

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

02.09.2013

OA No. 494/2013 with MA 272/2013 & 273/2013

Mr. Amit Mathur, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

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

Anil Kumar

(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 494/2013
WITH
MISC. APPLICATIONS 272/2013 & 273/2013

Jaipur, the 02nd day of September, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Harishankar son of Shri Dhan Singh, aged around 45 years, resident of 94, Vivekanand Colony, Ajay Nagar, Ajmer (Rajasthan). Presently working as Income Tax Officer, Income Tax Department, Ajmer.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Jaipur.

... Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed an OA No. 475/2013 being aggrieved by the transfer order dated 15.05.2013 vide which he was transferred from Ajmer to Bikaner. This OA was decided by this Tribunal on 19.06.2013, directing the respondents to decide the representation of the applicant by a reasoned & speaking order. In pursuance of these directions, the respondents considered the representation of the applicant and rejected the same vide order dated 01.07.2013 (Annexure A/2).

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2. Now the applicant has filed the present OA being aggrieved by his transfer order dated 15.05.2013 (Annexure A/1) and the rejection order of his representation passed by the respondents dated 01.07.2013 (Annexure A/2).

3. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant has been working on the post of Income Tax Officer since 27.07.2009. Thus he has not completed four years' tenure at Ajmer as stipulated in the transfer policy of the respondents dated 03.06.2009 (Annexure A/3).

4. That the applicant was given a form to fill up the particulars for transfer & posting. In this form, since the applicant had not completed four years at Ajmer, therefore in Column no. 10 of this form, he did not indicate three places of his choice posting.

5. However, the respondents vide order dated 15.05.2013 (Annexure A/1) transferred the applicant from Ajmer to Bikaner without completion of four years tenure.

6. The applicant immediately submitted a representation dated 16.05.2013 to the respondents (Annexure A/5) stating that he has not completed four years service tenure at Ajmer. Further that he never requested for transfer to Bikaner, that he is 55 years of age, that his two daughters are of marriageable

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age, the wife is mentally perturbed, that he is in the zone of consideration for promotion to the post of Assistant Commissioner and likely to be promoted in the year 2013. He further stated that on this ground, various transfer orders have been cancelled. He further stated that the posts are lying vacant at Ajmer and one more post will be available on 31.07.2013.

7. The representation of the applicant has been rejected by the respondents vide order dated 01.07.2013 (Annexure A/2). In this order, the respondents assumed four months relaxation in the tenure period and further that there was shortage of staff at Jodhpur, the applicant is not entitled for policy benefit.

8. The learned counsel for the applicant further stated that in the case of Shri Dinesh Kajot, as per the policy, relaxation was available to him for one year additional on the spouse ground and not otherwise. His extended tenure was also over despite he was retained at Ajmer and the applicant has been transferred. A person having longer stay should have been transferred but he has been retained in violation of the transfer policy of the respondents. Therefore, the transfer order of the applicant has been passed with legal malafide. Therefore, it is liable to be quashed and set aside.

9. The learned counsel for the applicant further submitted that while rejecting the representation of the applicant, the

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family circumstances of the applicant were not considered by the respondents. Therefore, he argued that the OA be allowed and the transfer order of the applicant dated 15.05.2013 (Annexure A/1) and rejection order of his representation dated 01.07.2013 (Annexure A/2) be quashed and set aside.

10. The learned counsel for the applicant referred to the following case law in support of his averments.

- (1) Virender S. Hooda & Others vs. State of Haryana & Another, 1999 SCC (L&S) 824.
- (2) Narendra Sharma & Another vs. State of U.P. & Others Civil Misc. Writ Petition No. 51317 of 2009 decided on 12.10.2009 by the Allahabad High Court.

11. The applicant has also filed the rejoinder.

12. On the other hand, the learned counsel for the respondents submitted that the applicant had earlier filed an OA No. 475/2013 before this Tribunal against his transfer order dated 15.05.2013. This Tribunal vide order dated 19.06.2013 directed the respondents to consider and decide the representation of the applicant dated 16.05.2013 strictly in accordance with the provisions of law and pass a reasoned & speaking order expeditiously. In compliance of the aforesaid order dated 19.06.2013, the representation of the applicant was decided by the respondents by a reasoned & speaking order (Annexure A/2). The applicant was informed that it was not possible to cancel his transfer from Ajmer to Bikaner. In

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compliance of the transfer order, the applicant was relieved from the office of Commissioner of Income Tax on 02.07.2013 (Annexure R/1) and the relieving order was duly served on the applicant on 03.07.2013 (Annexure R/2).

