

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 19th day of August, 2010

Original Application No. 305/2010

CORAM:

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

Ravindra Kumar Saxena,  
s/o Shri Shyam Lal Saxena,  
r/o Satya Bhawan, Surajmal Nagar,  
Near Central School,  
Bharatpur, presently posted as  
Accounts Clerks at  
Nehru Yuva Kendra,  
Dholpur.

.. 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. Shri Shalesh, Director General &  
Joint Secretary, Nehru Yuva Kendra  
Sangathan, Core-4, Second Floor,  
Scope Minar, Twin Tower Complex,  
Laxmi Nagar,  
District Centre,  
Delhi.
5. Ms. Anita Bharti, Zonal Director,  
Nehru Yuva Kendra Sangathan,  
Kendriya Sadan Parisar,  
Block-A, Room No. 205,  
Vidhyadhar Nagar,  
Sector-10, Jaipur

... Respondents

(By Advocate: Shri N.K.Bhat)

#### ORDER (ORAL)

This is second round of litigation. Earlier the applicant has filed writ petition No. 2558/09 thereby challenging his transfer <sup>from</sup> to Nehru Yuva Kendra (NYK), Dholpur to Nehru Yuva Kendra, Chamba. The said writ petition was transferred to this Tribunal as the High Court had no jurisdiction to entertain the matter and the same was registered as TA No. 28/2009. Although for a considerable period there was no stay operating in favour of the applicant, still the original order of transfer of the applicant was not implemented by the respondents. Be that as it may, subsequently, the said TA was disposed of by this Tribunal vide order dated 13.5.2010 when the learned counsel for the respondents has produced Office Order No. 11029/NYKS/PERS:emp/Spl-1/2010 dated 12.5.2010 as well as letter No.11029/NYKS/PERS:Court Case/2010 dated 12.5.2010 on record which show that transfer order of the applicant from NYK, Dholpur to

NYK, Chamba has been withdrawn. At this stage, it will be useful to quote order dated 13.5.2010 (Ann.A/15), which thus reads:-

"Learned counsel for the respondents has produced copy of an Office Order No. 11029/BYKS/PERS:emp/Spl-1/2010 dated 12.5.2010 as well as a letter No.11029/NYKS/PERS:Court Case/2010 dated 12.5.2010, which show that transfer order dated 23.1.2009 in respect of the applicant from NYK, Dhaulpur (Rajasthan) to NYK, Chamba (HP) has been withdrawn. Thus, the relief claimed by the applicant in this TA has already been granted to him and as such this TA has become infructuous.

In the result the TA is disposed of as having been rendered infructuous....."

After disposal of the aforesaid TA vide order dated 13.5.2010, the respondents have again issued order dated 20.5.2010 (Ann.A/1) whereby the applicant has been transferred from Dhaulpur to Jhalawar. Now, it is this order which is under challenge in this OA.

2. When the matter was listed on 25.6.2010, ex-parte interim stay was granted by the Tribunal on the premise that the said transfer has been passed by the incompetent authority and also that the order of transfer is mala-fide. This Tribunal while granting ex-parte stay directed the respondents to keep the transfer in suspended animation if the relieving order is not implemented. It was also observed that during the interregnum period, the applicant shall be retained at his present place of posting. However, this Tribunal vide order dated 8.7.2010 has not extended the ex-parte say order when it was brought to the notice of the Tribunal that the applicant stood already relied on 1.6.2010 and the order of transfer has been implemented. The challenge, as already stated above, regarding the impugned order has been made by the applicant on the

ground that the order of transfer has been passed by the incompetent authority and also that action of the respondents is mala-fide. In order to substantiate his claim regarding mala-fide, it has been pleaded that once the transfer of the applicant from NYK, Dholpur to NYK, Chamba has been withdrawn thereby rendering his TA as infructuous, it was not permissible for the respondents to again transfer the applicant after a period of less than one months from the disposal of the TA vide impugned order dated 20.5.2010.

3. The respondents have filed reply. In the reply, the respondents have stated that the applicant has not come before the Tribunal with clean hands and has misled the Tribunal thereby obtaining ex-parte stay order. As can be seen from the order dated 13.5.2010 passed in earlier TA relevant portion of which has been reproduced above, Office Order No. 11029/BYKS/PERS:emp/Spl-1/2010 dated 12.5.2010 as well as a letter No.11029/NYKS/PERS:Court Case/2010 dated 12.5.2010, both were placed on record by the applicant as he has received both these letters. The respondents have also placed copy of letter No.11029/NYKS/PERS:Court Case/Spl.2/2010 dated 12.5.2010 issued by the Dy. Director (Pers.) on record as Ann.R/1, perusal of which show that no doubt the authority has recorded that earlier transfer order of the applicant has been suspended by the competent authority on 9.9.2009, thus there is no merit in transferring the ACT outside the State and the earlier order has been withdrawn. It is further observed that in case continuance of the applicant is hampering the work in the Kendra either on administrative ground or otherwise, the Zonal Director is fully

