

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

12

ORDERS OF THE BENCH

Date of Order: 17.05.2012

OA No. 652/2011 with MA No. 106/2012 ✓

Mr. Rajvir Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties. O.A. and M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 17th day of May, 2012

ORIGINAL APPLICATION No.652/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

Parmanand Meena
s/o Shri Heera Lal Meena,
r/o 2-C-6, Mahavir Nagar-III,
Kota

... Applicant

(By Advocate: Shri Rajveer Sharma)

Versus

1. Union of India
Through Secretary (Revenue),
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Narcotics Commissioner,
19 The Mall, Morar, Gwalior-6
3. The Deputy Narcotics Commissioner,
Kota, Mahavir Nagar- 1st,
Jhalawar Road, Kota.
4. The Superintendent (Executive),
Office of the Deputy Narcotics Commissioner,
Mahavir Nagar-1st, Jhalawar Road,
Kota.

... Respondents

(By Advocate : Shri Mukesh Agarwal)

ORDER (ORAL)

This is second round of litigation. Earlier the applicant preferred OA No. 537/2011 and the same was disposed of vide order dated 22.11.2011. In the aforesaid OA, the applicant has challenged the transfer order dated 28.10.2011 on the ground that he is going to superannuate/retire on 31.1.2013, which is less than two years and also challenged on the ground that marriage of his daughter has been fixed on 17.2.2012 at Kota and there is no other person to arrange the marriage except the applicant.

2. Having considered the submissions made on behalf of the applicant, this Tribunal vide order dated 22.11.2011 given liberty to the applicant to file representation within 15 days from the date of passing of the order and the respondents were directed to decide the same sympathetically and according to the provisions of law on the subject within a period of two months from the date of receipt of the representation and in the meanwhile operation of the order dated 28.10.2011 was stayed as far as it relates to the applicant, if he has not been relieved from the post till date till the decision is taken by the respondents on the applicant's representation. A liberty was also extended to the applicant to file substantive OA, if any prejudicial order is passed by the respondents.



3. Pursuant to the directions, the applicant represented before the respondents vide representation dated 29.11.2011 (Ann.A/9) and the same has been considered by the respondents and rejected on administrative ground vide impugned order dated 12.12.2011 (Ann.A/1).

4. Aggrieved and dis-satisfied with the impugned order dated 12.12.2011 (Ann.A/1) and the transfer order dated 28.10.2011 (Ann.A/2) which was under challenge in the earlier OA No.537/2011 and operation of which was stayed by this Tribunal till the disposal of his representation, if he has not been relieved, the present OA is filed. Since representation of the applicant has been decided vide order 12.12.2011, admittedly, the stay was to operate till 11.12.2011.

5. I have perused the grounds taken in the present OA. More or less same grounds are taken in the present OA as has been taken in the earlier OA, beside the ground regarding marriage of his daughter which was fixed on 17.2.2012. Admittedly, the marriage of daughter of the applicant has already taken place. Now the additional plea taken by the applicant is that he is heart patient and under continuous treatment of Dr. Rakesh Jindal, Senior Cardiologist at Kota and this facility of Cardiologist is not available at Ghazipur, which is about 1000 kms from Kota. Further, the applicant is going to retire in January, 2013, therefore, looking to the



facts and circumstances, the transfer order dated 28.10.2011 (Ann.A/2) deserves to be quashed and set-aside.

6. In their reply, the respondents have stated that the transfer order of the applicant alongwith 10 Inspectors was made in the public interest as well as on administrative grounds as several complaints were received against the applicant from the opium growing areas under Kota Division. Therefore, his transfer was ordered in administrative interest.

7. The learned counsel appearing for the respondents referred the order dated 14.7.1992 passed in OA No.460/1992 by the CAT-Jodhpur Bench wherein also much emphasis was laid first on health grounds and second that the applicant was due to retire in near future and the Jodhpur Bench relied upon the case of Kamlesh Trivedi vs. Indian Council of Agricultural Research, AIR 1988 (2) 116 wherein it was held that if transfer order has been passed on the basis of allegation, it does not amount to a punitive transfer.

8. In support of his submissions, the applicant has also made submission that his representation was not considered as per the law laid down by the Hon'ble Supreme Court in the case of M/s Kranti Associates Pvt. Ltd. vs. Smt. Mazood Khan, reported in 2011 CDR (SC) 117 and Assistant Commissioner, Commercial Tax Department vs. Shukla and brothers reported in 2010 (4) SCC 785. Also relied



upon the judgment of the Division Bench of the Rajasthan High Court in the case of Dr. (Smt.) Pushpa Mehta vs. Rajasthan Civil Services Appellate Tribunal and Ors., reported in 2005 (5) SLR 598, wherein the Division Bench of the Hon'ble High Court held that ordinarily an employee should not be disturbed from the place of his posting, when that employee is on the verge of his retirement unless there are compelling reasons.

9. Having considered the rival submissions of the respective parties and upon perusal of the material available on record as well as the judgments referred by the respective parties, it is not disputed that in earlier OA No.537/2011, this Tribunal has given liberty to file representation with direction to dispose of the same in accordance with provisions of law and till disposal of the representation operation of the impugned transfer order dated 28.10.2011 (Ann.A/2) was stayed. The said representation has already been disposed of vide order dated 12.12.2011 (Ann.A/1) and request of the applicant for canceling the transfer order dated 28.10.2011 has been rejected. The applicant himself placed reliance on the judgment of the Division Bench of the Hon'ble High Court wherein it is held that ordinarily an employee should not be disturbed from the place of his posting, when that employee is on the verge of his retirement unless there are compelling reasons. It is submitted by the learned counsel appearing for the respondents that there are complaints against the applicant from the opium growing areas of Kota Division and the



transfer order is passed in public as well as in administrative interest. Thus, the ratio decided by the Hon'ble High Court in the case of Dr. (Smt.) Pushpa Mehta (supra) does apply but the ratio in the case of Kamlesh Trivedi (supra) is applicable in the facts and circumstances of the present case. The applicant can be transferred in the public as well as in administrative interest, if there exist compelling reasons with the administration. When there are complaints against an employee, two courses are open to the competent authority – either to initiate disciplinary proceedings or to adopt an easier course to transfer him to a different station to put an end to such complaints as well as in the interest of fair administration and such transfer is not deemed to be a punishment, therefore, a mere transfer order without a stigma is a safer course which is beneficial to the employee also. As per the ratio decided by the Hon'ble Supreme Court in the case of Kamlesh Tiwari (supra), I am of the view that no case is made out to interfere with the transfer order dated 28.10.2011 and the order is passed in public as well as in the administrative interest as several complaints have been received against the applicant and the respondents have rightly rejected the representation submitted by the applicant vide impugned order dated 12.12.2011. The cases relied upon by the learned counsel appearing for the applicant are not applicable in the facts and circumstances of the present case.



10. Consequently, no interference, whatsoever, is required and the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

11. In view of the order passed in OA, no order is required to be passed in MA No.106/2012, which is disposed of accordingly.


(JUSTICE K.S.RATHORE)
Judl. Member

R/