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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET


ORDERS OF THE TRIBUNAL

29.05.2012

OA No. 309/2012

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties. The OA is disposed of by a separate order.


(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of May, 2012

ORIGINAL APPLICATION No. 309/2012

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mr. Beni Prasad Tinker son of Shri Ratan Lal Tinker by caste Tinker, aged about 39 years, resident of House No. 1692, Thatheron Ka Rasta, SMS Highway, Jaipur. Presently working as UDC in the Office of Survey of India, RGDC (Rajasthan Geo Spatial Data Centre) Great ARC Bhawan, Sector 10, Vidhya Dhar Nagar, Jaipur.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Department of Survey of India, Ministry of Science and Technology, New Mehroli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Dehradun (Uttarakhand), India.
3. The Additional Surveyor General, Western Zone, Sector 10, Vidhyadhar Nagar, Jaipur.
4. R.K. Nigam, Director, RGDC (Rajasthan Geo Spatial Data Centre), Survey of India, Great ARC Bhawan, Sector 10, Vidhya Dhar Nagar, Jaipur.
5. Shree K.R. Meena, Retired as Additional Surveyor General, Western Zone, Jaipur (Rajasthan).

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

This is the third round of litigation between the parties. Earlier the applicant had preferred an OA No. 131/2012 and this Tribunal vide its order dated 27.02.2012 had directed the respondents to decide the representation of the applicant and the same was decided by the respondents vide their order dated 07.03.2012. Subsequently, another OA No. 160/2012 was preferred by the applicant, which was decided by this Tribunal vide its order dated 03.05.2012. This OA was

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withdrawn by the applicant and he was given liberty to file substantive OA to challenge the order dated 07.03.2012 by which the representation of the applicant was decided by the respondents. The present OA has been filed by the applicant praying for the following reliefs:-

- (i) That by a suitable writ/order or the direction the impugned order vide Annexure A/1 order dated 7.3.2012 be quashed and set aside.
- (ii) That by a suitable writ/order or the direction the impugned order dated 5.3.2012 vide Annexure A/1-A be quashed and set aside.
- (iii) That by a suitable writ/order or the direction the impugned order dated 24.01.2012 vide Annexure A/2 be quashed and set aside.
- (iv) That by a suitable writ/order or the directions the respondents be directed to treat the applicant on duty with effect from 25.04.2012 to till the date and further the respondents be directed to allow the applicant to perform his duties in Jaipur office continuously.
- (v) That by a suitable writ/order or the directions, the respondents be directed not to relieve the applicant from Jaipur till that the officials of long stay are performing their duties in Jaipur Office.

2. Learned counsel for the applicant has challenged the transfer order dated 24.01.2012 vide which the applicant was transferred from Rajasthan GDC at Jaipur to Gujarat, Daman & Diu GDC at Gandhinagar Station (Annexure A/2). He has also assailed the rejection order of his representation issued by the respondents vide dated 07.03.2012 (Annexure A/1). Learned counsel for the applicant argued that the applicant has been transferred due to malafide intention of Shri K.R. Meena, Additional Surveyor General, Western Zone, Jaipur. The reason of malafide intend of Shri K.R. Meena is that the applicant submitted an application dated 09.08.2011 (Annexure A/3) against the wrong action of Shri K.R. Meena. That due to the malafide intend against the

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applicant, Shri K.R. Meena did not implement the order of MACP issued in favour of the applicant.

3. He further argued that the family circumstances of the applicant are such that he is not in a situation to leave Jaipur. His parents are very old. The applicant is the only son and member in the family to look after his parents. That the responsibility of a married sister is also on the shoulder of the applicant as the married sister is residing at the applicant's home due to some marital disputes. That due to marital dispute, the wife of the applicant is not residing with the applicant and his three old son is residing with the applicant and the responsibility to bring up the minor son is on the applicant and if the applicant is transferred to Gandhi Nagar then it will be very difficult to look after his three years old son without the assistance of other family members. That he is the only earning member in the family. That one Shri Dinesh Saini, Assistant, has already been relieved from Jaipur to join to Gujarat. Therefore, the shortage of staff, as stated by the respondents, is no longer there. That the applicant has been at Jaipur only for 9 years while there are other UDCs in the office of the respondents who have served at Jaipur for longer period than the applicant. He drew my attention to the list of such officers which he has given in Para 5.14 of his OA. In support of his arguments on this point, he referred to order of the CAT Jabalpur Bench in OA No. 188/2007 dated 17.01.2008 in the case of **Shri Padma Kanta Saikia vs. Union of India**, reported in Swamy News September, 2009 at Page 92.

Thus he argued that there is no reasonable ground to transfer the applicant from Jaipur to Gandhinagar. Therefore, the order dated

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24.01.2012 (Annexure A/2) transferring the applicant from Jaipur to Gandhinagar and rejection of the applicant's representation vide order dated 07.03.2012 (Annexure A/1) be quashed and set aside.

