

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of August, 2010

Original Application No. 304/2010

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDL.)

Harivallabh Regar
s/o Shri Kayodi Lal Ji Regar,
r/o Dhanuwada Nai Basti,
Ward No.24, Jhalawar,
presently posted as
Accounts Clerk at Nehru Yuva Kendra,
Jhalawar.

... Applicant

(By Advocate: Shri S.P.Sharma)

Versus

1. Nehru Yuva Kendra Sangathan
through the Director General,
Core-4, Second Floor, Scope Minar,
Twin Tower Complex,
Laxmi Nagar, District Centre, Delhi.
2. Deputy Director (Personnel),
Nehru Yuva Kendra Sangathan,
Core-4, Second Floor, Scope Minar,
Twin Tower Complex,
Laxmi Nagar, District Centre, Delhi.
3. The Zonal Director,
Nehru Yuva Kendra Sangathan,
Kendriya Sadan Parisar,
Block 'A', Room No.205,
Vidhyadhar Nagar, Sector 10, Jaipur.
4. Youth Coordinator,
Nehru Yuva Kendra,
Fort Road, Jhalawar.

... Respondents

(By Advocate: Shri N.K.Bhat)

ORDER (ORAL)

The applicant has filed this OA against the impugned order of transfer dated 20.5.2010 (Annexure A/1) whereby the applicant has been transferred from Nehru Yuva Kendra, Jhalawar to Nehru Yuva Kendra, Dholpur. The transfer order has been challenged by the applicant on the ground that the said order has been passed by the incompetent authority and also to dislodge Shri Ravindra Kumar Saxena from Dholpur. It is further pleaded that the said order has not been passed for any administrative reason. The applicant has also pleaded that his father is suffering from paralysis and there no other family member to look after his father.

2. This Tribunal while issuing notices on 25.6.2010, kept the transfer in suspended animation and the applicant was retained at his present posting. The said ex-parte interim stay was granted on the ground that the order of transfer has not been passed by the competent authority whereas the power has been exercised by the subordinate authority i.e. the Zonal Director. The said stay is continuing from time to time.

3. The respondents have filed reply. Alongwith the reply, the respondents have annexed copy of the circular dated 2.8.1999 (Ann.R/1), perusal of which show that for Group 'B', 'C' and 'D' employees working under the administrative control of the Zonal Director, the Zonal has been delegated powers to transfer these employees within the zone. The respondents have categorically

10

stated that the applicant has been transferred within the zone, as such, the order has been passed by the competent authority. The respondents have also categorically stated that the circular dated 2.8.1999 was issued pursuant to the decision taken by the Board of Governors in its meeting held on 14.5.1999. The Board of Governors is the supreme authority for affairs and functioning of the Nehru Yuva Kendra Sangathan, as such, according to the respondents, the order of transfer has not been passed by the incompetent authority. The respondents have further stated that the applicant is permanent resident of Sarla Kala, Tehsil Khanpur, District Jhalawar and Jhalawar happens to be home district of the applicant. Thus, in view of the provisions contained in Clause-3 of Sub-Chapter (iv) (Chapter-VII) titled as Transfers, only Group 'D' employees are eligible to be considered for their posting in their home districts as far as possible whereas the applicant who is working as A.C.T. which post carry all India transfer liability could not have been posted at Jhalawar. Thus, under these circumstances the applicant was transferred vide impugned order. The respondents in para-4 of the reply affidavit have specifically stated that from the initial date of appointment, the applicant was posted as Group 'D' employee in district Jhalawar. Vide order dated 17.5.2005 he was promoted to the post of A.C.T., a Group 'C' post and posted at Nahan (H.P.). Within a very short span of time, he was brought back to Rajasthan and posted at N.Y.K. Dholpur vide order dated 1.9.2006. According to the respondents, the applicant remained posted in his home district most of the time, thus, he cannot make any grievance for his

transfer vide impugned order especially when he cannot be posted at his home district in terms of the provisions as mentioned above.

