and cons and weighing the decisions cited by all the parties, I deem it just fit and proper to hold that the apprehension of the applicant that there is malice on the part of the respondents against the applicant for the various reasons detailed and discussed herein above has valid substance and substantial force. To cite an instance, when the earlier orders, interim or final, the Tribunal has indicated its observations in favour of the applicant and recently too, the Tribunal has set aside the matter to the file of General Manager himself, namely, the second



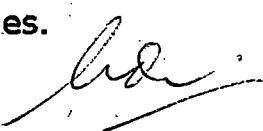
respondent vide order dated 28.09.2007 to pass a reasoned speaking order over the representations made by the applicant, the second respondent has not cared to pass a reasoned and speaking order except passing a cryptic and bald order and in spite of the decision of the Supreme Court in the case of S.N. Mukherjee (supra), holding that administrative authorities exercising quasi judicial functions must record reasons for its decisions. Further more, the representation of the applicant has been made to be decided earlier by a subordinate authority to the one who has passed the transfer order, namely, the DRM, which is quite opposite to and against the principles of natural justice. That apart, none of the charge sheets mentions about the financial irregularities committed by the applicant. The rejection order has also been passed stating that complaints were pending against the applicant and his continuance at Ajmer would hamper the investigation without furnishing any details thereof. Even the present order of the General Manager, merely states that such details would be given in due course, but nothing seems to have been given until this date. In spite of Tribunal's directions, the vacancy caused due to the death in harness of Shri Pradeep Ramchandani has also been not considered by the 2nd respondent. In view of all these reasons assigned in this para apart from the discussions held in the paras preceding hereinabove, I consider that if the apprehension of the applicant that there is malice on the part of the respondents



against the applicant could not be held as malice, it is not known what else could be described as malice than this!

15. Even though at one stage, I contemplated as to why not one more opportunity be given to the respondents for passing afresh a speaking and reasoned order, as directed by this Tribunal in its order dated 28.09.2007, as the learned counsel for the respondents 1 & 2 also volunteered and acceded to besides adding that within three weeks a fresh order would be passed, the learned counsel for the applicant was not willing to go back to the respondents emphasizing that when the earlier orders of this Tribunal itself has not been obeyed by them, where is the assurance that the applicant would get justice from the hands of the respondents. Thus and therefore I left the contemplation of remission since I am convinced that the applicant's counsel has demonstrated malice on the part of the respondents against the applicant.

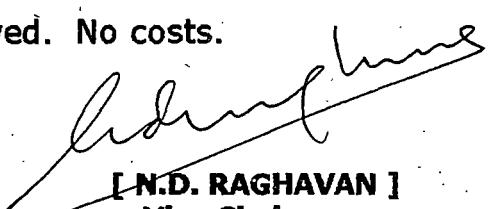
16. In view of the foregoing reasons, I do not hesitate to set aside the impugned orders dated 19.12.2007 (Annex. A/1) and particularly, the transfer order dated 07.06.2007 (Annex. A/2) passed by the 2nd and 3rd respondents respectively. I direct the respondents to allow the applicant to join at Ajmer forthwith besides also immediately treating interregnum period from the date of service of relief order [i.e. 20.12.2007] till joining forthwith as per admissibility under the Rules.



17. In view of the above verdict, M.A. No. 50/2008, praying that representation dated 03.01.2008, made by the applicant to the respondents in sequel to the order dated 02.01.2008 and the letter dated 18.12.2007, be allowed to taken on record, having now become infructuous, there is no necessity to pass a separate order.

18. Before parting with the case, I will be failing in my duty if I do not record my appreciations of the efforts taken by the respective counsel, particularly of counsel for respondents 1 & 2, as their respective contentions simply carried me away with the stand argued by each of the counsel before me. Such kind of assistance from the Bar is quite welcome to assist the Bench as those argued before me, being effective to render justice precisely, quickly and easily too.

19. In the result, the O.A is allowed. No costs.


[N.D. RAGHAVAN]
Vice Chairman.

Jsv.