

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 06.09.2013

OA No. 692/2012 with MA No. 381/2012

Mr. Mahesh Kalwania, counsel for applicant.
Mr. V.K. Pareek, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter on 16.09.2013 for hearing. I.R. to continue till the next date.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

16.09.2013

OA NO. 692/12 with MA NO. 381/12

Mr. Mahesh Kalwania, Counsel for applicant
Mr. V.K. Pareek, Counsel for respondents

Heard
and M.A.
O.A. ~~Pareek~~ disposed of by a
separate order on the separate
Sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 692/2012
With
MISC. APPLICATION NO. 381/2012

Jaipur, the 16th day of September, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER

Laxmi Narayan Bunkar son of Late Shri Chanda Ram Bunkar, aged about 55 years, resident of Khara Kua, Old Ward No. 22, Bunkar Mohalla, Amer, District Jaipur. Presently resident of 47, Pratap Colony, Nai Ki Thadi, Post Lalwas, Ramgarh Road, Amer. Presently posted as Assistant Instructor (IV Class) in the office of Assistant Director (A&C), Office of the Development Commissioner (Handicraft) Dumping Store, Watika, Jaipur.

... Applicant

(By Advocate: Mr. Mahesh Kalwania)

Versus

1. Union of India through Director, Ministry of Textile, Northern Regional Office, West Block No. 8, R.K. Puram, New Delhi.
2. The Deputy Director (NR), West Block No. 8, R.K. Puram, New Delhi.
3. Assistant Director (A&C), Office of the Development Commissioner (Handicraft) Dumping Store, Watika, Jaipur.

... Respondents

(By Advocate: Mr. V.K. Pareek)

ORDER (ORAL)

The applicant has filed the present OA being aggrieved by the order dated 14.09.2012 (Annexue A/1) vide which he has been transferred from M&SEC Jaipur to Service Centre Udaipur.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is presently working on the post of Assistant Inspector under the office of

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respondent no. 3 since 17.10.2007 and there is no complaint against the applicant at his present place of posting.

3. That the wife of the applicant is suffering from heart disease for the last five years. She was admitted many times in the various hospitals at Jaipur for taking treatment. There is no other member in the family to look after her except the applicant.

4. That the respondent no. 2 vide order dated 14.09.2012 (Annexure A/1) has transferred the applicant from the present place of posting to Service Centre Udaipur which is about 450 Kms. from his present place of posting. Hence, the transfer order dated 14.09.2012 is patently unconstitutional and, therefore, it is liable to be quashed and set aside. He further argued that the transfer order dated 14.09.2012 has been issued malafidely, without any administrative exigency and public interest.

5. The learned counsel for the applicant argued that there is no work to be done by the applicant at the place of his new posting and, therefore, the transfer order is issued with malafide intention to disturb the applicant from his present place of posting. Hence the transfer order needs to be quashed and set aside.

6. The learned counsel for the applicant also stated at Bar that the applicant is a surplus employee and being a surplus

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employee, he cannot be transferred from his present place of posting. Therefore, on this ground also, the transfer order needs to be quashed and set aside.

7. On the contrary, the learned counsel for the respondents submitted that the applicant was transferred to Service Centre Udaipur vide order dated 14.09.2012 in the administrative exigency due to the fact that there was shortage of staff at Service Centre Udaipur.

8. He further stated that it is not correct to say that the applicant is the only person to look after his wife. Apart from the applicant and his wife, his son Hemraj aged 27 years, another son Sawan Kumar aged 25 years, daughter Sukanya Kumari aged 22 years and daughter Kumar Monu aged 20 years are there to look after the wife of the applicant. Otherwise also, there are ample medical facilities in Udaipur and the wife of the applicant can very well be treated at Udaipur itself.

9. The learned counsel for the respondents further argued that the applicant is challenging the transfer policy of the Government without any basis. At Jaipur office, there are 20 staff working at present. The Department has two offices at Jodhpur and Udaipur. There is shortage of staff at Udaipur as it has only two employees at present and at Jodhpur, there is only one staff member. Therefore, the allegation of the applicant that he has been transferred to Udaipur due to

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malice and without administrative exigency is false. Thus the applicant has been transferred in the administrative exigency.

10. With regard to the submission of the learned counsel for the applicant that the applicant has been declared surplus and hence he cannot be transferred, the learned counsel for the respondents submitted that the applicant cannot raise arguments beyond the pleadings in the OA. He has no where mentioned in the OA that the applicant is a surplus employee and hence he cannot be transferred. Therefore, he cannot take this plea at the stage of arguments.