13. The learned counsel for the respondents further submitted that the applicant concealed this fact that he has already been relieved on 02.07.2013 and the said relieving order was received by him on 03.07.2013 before the Hon'ble Tribunal on 04.07.2013. In view of the wrong facts submitted by the applicant, this Tribunal passed an interim order dated 04.07.2013. Therefore, in view of concealment of facts, the present OA is liable to be dismissed.

14. He further argued that when the case was listed on 18.07.2013, the applicant again mislead the Hon'ble and did not state the correct facts that he had already been relieved vide order dated 02.07.2013 and the same was served upon him on 03.07.2013. In such circumstances, the interim order was continued.

15. That the applicant on 26.07.2013 has suo-moto given a joining letter in the office of Commissioner of Income Tax, Ajmer that he is reporting for duty in pursuance of the order dated 04.07.2013 passed by this Tribunal. Thus it is clear that the applicant has all along tried to mislead the Tribunal. In view of the fact that the applicant was already relieved vide

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order dated 02.07.2013, which was received by the applicant on 03.07.2013, his reporting for duty on 26.07.2013 at Ajmer Office carries no meaning.

16. The learned counsel for the respondents further submitted that the applicant has taken wrong interpretation of the transfer policy. The respondents have quoted Para 2(b) of the transfer policy, which is as under:-

"The cooling off period on transfer from a station will be 2 years subject to relaxation of 4 months if the time between to AGTs is less than 2 years. The date shall be reckoned from the date of actual joining and not from the date of the order. The cut off date will be 31st March."

It is very clear from the above that the period of 3 years 8 months have been deemed to be 4 years. It is further submitted that during the AGT, 2013 for ITO, the stay period was considered as 3 years 8 months uniformly.

17. He further submitted that every year all the field officers of Rajasthan Region are requested to send the duly filled up transfer proforma of officers/officials working under their charge. In this proforma, the officers are given a choice of three stations. The applicant has filled up the transfer proforma but failed to fill up column no. 10 wherein three choice stations were to be filled up. Since the applicant has failed to do so, it was upon the respondents to transfer the applicant anywhere in Rajasthan Region subject to the availability of vacancies. As there was vacancy in Bikaner, therefore, the applicant was transferred to Bikaner.

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18. The learned counsel for the respondents further stated that as per the transfer policy, the case of the applicant is not covered under compassionate grounds.

19. He further stated that the case of the applicant is also not covered under retirement due because as he is of 55 years of age and not 57 years.

20. He further argued that with regard to the submission of the learned counsel for the applicant that he is due for promotion to the post of ACIT, he submitted that the matter is premature at this stage.

21. Considering all the facts, stated above, learned counsel for the respondents submitted that the representation of the applicant has been rightly rejected through a reasoned & speaking order.

22. He further argued that Shri Dinesh Kajot has not been transferred^{red} from Ajmer because his wife is working at the same station. He submitted that as per the Office Memorandum issued by the Department of Personnel & Training dated 30.09.2009, the husband & wife should be as far as possible posted at the same station. He drew my attention of Para 5 of this OM wherein it has been stated that the cadre controlling authority should strive to post the employee at the station of

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the spouse and in case of inability to do so, specific reasons, therefore, may be communicated to the employee. Moreover, he submitted that Shri Dinesh Kajot has not been made party in this OA; hence no adverse order can be passed against him. Therefore, the OA has no merit and it should be dismissed with costs.

23. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the applicant.

