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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.11.2011

OA No. 491/2011

Mr. S. Shrivastava, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents.

Learned counsel for the respondents submits that he has the reply yesterday. The Registry is directed to place the same on record.

replay filed
U2
List it on 29.11.2011. In the meantime, the applicant may file rejoinder, if any.

Anil Kumar
(Anil Kumar)
Member (A)

1
Rejoinder
not filed

ahq

29.11.2011

Mr. S. Shrivastava, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents
Heard. The OA is disposed of by a

separate order.

(Anil Kumar)
M (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of November, 2011

ORIGINAL APPLICATION No. 491/2011

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Asharam son of Shri Mahadev aged about 53 years, resident of Gram Sakhunia, Post Bhopadpura, District Sikar. Presently posted as Health Inspector at Jaipur under Station Manager, Jaipur Division of NWR, Jaipur.

... Applicant

(By Advocate : Mr. S. Shrivastava)

Versus

1. Union of India through Divisional Personnel Manager (P), Jaipur Division, DRM Office, Power House Road, Jaipur.
2. Chief Medical Superintendent, Railway Hospital, Hasanpura Road, Jaipur.

... Respondents

(By Advocates : Mr. Anupam Agarwal)

ORDER (ORAL)

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

"(A) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 11.02.2011 (Annexure A/1) and order dated 10.10.2011 (Annexure A/2) passed by the respondents arbitrarily for extraneous reasons and which seems to be punitive.

(B) Respondents may further be directed to consider the representation of the petitioner in right perspective afresh.

(C) Any other order, which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case be passed in favour of the petitioner."

Anil Kumar

2. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the applicant was transferred from Jaipur to Rewari vide order dated 11.02.2011 (Annexure A/1) in an arbitrary manner for extraneous reasons under the garb of word & expression 'Administrative interest.' He further argued that the applicant was transfer^{ned} in order to accommodate others to the places to their choice. In case of reduction of posts, junior person should have been transferred. That the applicant has got his name noted for Sikar. That the respondents have reduced the posts to adjust other persons to their places of choice. That the applicant has been made escape goat for the advantage of other employees and has been victimized intentionally because he made complaint of the officers to the Railway Board. That being aggrieved by the order of transfer dated 11.02.2011, he filed an OA No. 223/2011, which was decided by this Tribunal with the direction to the respondents to consider the representation of the applicant afresh. He further argued that the applicant filed a detailed representation dated 10.06.2011 but the respondents have again passed an arbitrary order without considering the points raised in the representation and have rejected the representation vide order dated 10.10.2011 (Annexure A/2).

3. He further argued that perusal of Annexure A/1 shows that several employees have been adjusted to the places of their choice but the applicant has been

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transferred to Rewari. That the transfer order dated 11.02.2011 has been made on the ground that an inspection was carried out in the year 2009. This shows that he was transferred after two years of inspection and also shows the malafide intention of the respondents. That the applicant is working in the grade pay of Rs.4200/- and he is the senior most person. That at Rewari, there is no post of Health Inspector in the pay grade of Rs.4200/-. The post at Rewari is under the pay grade of Rs.4600/-. Since there is no post in the pay grade of Rs.4200/-, the applicant cannot be posted there. He further argued that there is no administrative interest involved in his transfer and the word & expression 'Administrative interest' has been used by the respondents so as to prevent the applicant from questioning arbitrariness of his transfer and victimization for others. That his representation has been decided by the respondents vide order dated 10.10.2011 without considering the points raised by the applicant in his representation and the impugned order seems to be punitive in nature. He further argued that the respondents served the applicant a minor penalty charge sheet for the reasons for which no other employee is charge sheeted normally. He has been charge sheeted because the applicant has challenged the transfer order before the Tribunal and the Tribunal issued the direction to consider his representation afresh. Therefore, he argued that his transfer order dated 11.02.2011 (Annexure A1) and decision on his representation taken by the respondents

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dated 10.10.2011 (Annexure A/2) may be quashed and his transfer to Rewari may be cancelled.