4. The applicant has filed rejoinder thereby stating that certain persons mentioned in para-2 of the rejoinder through belong to the home district have been permitted to work where as the applicant is being discriminated by transferring him to a distant place.

5. I have given due consideration to the submissions made by the learned counsel for the applicant. I am of the view that the applicant has not made out a case for my interference. The ground of the applicant on the basis of which stay was granted is that the order of transfer has been passed by the incompetent authority. As already stated above, the respondents have placed on record circular dated 2.8.1999 (Ann.R/1), perusal of which show that Zonal Director was competent to transfer Group 'B', 'C' and 'D' employees within zone. Admittedly, the applicant has been transferred within the zone, as such, contention raised by the applicant that the order of transfer has been passed by the incompetent authority deserves out right rejection. The respondents have further categorically stated that the applicant could not have been posted to his home district in view of the provisions contained in the transfer policy. At this stage, it will be useful to quote clause 3 of sub-Chapter (IV) (Chapter VII) titled as transfer, which has been annexed by the applicant as Ann.A/2 and thus reads:-

"3. Transfer Policy of NYKS

1. As a matter of policy, posting and transfers of Youth Coordinators to their own respective home districts should as far as possible be avoided save in

exceptional cases where (i) the local conditions are such that outsiders are not at all acceptable to the people or (ii) the personal circumstances of the individual functionary are such that he/she cannot be posted outside the home district. The exceptions, if any, to this general rule should, however, be made only after recording the reasons in writing and after obtaining prior approval of the Director General, NYK Sangathan. Group-D employees should as far as possible be posted in their own home district.

2....."

Thus, in view of the provisions contained in sub-clause (1) of clause 3 as reproduced above, the applicant has no indefeasible right to be posted to his home district. The departure to the general rule has to be made by the authority only after recording the reason in writing and after obtaining approval of the Director General. Thus, it cannot be said that transfer of the applicant was mala-fide or for extraneous consideration, rather it has been made in consonance with the transfer policy.

6. Scope of judicial review in the matter of transfer is very limited and it has been repeatedly held by the Apex Court that the order of transfer can be interfered on the ground of mala-fide and violation of any specific provisions. At this stage, I wish to quote a decision of the Apex Court in the case of Rajendra Singh and Ors. vs. State of U.P. and Ors. (2010) 1 SCC (L&S) 503 whereby the Apex Court in para 8 to 10 has made the following observations:-

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No government can function if the

government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose vs. State of Bihar* (192 SCC (L&S) 127), this Court held:-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule, or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

10. In *N.K. Singh vs. Union of India* (1994 SCC (O&S) 1304) this Court reiterated that:-

"6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision...."

6. As can be seen from the law laid down by the Apex Court, as reproduced above, the scope of judicial review in such matters are very limited and courts are always reluctant to interfere with transfer of an employee unless such transfer is in violation of some statutory

provisions or suffers from mala fide. The instant case is not a case of such nature. As such, I am of the view that the applicant has not made out a case for my interference. The new contention raised by the applicant in the rejoinder that some of persons have been permitted to work at their home district cannot be a ground for granting relief to the applicant dehors the policy decision besides the fact that new point taken in the rejoinder cannot be considered.

7. The learned counsel for the applicant, however, argued that condition of father of the applicant is precarious and he is paralytic, as such, the authority should consider his case sympathetically. Since clause-3 of the transfer policy, as reproduced above, vests the power with the authority to consider posting of the Youth Coordinator at his home district on the ground of personal circumstances of the individual, I see no reason why the appropriate authority shall not consider the matter within a reasonable period in light of the provisions contained in clause-3 of the transfer policy, in case such representation is made by the applicant.

8. For the foregoing reasons, the OA shall stand disposed of accordingly with no order as to costs. The interim direction issued on 25.6.2010 and continued from time to time shall stand vacated.


(M.L. CHAUHAN)
Judl. Member

R/