24. The learned counsel for the applicant has submitted that tenure of the Income Tax Officer at Ajmer is 4 years. However, the applicant has been transferred after 3 years and 8 months. Therefore, his transfer order is against the transfer policy of the respondents. In reply to the submission of the learned counsel for the applicant, learned counsel for the respondents has argued that as per Para 2(b) of the transfer policy, the cooling off period on transfer from a station will be 2 years subject to relaxation of 4 months if the time between to AGTs is less than 2 years. The date shall be reckoned from the date of actual joining and not from the date of order. The cut-off date will be 31st March. Thus it is clear from the above that the period of 3 years and 8 months have been deemed to be 4 years and this stay period of 3 years and 8 months was considered uniformly for all ITO of Rajasthan Region. Therefore, there is no discrimination against the applicant on

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the basis of tenure. The learned counsel for the applicant admitted during the arguments that other officers who have completed 3 years and 8 months have also been transferred and on this ground alone, the applicant has not been discriminated. Thus considering the facts, stated above, I am of the opinion that if the applicant has been transferred after 3 years and 8 months, it would not be considered as violation of the transfer policy of ITO. Moreover, this tenure of 3 years and 8 months has been uniformly applied to other officers also. Therefore, on this ground, the applicant is not entitled for any relief.

25. The learned counsel for the applicant has argued that he has not given Bikaner as one of his choice place; therefore, he should not have been transferred to Bikaner. In reply to this averment of the applicant, the respondents submitted that the applicant was required to fill up the transfer proforma. The applicant has filled up the transfer proforma but failed to fill up column no. 10 wherein three choice stations were to be filled up. Since the applicant has failed to do so, therefore, the respondents have transferred the applicant to Bikaner as vacancy was available at that place (Annexure R/3).

26. I have carefully gone through the transfer proforma filled up by the applicant (Annexure R/3). In column no.10, there is clear mention that three station of choice are to be given by the officers who fill up this form but in the present case, the applicant has not filled any choice station. Therefore, in my

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opinion, the respondents were free to post the applicant wherever the vacancy existed in the administrative exigency. It was the duty of the applicant that if he wanted his consideration for a choice station then he should have filled up column no. 10. Therefore, on this ground, the applicant is not entitled for any relief.

27. The learned counsel for the applicant submitted that the respondents have not considered family circumstances of the applicant while deciding the representation. Therefore, the transfer order of the applicant should be cancelled. In response to this submission of the learned counsel for the applicant, the respondents have submitted that the case of the applicant was not covered under the heading of compassionate grounds. As per transfer policy, case of only those officers/officials whose family members are suffering from serious illness may be considered on compassionate grounds. In the applicant's case neither the applicant nor any of his family members is suffering from serious illness. Therefore, the applicant's case was not considered on this ground. As regards 'Children Education' ground, it was submitted that only those officers/officials are retained at the same station whose children are studying in 10th/12th Std. during the year. In the case of the applicant, none of his children are studying in these two classes. Therefore, even on this ground, the applicant is not entitled for any relief. The learned counsel for the applicant could not rebut the submission of the learned counsel for the

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respondents. Therefore, I am of the considered opinion that the case of the applicant was not covered under compassionate ground and hence the applicant is not entitled for any relief on this ground.

28. The applicant is also not entitled for relief on the ground that he has to retire soon as his age is 55 years and not 57 years. Therefore, on this ground also, the applicant is not entitled for any relief in the present OA.

29. With regard to the submission that the applicant is likely to be promoted at an early date, the respondents have submitted that the matter is premature at this stage. Therefore, on this ground, the transfer order of the applicant cannot be cancelled. I am inclined to agree with the averment made by the learned counsel for the respondents.

30. The learned counsel for the applicant vehemently argued that Shri Dinesh Kajot has completed more than 5 years at Ajmer and as per the policy of the respondents, he could have been given one more year beyond 4 years. Therefore, having completed five years tenure at Ajmer, he should have been transferred instead of the applicant. Thus this is discrimination against the applicant. On the other hand, learned counsel for the respondents drew my attention to OM dated 30.09.2009 of the Department of Personnel & Training. This OM is with regard to the guidelines regarding posting of husband & wife at the

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same station. In Para No. 5 of this OM, it has been stated that the cadre controlling authority should strive to post the employee at the station of the spouse and in case of inability to do so, specific reasons, therefore, may be communicated to the employee. In pursuance to these guidelines, Shri Dinesh Kajot has not been transferred. Moreover, he has not been made party in this OA. Therefore, this Tribunal cannot pass any prejudicial order against Shri Dinesh Kajot.

