

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>11.02.2008</u></p> <p><u>OA No. 40/2008</u></p> <p>Mr. Anand Sharma, Counsel for applicant.</p> <p>Heard learned counsel for the applicant.</p> <p>The OA is disposed of at admission stage by a separate order, for the reasons recorded therein</p> <div><div>(J.P. SHUKLA) MEMBER (A)</div><div>(M.L. CHAUHAN) MEMBER (J)</div></div> <p>AHQ</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 11th day of February, 2008

ORIGINAL APPLICATION NO. 40/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

Heera Lal Vyas son of Shri Baluram Vyas aged about 50 years, resident of behind Dangi Factory, Near Sanwaria Mandir, Azad Nagar, Bhilwara. At present posted as Radiographer at Central Hospital, Gangapur, District Bhilwara.]

By Advocate: Mr. Anand Sharma

.....Applicant

Versus.

1. Union of India through Secretary, Ministry of Labour & Employment, Shramshakti Bhawan, Rabbi Marg, New Delhi.
2. The Welfare Commissioner, Office of Welfare Commissioner, Labour Welfare Organization, B-115, Jatia Hills, Datanagar, Ajmer.
3. The Director General (LW), Government of India, Ministry of Labour & Employment, Jaiselmer House, Mansingh Road, New Delhi.

By Advocate: -----

.....Respondents

ORDER (ORAL)

The applicant has filed this OA against the order dated 17.01.2008 (Annexure A/1), whereby the applicant, as well as two other persons, have been transferred from Central Hospital,

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Gangapur to Biharshariff Hospital, Karma (Jharkhand), with immediate effect.

2. The grievance of the applicant is that he is settled at Bhilwara and his children are studying there. He has also pleaded that he has been transferred to Biharsharif Hospital, Karma (Jharkhand) at a distance of 2000 Kms which will definitely cause hardship to him being a low paid employee. He should have been adjusted in the same region as has been got done in the case of other employees. This Tribunal in OA No. 32/2008, **Smt. Radhamaniamma K.C. vs. Union of India & others**, decided on 07.02.2008 has upheld the validity of the impugned transferred order. Further the relief was also granted to the applicant therein to the extent that the respondents shall maintain status quo qua the applicant till her representation is not decided. At this stage, it will be useful to quote para nos. 3 to 8^{of the judgment} rendered by this Tribunal in the case of Radhamaniamma K.C. (supra), which thus reads as under:-

"3. At this stage, it may be noticed that the applicant was working at Central Hospital, Gangapur (Rajasthan), before passing of the order dated 1.6.2007 (Ann. A/4), by which the Government took a decision to close the 30 bedded Central Hospital at Gangapur. It was further decided by the said order that the equipments of the Central Hospital, Gangapur, may be shifted to Biharsharif Hospital, Karma Region. Pursuant to the said decision taken by the Government, respondent No. 2 made a recommendation to the Government, vide letter dated 10.7.2007 (Ann.A/5), to the effect that at present nine persons are working at Central Hospital, Gangapur, viz. one CMO, one Pharmacist, one Lab. Asstt. (the applicant), one Radiographer and five Class IV employees, and it was recommended that the CMO will be adjusted against the post of Medical officer in the same Region, whereas services of the Pharmacist will be utilized at Ajmer. Similarly, regarding the applicant and the post of Radiographer it was suggested that since Mobile X-Ray Machine is available at Central Hospital, Gangapur, services of the applicant and the Radiographer will be utilized for organizing Health

Check-up Camps at various dispensaries run under this Region. It was further recommended that the Group-D staff may be allowed to retain in the same Region as they are very low paid employees.

4. It appears that the recommendations made by respondent No. 2 have not been accepted in toto by the Government, which has resulted in issuance of the impugned order dated 17.1.2008 (Ann. A/1), whereby three persons have been transferred to Bihar Sharif Hospital, Karna (Jharkhand).

5. Learned counsel for the applicant submits that the Hospital at Gangapur has not been closed fully as some of the staff is still working there. As such, the applicant may be allowed to work at Gangapur at least till the said hospital is fully closed. It is further stated that the applicant has still not handed over the charge. Learned counsel for the applicant also submits that it is a case of discrimination.

6. I do not see any force in the submission made by the learned counsel for the applicant. Who should be posted where, is a matter to be decided by the appropriate authority and it is not permissible for this Tribunal to interfere in such matters unless it is a case of mala fide or violation of statutory provisions. Law on this point is well settled by the Apex Court. *The Apex Court in the case of State of U.P. and others V. Gobardhan Lal*, (2004) 11 SCC 402, in para-7, made the following observations :

"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 of routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfer 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 and 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 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."

7. Thus, in view of the law laid down by the Apex Court in the case of *Gobardhan Lal (supra)* the applicant has not made out any case for

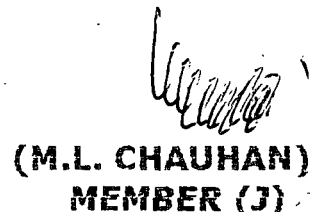
interference by this Tribunal. However, in view of the fact that the applicant is a lady and has been transferred to a distant place and the fact that she has still not handed over the charge, as alleged by the learned counsel for the applicant, and also the fact that she has made a representation to respondent No. 3 regarding her adjustment in terms of the recommendations made by respondent No. 2 vide Ann. A/5, I am of the view that ends of justice will be met if a direction is given to respondent No. 3 to decide the representation of the applicant sympathetically and exploring the possibility of adjusting the applicant in Ajmer Region. Ordered accordingly.

8. However, till a decision is taken on the representation of the applicant by the competent authority, the respondents shall maintain status-quo as of today qua the applicant."

3. In view of the findings recorded by this Tribunal in the case of Smt. Radhamaniamma K.C. (Supra), we are of the view that the applicant being a similarly situated is also entitled to the same relief. Accordingly, respondent No. 3. is directed to decide the representation of the applicant dated 22.01.2008 (Annexure A/5) sympathetically and explore the possibility to adjust the applicant in Ajmer Region. Till the decision is not taken on the representation of the applicant, the respondents shall maintain status-quo qua the applicant.

4. With these observations, the OA stands disposed of at admission stage itself. No order as to costs.


(J.P.SHUKLA)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