4. On the contrary, learned counsel for the respondents argued that the applicant has been rightly transferred for valid administrative reasons. The same has been disclosed to him as well as while deciding his representation. That the applicant has failed to join his new place of posting till date despite the order dated 10.10.2011 (Annexure A/2). He further argued that it is wrong to say that the applicant is being harassed under the garb of expression 'Administrative interest'. Bare perusal of Annexure A/2 would refute such allegation. Seniority has no role in the case of transfer. He further argued that it is not correct to say that the applicant has been transferred because of reduction of posts. So far as the transfer on name noting basis is concerned, it is allowed provided that there is post available at the requested station. At present there is no vacant post available at Sikar. He stated at Bar that as & when the post would be available at Sikar, his request for transfer to Sikar would be considered at the appropriate time. He further argued that reading of order (Annexure A/2) makes it clear that the applicant was found negligent in his duties. Admittedly, Jaipur is an 'A-1' category railway station where important persons and tourists visited regularly. As such, it is more important to keep it ^{clean} and maintain its cleanliness. The applicant failed to improve despite warning and punishment. Therefore, the respondents have no option ^{but} to transfer the applicant in

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administrative exigency of service. The respondents have denied that the applicant has been transferred of old incident rather it is because of the reasons detailed in Annexure A/2. Admittedly, he was found to be negligent during inspection. His name find place in the note put up by the Senior DCM. His name was noted for transferring him. The applicant has not impleaded any person in personal capacity, as such any submission of malafide cannot be gone into by the learned Tribunal. The applicant's representation has been decided by a speaking & reasoned order. He further argued that if he has any grievance against the punishment order, then he may seek redressal through proper procedure as per rules and it cannot be clubbed in this OA. That the transfer is an incident of service. His posting at the railway station is an out of cadre posting but not a deputation so as to ask for the repatriation back to his medical service. That the disciplinary proceedings were initiated against him and he was punished after following the due procedure. Therefore, there is no merit in the OA and it should be dismissed with cost in favour of the respondents.

5. Having heard the rival submission of the parties and perusal of the documents on record and the circumstances of the case, I am of the opinion that there is no ground for the interference by this Tribunal in the present case. I have carefully gone through the decision taken by the respondents on his representation dated 10.10.2011 which clearly states the reasons of his transfer from Jaipur to

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Rewari. This order of the respondents is a very reasoned and speaking order. The respondents have clearly stated that the applicant was transferred from Sikar to Jaipur on the ground that he would improve his work while working under the supervision of his seniors but he did not improve his work and conduct and he was careless in discharging ~~of~~ his duties. As a consequence, he was also served with three charge sheets and he was also penalized. His supervisory Officer after inspection in July, 2009 had recommended for his transfer but the applicant was given an opportunity to improve himself but since he did not show any improvement, he was transferred vide order dated 11.02.2011. Jaipur being the capital of Rajasthan and a tourist centre, therefore, it is necessary that the station is kept clean but the applicant did not show any improvement inspite of opportunities being given to him to improve his work. He used to absent during inspection by the senior officers. In my opinion, the applicant has not been able to prove any malafide against any of his superior officer or against the competent authority who transferred him. He was not only given many opportunities to improve his work and conduct but he was also penalized by the respondents after issuance of charge sheets to him. Thus there are enough administrative grounds to transfer the applicant from Jaipur to Rewari as stated by the respondents. Seniority has no role while transferring him. It is admitted that Rewari has no post in the pay grade of Rs.4200/- but there is a post in the pay grade of Rs.4600/-. A junior employee can always be posted

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against the senior position if that is vacant. In this case, the post at Rewari is vacant in the grade pay of Rs.4600/-. Therefore, in my opinion there is no irregularity in posting the applicant against the pay grade of Rs.4600/-. As regards his posting at Sikar is concerned, the respondents have stated that his name has been noted for post at Sikar and as & when the post would become available at Sikar, he would be considered at ~~that~~ appropriate time. Thus on any ground, the applicant has not made out any case for interference by this Tribunal.

6. Consequently, the OA is dismissed being devoid of merit with no order as to costs.

7. Learned counsel for the applicant also argued that he may be repatriated to his parent department. The applicant is at liberty to file a representation to this effect to the competent authority and it is for the competent authority to consider the representation of the applicant and take a view on the representation of the applicant, if so filed.

Anil Kumar
(Anil Kumar)
Member (A)

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