31. I have carefully gone through the policy guidelines issued by the respondents dated 03.06.2009 (Annexure A/3) and the guidelines issued by the Department of Personnel & Training vide order dated 30.09.2009 with regard to the posting of husband & wife at the same station. As per the transfer policy of the respondents dated 03.06.2009, the relaxation of one year after completion of tenure for transfer is allowed to the officers. It is not disputed that Shri Dinesh Kajot has completed 5 years at Ajmer but in view of the fact that his wife is working at Ajmer, the respondents have not transferred Shri Dinesh Kajot. Moreover, OM dated 30.09.2009 of the Department of Personnel & Training also states that as far as possible the cadre controlling authority should strive to post the employee at the station of the spouse. Therefore, I do not find any infirmity in the decision of the respondents not to transfer Shri Dinesh Kajot from Ajmer. Moreover, Shri Dinesh Kajot has not been made party in the present OA, therefore, no prejudicial order can be passed against him.

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32. Even if it is agreed that transfer of the applicant has been issued in violation of the transfer policy even then the applicant has no legal enforceable right. It is settled law that ordinarily the transfer order passed in violation of the policy of transfer may not be interfered with as the transfer policy or guidelines or instructions are not statutory in nature and, therefore, do not infringe any legal right to employee.

33. I have gone through the case law, referred to by the learned counsel for the applicant. The ratio decided by the Hon'ble Supreme Court in the case of **Virender S. Hooda & Others vs. State of Haryana & Another**, 1999 SCC (L&S) 824 (supra) is not applicable in the facts & circumstances of the present case. The case before the Hon'ble Supreme Court was with regard to the recruitment of Haryana Civil Services (Executive Branch) & other Allied Services whereas the present case is of the transfer of the applicant from Ajmer to Bikaner. Therefore, it is not applicable in the facts & circumstances of the present case.

34. I have also perused the judgment of the Hon'ble High Court in the case of **Narendra Sharma & Another vs. State of U.P. & Others** Civil Misc. Writ Petition No. 51317 of 2009 decided on 12.10.2009 by the Allahabad High Court. In this case the Hon'ble High Court has directed to the Registry of the Court to place the papers of these Writ Petitions before the

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Hon'ble the Chief Justice under Chapter V Rule 6 of the Rules of the High Court, 1952 at the earliest for constituting a larger Bench for resolving the question of law formulated above or any other ancillary question which may also be found fit and reasonable under the aforesaid facts and circumstances. Thus from the directions given by the High Court itself, it is clear that they have not adjudicated or laid down any law in this judgment. Therefore the applicant cannot be given any relief on the basis of this judgment.

35. On the other hand, the ratio decided by the Hon'ble Supreme Court in the cases of **Union of India vs. S.L. Abbas**, 1994 SCC (L&S) 230 and **State of U.P. vs. Goverdhan Lal**, 2004 (11) SCC 402 are squarely applicable under the facts & circumstances of the present OA. The Hon'ble Supreme Court in Para No. 7 & 8 of its judgment in the case of **Union of India vs. S.L. Abbas** (supra) has held that-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it....."

"8.The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer....."

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36. Hon'ble Supreme Court in Para Nos. 7 & 8 of its judgment in the case of **State of U.P. vs. Goverdhan Lal**, 2004 (11) SCC 402 has held that

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

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37. The learned counsel for the respondents argued that the applicant was relieved from the office of the Commissioner of Income Tax on 02.07.2013 (Annexure R/1) and the relieving order was duly served on 03.07.2013 (Annexure R/2) but this fact was not disclosed by the applicant on 04.07.2013 when the matter was heard by this Tribunal. The applicant has concealed this fact. The learned counsel for the applicant admitted that it was a mistake on the part of the applicant. Therefore in view of these facts, the joining letter given by the applicant on 26.07.2013 in the office of Commissioner of Income Tax, Ajmer will have no effect.

38. The transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Who should be transferred where, is a matter for the appropriate authority to decide. The applicant cannot claim that once he is appointed or posted in a particular place or position, he could continue in such place or position, as long as he desires.

39. Considering the above facts and discussions, I am of the view that the applicant has failed to make out any case of interference by this Tribunal.

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40. Consequently, the OA being bereft of merit is dismissed with no order as to costs. Interim Relief granted vide order dated 04.07.2013 stands vacated.

41. In view of the order passed in the OA, MA Nos. 272/2013 & 273/2013 are disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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