4. On the contrary, learned counsel for the respondents argued that the applicant has already been relieved vide order dated 24.04.2012. The applicant has not assailed this order. Therefore, this OA is not maintainable at this stage. He further argued that since the applicant has been relieved, therefore, he should join at Gandhinagar first and then he can make a representation to the competent authority for redressal of his grievances, if any. In support of his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **S.C. Saxena vs. Union of India**, 2006(9) SCC 583, wherein the Hon'ble Supreme Court has held that a Government servant cannot disobey a transfer order by not reporting at the place of posting and then to go to a court to ventilate his grievance. It is his duty to first report for work where he is transferred and makes a representation as to what may be his personal problems.

5. He further argued that the allegations of malafide against Shri K.R. Meena are not correct as the transfer order has been issued by the Surveyor General of India and not by the Additional Surveyor General, Shri K.R. Meena. Similarly, the representation of the applicant has been decided by the Surveyor General of India by a speaking order dated 07.03.2012. Therefore, there is no malafide intend on the part of the respondents towards the applicant because the transfer order has been issued as per administrative requirement of the department. There was shortage of staff at Gandhinagar and,

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therefore, at the request of that office, some additional staff was to be posted at Gandhinagar to handle day to day work of that office. The submission of the applicant that there was requirement of Assistant only is not correct. He further argued that due to the functional requirement, transfer and deputation are usually made by the Government from one department to another department but the same does not provide any legal right to the applicant to remain at Jaipur. The applicant has been transferred purely on administrative grounds by the competent authority.

6. He further argued that the applicant's representation against the transfer order was duly considered by the competent authority i.e. Surveyor General of India and the same has been rejected by a speaking order dated 07.03.2012. He further argued that Apex Court had held that transfer order should not be interfered with by the Tribunal/Courts unless it is based on malafide or issued by an incompetent authority, or it is against the statutory provisions. He submitted that in this case, as stated earlier, transfer order has been issued on administrative grounds and there is no malafide intention against the applicant. The applicant has leveled/charged malafide intention against the Additional Surveyor General, Shri K.R. Meena but the transfer order has been issued by the Surveyor General of India. There is no allegation of malafide against him. He further submitted that the transfer order has been issued by the competent authority and it is not against any provisions of law. Therefore, the transfer order dated 24.01.2012 (Annexure A/2) cannot be interfered with by the Tribunal. In support of his averments, he referred to the judgments of the Hon'ble Supreme Court in the cases of **Union of**

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India & Others vs. S.L. Abbas, 1994 SCC (L&S) 230 and **State of U.P. & Others vs. Gobardhan Lal**, 2005 SCC (L&S) 55. Therefore, he submitted that in view of the facts & circumstances and in view of the ratio laid down by the Hon'ble Supreme Court in the above cases, the present OA has no merit and it should be dismissed with costs.

7. Heard the learned counsel for the parties and perused the relevant documents on record and also perused the case law referred to by the learned counsel for the parties. The bare perusal of order dated 07.03.2012 passed by the Surveyor General of India clearly shows that there was functional requirement of UDCs in Gandhinagar and in view of functional requirement at Gandhinagar, the applicant was transferred from Jaipur to Gandhinagar in public interest on functional requirement of the department. I have gone through the order dated 07.03.2012 carefully and I find that there is no infirmity/illegality in the order dated 07.03.2012 issued by the Surveyor General of India and the applicant's representation has been duly considered and after consideration of his representation, this order has been passed by the Surveyor General of India. The transfer is an incidence of service, there may be some personal inconvenience to an employee on transfer but that cannot take away the right of the employer to transfer an employee from one place to another. The order of the CAT, Jabalpur Bench in the case of **Shri Padma Kanta Saikia vs. Union of India** (supra) is not applicable under the facts & circumstances of the present case. In the above case it was stated that worked charged staff should not normally be transferred from one place to another and in inescapable situation as per clause II(b) of the policy is to be followed. That clause states that the person with longest

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continuous stay at the place of his current posting, in any grade/post or who has never been transferred should be transferred first.

8. In the present OA, it is not the case of the applicant that his post is not transferable. He has not been able to show any policy of the respondents which states that if any employee is to be transferred then the person of longest continuous stay has to be transferred first. Therefore, I am of the opinion that the ratio decided by the CAT Jabalpur Bench in the case of **Shri Padma Kanta Saikia vs. Union of India** (supra) is not applicable under the fact & circumstances of the present OA. On the other hand the ratio decided by the Hon'ble Supreme Court in the cases of **S.C. Saxena vs. Union of India**, 2006(9) SCC 583, **Union of India & Others vs. S.L. Abbas**, 1994 SCC (L&S) 230 and **State of U.P. & Others vs. Gobardhan Lal**, 2005 SCC (L&S) 55 are squarely applicable in the facts & circumstances of the present case. I do not find any infirmity or illegality in the transfer order dated 24.01.2012 (Annexure A/2) and the order dated 07.03.2012 (Annexure A/1) by which the representation of the applicant was rejected. Therefore, I am of the opinion that the applicant is not entitled to any relief in the present OA.

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

Anil Kumar
(Anil Kumar)
Member (A)

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