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competent to transfer him elsewhere within the State. Thus, according to the respondents, in view of this clear cut observation in the letter dated 12.5.2010 (Ann.R/1) copy of which was also made available to the applicant, the contention raised by the applicant that he could not have been transferred vide impugned order after withdrawal of transfer order is wholly misconceived and it is not a case of mala-fide exercise of power. Regarding the contention raised by the applicant that the transfer order has been passed by the incompetent authority, the respondents have placed on record copy of the circular dated 2.8.1999, perusal of which reveals that Zonal Director is competent to transfer Group 'B', 'C' and 'D' employees working under his administrative control within the zone. Thus, according to the respondents, contention of the applicant that the impugned order has been passed by the incompetent authority is also without merit. On merit, the respondents have categorically stated that the applicant has been continuously posted at NYK, Dholpur for about more than 11 years. It is further stated that the applicant was initially posted after his appointment at NYK, Bharatpur and continued there till his transfer to NYK, Dholpur. Thus, according to the respondents, the applicant has no claim for his posting at Dholpur even after a long stay. It is further pleaded that the applicant was aware that number of complaints have been received against him and more so in the aforesaid order dated 12.5.2010 the competent authority has specifically authorize the Zonal Director to transfer him within the State. The respondents have further stated that the stay order dated 18.9.2006 passed by the

Hon'ble High Court was vacated and the applicant could have been relieved to join at Nahan (H.P.) <sup>u (should have been Chamba) u</sup> however lenient view was taken by the department and he was transferred to Bikaner within the State. It is further stated that however the applicant did not comply this transfer order in spite of the fact that he failed to get any stay order against this order.

4. The applicant has filed rejoinder thereby reiterating that neither any complaint has been received against him nor he made any complaint against any officer. It is further stated that the applicant was not aware about the fact that Zonal Director was competent to pass the transfer order.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. Who may be transferred where is a matter to be decided by the competent authority and the 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 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 ..."

7. The question which requires my consideration is whether the applicant has made out a case in the terms of law laid down by the Apex Court, as reproduced above. Admittedly, in the instant case,

the order of transfer has been passed by the competent authority, as can be seen from the circular dated 2.8.1999 (Ann.R/2). Even the applicant has not disputed this fact in the rejoinder that Zonal Director is not competent to transfer the applicant, as such, in my view the impugned transfer has been passed by the competent authority. The second contention raised by the applicant is regarding mala-fide exercise of power on the ground that TA was made infructuous by canceling the order of transfer from NYK, Dholpur to NYK, Chamba and simultaneously passed the impugned order dated 20.5.2010 (Ann.A/1) within a period of one month. I am of the view that the applicant has not made out any case of mala-fide on this ground for the reasons stated hereinbelow. As can be seen from the order dated 13.5.2010, relevant portion of which has been reproduced above, the reference has been made about two orders/letters, more particularly, order dated 12.5.2010 (Ann.R/1) issued by the Nehru Yuva Kendra Sangathan, Delhi, perusal of which reveals that earlier order of transfer of the applicant from NYK, Dholpur to NYK, Chamba was withdrawn and liberty was reserved to the Zonal Director to transfer the applicant within State in case the applicant hampers work in the Kendra either on administrative ground or otherwise. Admittedly, the applicant was aware regarding this order passed by the competent authority. Not only that, the same order was placed on record in the earlier TA. The applicant did not object disposal of the TA on the basis of letter Ann.R/1 and another letter of even No. dated 12.5.2010. It was permissible for the applicant to oppose disposal of the TA on the

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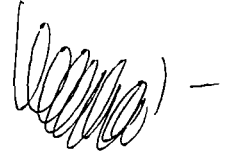


basis of these letters and could have insisted for disposal of the TA on merit. Having not done so and more particularly when the stay in favour of the applicant was not operating it was permissible for the respondents to relieve the applicant to Chamba i.e. outside the State pursuant to the order dated 23.1.2009, still the applicant was not forced to join at Chamba till cancellation of the order dated 23.1.2009 on 12.5.2010 after a period of about 16 months, show bona-fide of the respondents that they were not acting in mala-fide manner so far as the applicant is concerned. From the material placed on record, it is evident that the applicant has been working at Dholpur for the last 11 years. Thus, in these circumstances, it cannot be said that the order of transfer has been passed in a mala-fide manner or in violation of the statutory provisions. Thus, the applicant has not made out a case for my interference.

8. Before parting with the matter, the learned counsel for the applicant submits that the impugned order of transfer has caused hardship to the applicant, inasmuch as, age of father of the applicant is about 83 years and he is bed ridden and living the life in the wheel chair, as such, the applicant may be allowed to continue at Dholpur. It is settled position that order of transfer shall cause hardship to the individual but that is not a ground for canceling the order of transfer and it is a matter to be considered by the appropriate authority. In case the applicant makes such grievance before the appropriate authority, I see no reason why the appropriate authority shall not consider such request in accordance with the law within a reasonable period.

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9. — With these observations, the OA shall stand disposed of with no order as to costs.



(M.L. CHAUHAN)  
Judl. Member

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