11. Thus the transfer order dated 14.09.2012 (Annexure A/1), transferring the services of the applicant to Service Centre Udaipur, does not suffer from any infirmity as he has been transferred in the administrative exigency due to shortage of staff at Udaipur.

12. The learned counsel for the respondents further stated that Dumping Store Watika, Jaipur where the applicant has prayed to be shifted, has already been closed down vide order dated 27.02.2007 (Annexure R/1) and the applicant has already been relieved vide order dated 28.02.2007 (Annexure R/2). Therefore, he submitted that the OA has no merit and it should be dismissed with costs.

13. In support of his arguments, the learned counsel for the respondents referred to the judgment of the Hon'ble Supreme

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Court in the case of **State Bank of India vs. Anjan Sanyal & Others**, 2001 (5) SCC 508.

14. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the respondents. It is well settled law that transfer is an incidence of service and it was not disputed by the learned counsel for the applicant that the applicant has transfer liability. From the perusal of the order dated 27.02.2007 and 28.02.2007 (Annexures R/1 & R/2 respectively), it appears that earlier also, the applicant was transferred to Service Centre Udaipur due to closure of Dumping Store Watika. However, the learned counsel for the respondents could not show any document vide which the applicant was again transferred from Service Centre Udaipur to M&SEC Jaipur where he is presently working. It has not been denied by the respondents that the applicant is presently posted at Jaipur.

15. It is well settled that it is for the employer to post the employees in the interest of service or due to administrative exigency. Therefore, I am not inclined to grant any relief to the applicant on the ground that his wife is suffering from heart disease. There are good medical facilities at Udaipur and, therefore, his wife can get treatment at Udaipur. Besides the respondents have also stated in their written reply that there are other family members of the applicant who can look after the wife of the applicant.

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16. However, the learned counsel for the respondents agreed to the oral submission made by the learned counsel for the applicant that the applicant has been declared surplus. The respondents in their written reply have submitted that there is shortage of staff at Udaipur and only two employees are working at Udaipur at present but the learned counsel for the respondents could not clarify during the arguments that the applicant has been posted against which post at Udaipur. If the applicant is a surplus employee then he has to be redeployed according to the rules. The learned counsel for the applicant stated that there is no work at Udaipur because staff working at Udaipur is also declared surplus. Therefore, there is no administrative exigency involved in the transfer of the applicant from Jaipur to Udaipur.

17. I have carefully perused the judgment of the Hon'ble Supreme Court in the case **State Bank of India vs. Anjan Sanyal & Others** (supra). The Hon'ble Supreme Court has held that transfer should not be lightly interfered with by the Courts/Tribunal unless it is based on mala fide or prohibited by Service Rules or passed by an incompetent authority. In my opinion, the law laid down by the Hon'ble Supreme Court in this case would not be applicable in the facts & circumstances of the present OA. The applicant has been transferred to Udaipur primarily on the ground that there is shortage of staff at Service Centre Udaipur. The learned counsel for the applicant submitted that there is no work at Udaipur since the

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staff working there has been declared surplus. The learned counsel for the respondents could not show any document that there is work at Udaipur or against which post, the applicant has been posted at Udaipur. It is admitted that the applicant is surplus employee. If there was sanctioned post at Service Centre Udaipur then certainly the applicant could have been posted against one of those posts. Since the applicant has no work at his present place of posting at Jaipur and there is also no work at Udaipur either, therefore, the transfer of the applicant, who is a surplus employee, cannot be said to be in administrative exigency. Further the learned counsel for the respondents could not show that there is any vacancy at Udaipur against which the applicant has been transferred. Therefore, in my opinion, the transfer order dated 14.09.2012 (Annexure A/1) is liable to be quashed and set aside.

18. Consequently, the transfer order dated 14.09.2012 (Annexure A/1) qua the applicant is quashed and set aside.

19. Accordingly, the OA is allowed with no order as to costs.

20. In view of the order passed in the OA, the MA No. 381/2012 for vacation of the ex-parte interim order dated 28.09.2012 stands dismissed.

21. However, it is made clear that the respondents are at liberty to issue a fresh transfer order of the applicant in case there is a policy of the respondents to transfer the surplus

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employees from one station to another station and if there is a vacancy at a station where the respondents propose to transfer the applicant.



(Anil Kumar)
Member (A)

AHQ