

8

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

16.05.2008

OA No.47/08

None present for the applicant
Mr. Siya Ram, proxy counsel for
Mr. T.P.Sharma, counsel for respondents

*Reply
made
f*
*Rejoinder
not
filed
2-6-08*

The learned proxy appearing on behalf of the respondents submits that reply is ready but copy of the same could not be given to the learned counsel for the applicant. Let reply be filed within a period of one week. Rejoinder, if any be filed within four weeks thereafter.

Let the matter be listed on 2.7.2008.

[Signature]
(M.L. CHAUHAN)
Judl. Member

R/

2-7-2008

Mr. M.S. Kurnawat, Counsel for Counsel
Mr. T.P. Sharma, Counsel for respondents

Heard learned Counsel for the parties.
For the reasons dictated separately, the

OA is disposed of.

[Signature]
(M.L. Chauhan)
-M(J)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 02nd day of July, 2008

ORIGINATION APPLICATION NO. 47/2008

CORAM:

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

Gyan Chand son of Shri Khatu Mal resident of House No. 465/2, Mali Mohalla Arjun Nagar, Phy Sagar Road, Ajmer. Presently working as P.P. Rly, Ajmer.

....APPLICANT

(By Advocate: Mr. M.S. Kumawat)

VERSUS

1. Union of India through its General Manager, North West Railway, Station Road, Jaipur (Rajasthan).
2. Divisional Manager Railway, DRM Office (NWR) Ajmer.
3. Shyam Lal, L.Sr. Pointsman, Nasirabad C/o Station Superintendent, Railway Station, Nasirabad.
4. Sunil Gupta, Sr. Divisional Operating Manager, North West Railway, DRM Office, Ajmer.

.....RESPONDENTS

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

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

ll

"(i) That by a suitable writ order of the direction the impugned order vide Annexures 1 and 2 be quashed and set aside.

(ii) That any other relief which the Hon'ble Bench deems fit."

2. Briefly stated, facts of the case are that vide order dated 13.12.2007 (Annexure A/1), the applicant was transferred from Ajmer to Jaggabore in Udaipur Division. The applicant made a representation against the said transfer to the Divisional Railway Manager i.e. Respondent No. 2 on 20.12.2007 (Annexure A/4) in which it was stated that he has been transferred on account of false complaint made by the Union and the said order of transfer was subsequently modified vide order dated 04.01.2008 (Annexure A/2) whereby the transfer of the applicant from Ajmer to Jaggabore was cancelled and the applicant was transferred to Nasirabad instead of Jaggabore.

3. It is these two orders which have been challenged by the applicant in this OA. The ground taken by the applicant for challenging the validity of these orders is that he has been transferred on account of false complaint as he was a candidate in the Union election and by way of the said transfer order; he is facing hardship and family problems.

4. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, the respondents have categorically stated that the applicant has been transferred on administrative grounds. The respondents have denied that the transfer of the applicant was punitive or passed with mala fide intention

102

or inculcable exercise of power. The respondents have relied upon the Apex Court's decision in the case of Major General J.KI. Bansal vs. Union of India & Others, 2005 SCC (L&S) 932, whereby it has been held that transferable govt. employee has no vested right to be posted in one place/organization only - transfer order should not be interfered, but should direct employee to appeal against that order departmentally.

5. The respondents have further stated that in fact the respondents have given due consideration to the representation filed by the applicant on 20.12.2007 (Annexure A/4) against his transfer order dated 13.12.2007 (Annexure A/1) from Ajmer to Jaggaore. As such, the said order was cancelled and modified vide order dated 04.01.2008 (Annexure A/2) and the applicant was posted at Nasirabad, which is about 23 Kms. from the original place of posting i.e. Ajmer whereas the distance of the Jaggaore from Ajmer is about 450 Kms. Thus according to the respondents, the contention of the applicant that respondents have transferred the applicant with mala fide intention is without basis.

6. I have heard the learned counsel for the applicant and have gone through the material placed on record. Learned counsel for the applicant submits that the applicant has further filed representation dated 14.01.2008 (Annexure A/5) against the modified order of transfer dated 04.01.2008 (Annexure A/2), which is still pending. Perusal of the said representation reveals that the grounds raised by the applicant in this representation are the same which were raised in his earlier representation dated 20.12.2007

me


(Annexure A/4) though the subsequent representation is elaborative one. Since I am of the firm view that the applicant has not made out any case for my interference in view of the settled legal position whereby the Apex Court has repeatedly held that who should be transfer and where is the subject matter to be decided by the Appropriate Authority and it is not open for the court to act as an Appellate Authority in interfering the transfer order unless the order of transfer has been made on mala fide intention or there is violation of any statutory provision. Such a case is not set up by the applicant. The grievance of the applicant, that he has been transferred on account of false complaint made by some persons as he has indulged in election in 2007, has been taken into consideration by the Appropriate Authority while deciding first representation of the applicant (Annexure A/4), as such the original order of transfer of the applicant from Ajmer to Jaggabore, which is about 450 Kms. from Ajmer has been cancelled and modified and now the applicant was posted at Nasirabad, which is about 23 Kms. from Ajmer. Thus according to me, the applicant has been fairly treated by the respondents and impugned orders need not be interfered.

7. Further contention of the applicant that respondent no. 2 be also directed to decide the representation of the applicant dated 14.01.2008 (Annexure A/5) against the subsequent transfer order from Ajmer to Nasirabad, which is still pending, I am of the view that no positive directions need be given. However, it will be open for Respondent no. 2 to consider the said representation of the applicant and pass appropriate order and in that eventuality, observation made by this Tribunal, as aforesaid, will not come in his

tz

way to pass appropriate order in case respondents no. 2 decides to accept the representation of the applicant.

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


(M.L. CHAUHAN)

MEMBER (J)

AHQ